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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 241.

HITCHMAN COAL AND COKE COMPANY, APPELLANT,

vs.

JOHN MITCHELL, INDIVIDUALLY; T. L. LEWIS, INDIVIDUALLY; W. B. WILSON, INDIVIDUALLY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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a UNITED STATES OF AMERICA, *ss:*

At a United States Circuit Court of Appeals for the Fourth Circuit, begun and held at the Court House, in the City of Richmond, on the first Tuesday in May, being the fifth day of the same month, in the year of our Lord one thousand nine hundred and fourteen.

Present: Hon. J. C. Pritchard, Circuit Judge; Hon. Martin A. Knapp, Circuit Judge; Hon. Charles A. Woods, Circuit Judge.

Among other were the following proceedings, to-wit:

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,

vs.

HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

Be it remembered that heretofore, to-wit, on September 15, 1913, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows:

1 TRANSCRIPT OF RECORD.

Be it remembered, that, heretofore, to-wit: On the 24th day of October, 1907, the following bill was filed in the office of the Clerk of the Circuit Court of the United States for the Northern District of West Virginia, at Philippi:

Bill of Complaint.

In the Circuit Court of the United States in and for the Northern District of West Virginia.

No. —. In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus,
2 Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of West Virginia:

Hitchman Coal & Coke Company, a corporation organized under and by virtue of the laws of the State of West Virginia, and a citizen of said State, having its principal office at Wheeling, in said State and District, brings this, its bill of complaint, against John Mitchell, of Indianapolis, Indiana, and a citizen of the State of Indiana, individually, and as President of the United Mine Workers of America

and of the International Union United Mine Workers of America; and T. L. Lewis of Bridgeport, Ohio, and a citizen of the State of Ohio, individually, and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; and W. B. Wilson of Blossburg, Pennsylvania, and a citizen of the State of Pennsylvania, individually, and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; and William Green of Coshocton, Ohio, and a citizen of the State of Ohio, individually, and as President of District No. 6 United Mine Workers of America; and D. H. Sullivan, of Coshocton, Ohio, and a citizen of the State of Ohio, individually, and as Vice-President of District No. 6 United Mine Workers of America; and George W. Savage of Columbus, Ohio, and a citizen of the State of Ohio, individually, and as Secretary-Treasurer of District No. 6 United Mine Workers of America; and A. R. Watkins of Yorkville, Ohio, and a citizen of
3 the State of Ohio, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America; and John Zelenka of Warrenton, Ohio, and a citizen of the State of Ohio, individually, and as Vice-President of Sub-District 5 of District 6 United Mine Workers of America; and Lee Rankin of Dillonvale, Ohio, and a citizen of the State of Ohio, individually, and as Secretary-Treasurer of Sub-District 5 of District 6 United Mine Workers of America; and Thomas Hughes of Shadyside, Ohio, and a citizen of the State of Ohio, defendants.

And, therefore, your orator complains and says:

First. Your orator, Hitchman Coal & Coke Company, is a corporation organized under and by virtue of the laws of the State of West Virginia, having its principal office at Wheeling, in Ohio County, in said State; that it is the owner of about five thousand (5,000) acres of coal situated contiguous to its coal mine which is at Benwood; that its coal mine is equipped with the necessary plant for mining coal and has shipping facilities on the main line of the Baltimore & Ohio Railroad, and its various shipments by rail originate on that road and at its mine; that your orator has been for some time past and is now engaged in mining coal and shipping the same to the open markets of the United States; that the product of its mine is large amounting to about fourteen hundred tons per day, and that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months when coal is carried to the northwest by steamers upon the lakes while navigation is not interrupted by ice, while another portion of its trade has been for years and now is supplying coal for fuel for engines of the said Baltimore & Ohio Railroad Company delivered by a coaling device to the engines at its tipple and likewise from large storage bins which have been erected and are in use by your orator and by said railroad company wherefrom to coal their engines, said storage bin being located at the end of a considerable steel structure, trestle or viaduct located near the round house of said Railroad Company at Benwood, in the construction of which steel trestle and coal bins your orator has expended and now has

invested a large sum of money; that on mining coal, the coal as mined is brought to the surface and mouth of the mine and then for interstate commerce is delivered to the common carrier and by it carried to its destination within the United States but without the State of West Virginia; that your orator has made large contracts for the future delivery of coal to points within and without
4 the State of West Virginia, but within the United States, especially for lake trade; that your orator alone furnishes daily to said Baltimore & Ohio Railroad Company between five hundred and six hundred tons, engine coal; that the profits and earnings of your orator depend largely upon its mining and producing coal during the summer and fall seasons of the year, and especially is this true of this year as to its said contracts not yet filled, but which it has the ability and unless unlawfully interfered with by the defendants expects to fill; that prior to April 1st, 1906, your orator operated its said mine by employing a large number of men who were affiliated with said United Mine Workers of America, but on April 1st, 1906, a strike having been ordered by said association the employees of your orator who were working for it at that time continued to work until April 16th, 1906, and on that day under renewed demands of said United Mine Workers of America went out on a strike and ceased to work for your orator, and said strike so declared is still in force so far as your orator and its mine is concerned; that at the time your orator's said employes went out on said strike they had no grievance, had made no complaint to your orator, and your orator had not failed to comply with its then contracts with its said employes with reference to their work; that said strike was ordered by the said association and your orator's said employes went out on said strike as aforesaid in pursuance thereof for the reason that certain coal operators in other sections of the country had refused to accede to certain demands of said association, and the ordering out of your orator's said employes and their going out on a strike as aforesaid were means amongst others used by said association at that time for the purpose of compelling said coal operators to sign a certain scale of wages which had been prepared and was being insisted upon by said association as the price of its permission being given to its members to remain at work for said coal operators; that at that time your orator being advised of the controversy between said association and said coal operators proposed to its said employes that they continue at work for your orator pending the signing of the scale by said coal operators, and that on the signing of the scale your orator would pay its said employes any additional sum that would have been earned by them during the time intervening between April 1st, 1906, and the signing of the scale, provided that the scale when signed should provide for an advance in wages on work done on and after said April 1st, 1906; that while your orator's said employes were ready and willing to accept your orator's proposition, nevertheless the said employes being members of the United Mine Workers of America were by that association ordered to
5 strike, and after having continued in your orator's employ until April 16th, 1906, went out on a strike as aforesaid

under the renewed orders of said United Mine Workers of America that they should strike, which going out on strike on April 16th, 1906, was without justification and without excuse, and greatly to your orator's injury, embarrassment in business and financial loss, owing to its inability to carry out its contracts which it then had for the sale and delivery of coal and for supplying coal to the engines of said Baltimore & Ohio Railroad Company at its tipple and bins aforesaid; that your orator's said mine was shut down and was not operated after April 16th, 1906, until June 12th, 1906, but upon resumption of operation on June 12th, 1906, your orator started to run its mine on a non-union basis and which every man who accepted employment at the mine was told at the time of entering your orator's service that there was no union at the mine, that the company would not allow any, and that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and obeying its orders, and if any employe of the company joined the union he could not work any longer for the company; that under those circumstances and with full knowledge of the said conditions of employment many men applied to your orator for work and being employed entered the employment of your orator under an express contract not to join the United Mine Workers of America and worked in its mine and have continued so to work until the present time with satisfaction to themselves and to your orator, although from time to time since your orator has been operating its said mine on a non-union basis, efforts have been repeatedly made by officers and agents representing the United Mine Workers of America and its subordinate associations or branches to induce your orator to agree to re-unionize its mine and to sign the scale of the United Mine Workers of America; that your orator has repeatedly refused to have anything to do with the United Mine Workers of America, or any of its subordinate associations or branches, or with any of its officers, agents, employes, or servants, and has made known to them and to each of them your orator's determination to run its mine non-union and its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employes and servants, with its operation of its mine or with its business, whereupon said United Mine Workers of America, its subordinate associations or branches by its officers, agents, employes and servants have sought and are now seeking by inducements, threats and intimidation, but so far without physical violence, to cause the employes of your orator to leave its service and to cause others who have
6 engaged to enter their service to break their engagements of service and not work for your orator, and to prevent others from working for your orator, all with the professed, avowed and actual purpose which your orator says is an unlawful purpose, of compelling your orator to recognize the union, to force your orator to employ none but persons who are members of the United Mine Workers of America, to compel your orator to pay such scale of wages as said United Mine Workers of America arbitrarily fix and demand, and to submit your orator's business and its property to the juris-

diction and control of said union, becoming by the union's rules obliged to employ or to discharge whom the said union, its subordinate associations or branches, and its officers, agents, employees, and servants shall direct or require.

Your orator says that the said United Mine Workers of America, including its said subordinate associations or branches is a secret voluntary organization having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes that the matters and things herein complained of by your orator have arisen.

Your orators says that the said United Mine Workers of America, although not incorporated as aforesaid, was organized on or about January 25th, 1890, that from the proceedings of its last annual convention, which was held in Indianapolis, Indiana, from January 15th to January 22d, inclusive, 1907, it appears that it had a membership of 230,667 in 1906; that its income for the fiscal year ending November 30th, 1906, was $1,081,408.32, its expenditures for the same period were $1,232,994.01, and that its balance on hand December 1st 1906, was $337,960.71, and that it is claimed for it that it is the largest labor organization in America.

Indicative of the character and purpose of said United Mine Workers of America and its said subordinate associations or branches, your orator refers to and says that the following are some of the provisions of their respective constitutions.

Excerpts from the Constitution of the United Mine Workers of America and of the International Union, United Mine Workers of America.

Article I.

Name, Objects and Jurisdiction.

Sec. 1. This organization shall be known as the United Mine Workers of America.

7 Sec. 2. The objects of this union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes.

Sec. 3. This organization shall be composed of International, District, Subdistrict and Local Unions.

Sec. 4. The International Union shall have jurisdiction over all Districts, Sub-Districts and Local Unions, which shall be governed by this constitution.

Article II.

Officers and Their Duties.

Sec. 1. The officers of the Union shall be one President, one Vice-President, and one Secretary-Treasurer, and an Executive Board to be composed of one member from each district under the

jurisdiction of United Mine Workers, each district to elect its member of the International Executive Board, the President, Vice-President and Secretary-Treasurer to be members of the board by reason of their position.

Sec. 2. The President shall preside at all general conventions of the Union. * * *; from time to time appoint such organizers and workers in the International office or in the field as may be required. * * * decide all questions of dispute concerning the meaning of the Constitution; exercise general supervision over its workings, both in the field and in the International offices, as his judgment dictates or the exigencies of the case require * * * and he shall quarterly name the pass-word for the use of the Local Unions.

Sec. 3. The Vice-President shall act as general organizer, and shall be under the direction of the President, and shall succeed that officer in case of death, resignation, or removal from office.

Sec. 5. The Executive Board shall constitute an International Board of Conciliation and Arbitration; shall execute the orders of the International Convention, and between conventions shall have full power to direct the workings of the organization, also to levy and collect assessments when necessary * * *.

Sec. 6. The International Executive Board shall have power to order a general strike or suspension by a two-thirds vote at
8 any time during the year that they may deem necessary, and *and* each member shall have one vote and one deciding vote for every two thousand members in good standing, or a majority fraction thereof; provided that all District Presidents, Vice-Presidents and Secretaries be called into joint conference for consideration before any joint strike or suspension order be issued.

Sec. 7. The International Executive Board shall be convened upon the order of the President or by the Secretary-Treasurer at the request of eleven members of the Board.

Sec. 8. The term of all elective officers shall be from April 1st to March 31st of each year.

Article III.

Qualifications and Salary of Officers.

Sec. 1. Any member in good standing in the organization shall be eligible to hold office in the International Union provided he is not a salaried officer of a Sub-District or District at the same time, and provided he has never been found guilty of misappropriating any funds of the organization entrusted to his care, who has been a member of a Local Union for one year prior to his election.

Sec. 2. The President's salary shall be $3,000.00 per annum and all legitimate expenses; Vice President $2,500.00 per annum and all legitimate expenses; Secretary-Treasurer $2,500.00 and all legitimate expenses. * * *

Article IV.

Revenues.

Sec. 1. Every Local Union shall pay direct to the International Secretary-Treasurer a per capita tax of twenty-five cents per month per member, and such additional assessments as may be levied. * * *

Sec. 2. The Local Secretary-Treasurer shall fill out and forward to the International and District Secretary-Treasurer before the 25th of each month, a report of all members in good standing in the Local Union on the first day of that month, together with all taxes and assessments due to the International and District offices from the same.

9 Sec. 6. No local union shall be exonerated from the payment of per capita tax or assessments unless their members have been idle for one month or more.

Sec. 7. Where a mine is abandoned indefinitely and all the members of the Local Union at that mine have gone to work elsewhere, the Local Secretary shall notify the District Secretary of the fact and the District Secretary shall make application for exoneration for the Local Union each month to the International Secretary-Treasurer, until work is resumed at the mines and the Local Union is again placed in working condition.

Sec. 9. The local monthly dues to be paid by each member shall not be less than fifty cents per month, together with such assessments as may be levied by the different branches of the U. M. W. of A.

Sec. 10. The initiation fee shall be $10.00 for practical miners, and for non-practical men it shall be left to the discretion of the District where applications for membership are made.

Article V.

Conventions and Representatives.

Sec. 2. * * * And the term "miner or mine worker" includes any one working in or around the mines and a member of a Local Union.

Article VII.

Cards.

Sec. 4. Any member desiring to leave the mine where his Local is located and work elsewhere, shall immediately make application to the Secretary of the Local for a Transfer Card, and if he has paid all dues and assessments, the President and Recording Secretary shall issue a Transfer Card to him, which shall be attested by the Financial Secretary, providing the Local Union is in good standing with the International, District, and Sub-District Unions, which shall be accepted in any District, and in case such person cannot

produce a Transfer Card he shall pay the regular initiation fee. All Transfer Cards shall be deposited as the laws of the District where work is secured may direct.

10 Sec. 8. When a Transfer Card is issued to any member, it must be deposited by him with some Local Union or with the International Secretary-Treasurer within three months after the last day of the month in which it was issued to him, else the card will become void and he can only become a member again by initiation as a new member.

Article IX.

Organizers.

Sec. 1. Commissions as Organizer shall be signed by the President and attested by the Secretary-Treasurer.

Article X.

Strikes.

Sec. 1. When trouble of a local character arises between members of a Local Union and their employers, the officers of said Local shall endeavor to effect an amicable adjustment, and failing in this they shall immediately notify the officers of the District to which the affected Locals are attached, and said District officers shall immediately investigate the case of complaint; and failing to effect a peaceable settlement on a basis that would be fair and just to aggrieved members, finding that a strike would best serve the interests of the locality affected, they may order the inauguration of a strike, but no local strike shall be legalized or supported by a District unless its inauguration was approved by the officers of the District or by the International Executive Board, upon an appeal taken by the aggrieved members from the decision of the District officers; any Local Union striking in violation of the above provisions shall not be sustained or recognized by the International officers.

Sec. 3. When any member of the United Mine Workers is suspended or discharged, it shall be the duty of the Mine Committee to immediately investigate the case, and if the member discharged is not guilty of an offense justifying the same, the grievance shall immediately be reported to the Sub-District and District President in writing, under the seal of the Local and if, upon investigation, the report of the Local Committee is found correct, the Sub-District and District President shall immediately insist upon the reinstatement of the suspended or discharged member.

Sec. 4. The International officers shall at any time they deem it to the best interests of mine workers in a District that is idle,

11 for just and sufficient reasons, order a suspension in any other District or Districts that would in any way impede the settlement of the District affected; provided, that such action would conserve to the best interests of the United Mine Workers of America.

Article XII.

Districts.

Sec. 1. Districts shall be formed with such number and territory as may be assigned them by the International officers and shall be subject to the jurisdiction, laws, rules, and usages of the International Union.

Sec. 2. Districts may adopt such laws for their government as they may deem necessary; provided they do not conflict with the International Union.

Article XIII.

Sub-Districts.

Sec. 1. Sub-Districts may be formed with such number and territory as may be assigned them by the Districts to which they are attached, and shall be subject to the jurisdiction, laws, rules and usages of the International and District Unions.

Sec. 2. Sub-Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with International and District constitutions or agreements entered into.

Sec. 3. All Local Unions within the territory of Sub-Districts already organized in any District, shall contribute and become a part of the same and comply with its laws, before they are entitled to pass-word or representation in either International or District organization.

Article XIV.

Locals.

Sec. 1. Local Unions shall be composed of miners, mine laborers and other workmen, skilled and unskilled, working in and about the mines, except mine manager, top boss and persons engaged in the sale of intoxicating liquors, and shall be given such num-
12 bers as the International Secretary-Treasurer shall assign them.

Sec. 2. All Locals shall be under the jurisdiction of the International, District, and Sub-District Unions, and may make such laws for their government as they deem necessary, provided they do not conflict with the International, District and Sub-District Constitutions or agreements entered into. Any Local Union or members thereof violating this section shall be subject to a fine of not less than five dollars.

Sec. 4. All local officers and committees shall be elected the last meeting of June in each year, by a majority vote of the members present, and shall serve one year, or until their successors are elected and qualified.

Your orator says that its mine is located in territory, which under the organization of the United Mine Workers of America is included within the jurisdiction of Sub-District 5 of District 6.

Excerpts from Constitution of District No. 6, United Mine Workers of America.

Article I.

Name and Objects.

Sec. 1. This organization shall be known as District No. 6 of the United Mine Workers of America.

Sec. 2. One of the objects of this organization is to unite all employees in and around the coal mines of Ohio and the Pan Handle District of West Virginia.

Article II.

Sec. 1. District No. 6 shall be divided into six sub-districts. * * *

Article III.

Officers and their Duties.

Sec. 1. The officers of this organization shall consist of one President, one Vice President, one Secretary-Treasurer, and an Executive Board of nine members, three of whom shall be the President,
13 Vice-President and Secretary-Treasurer. The President and Secretary-Treasurer shall act as Chairman and Secretary of the Executive Board.

Sec. 2. The President shall preside at all conventions of the district organization * * * He shall act as general organizer for the district * * *.

Sec. 3. The Vice-President shall act as general organizer of District No. 6 and shall be under the direction of the President, and shall succeed that officer in case of death or removal, and when directed by the President in writing to settle any grievance or dispute his decision shall be final.

Sec. 7. The members of the Executive Board being presidents of sub-districts, have the right to organize Locals in their respective districts.

Sec. 8. That the term of office of President, Vice-President, Secretary-Treasurer, and members of the Executive Board shall be from April 1st to March 31st of each year.

Article VI.

Salaries of Officers.

Sec. 1. The salary of President shall be $100.00 per month payable semi-monthly, * * * with legitimate expenses * * *.

Sec. 2. The Vice-President shall be paid $90 per month on the same condition as the President.

Sec. 3. The Secretary-Treasurer shall be paid for his services the sum of $100 per month and all office expenditures * * *.

Article VIII.

Grievances and Disputes.

Sec. 1. In case of trouble arising in any local with the employer, it shall be the duty of the local officers to try to effect a settlement; failing in this the grievance shall be presented to the sub-district president in writing, who shall investigate the grievance or dispute and settle, if possible. Should he fail, he shall consult the District President who shall settle the dispute either by suspending work or such other methods as they may deem best. In case of a
14 direct violation of agreements, the sub-district president or Local Union affected are authorized to order a suspension of work.

Sec. 2. When it becomes necessary for a District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine so closed may be situated.

Article IX.

Sec. 1. The initiation fee in District 6 shall be $10.00, and all persons applying for and securing work in the mines, who are not practical mine workers, shall pay $10.00 initiation fee. Any person applying for work at any organized mine shall present a United Mine Workers' card. In case said person cannot present such union card, he shall pay the regular initiation fee.

Sec. 4. When a member allows himself to be three months in arrears he shall be considered no longer a member of the United Mine Workers of America, and in order to become a member again he must pay uniform initiation fee * * *.

Sec. 8. Each local union must be provided with a seal of the U. M. W. of A., and no card or communication will be recognized unless the seal of the local be attached.

Sec. 15. Any member of our organization working in or around the mine working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offence.

Sec. 16. The local monthly dues to be paid by each member shall not be less than fifty cents per month, together with such assessment as may be levied by the different branches of the U. M. W. of A.

Sec. 17. That a fine of $10.00 (be imposed) in each individual case where it can be proven that a member of the Union leaves his district for West Virginia or any other unfair mines, and remains there one month or more without having deposited his transfer card and returns without giving a satisfactory account of why he has not deposited his transfer card; and the fine to be collected by the local union where he works.

15 *Excerpts from Constitution of Sub-District 5 of District 6 United Mine Workers of America.*

Article I.

Sec. 1. This organization shall be known as Sub-District 5 of District 6, United Mine Workers of America.

Sec. 2. The object of this organization is to unite the mine employees of Belmont, Jefferson, Tuscarawas, Harrison and Carroll Counties in Ohio, and that part of Stark County, South of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio and Marshall Counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike.

Sec. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines.

Sec. 4. This organization shall have jurisdiction over all local unions of Sub-District 5 of 6, U. M. W. of A.

Article II.

Sec. 1. The officers of this organization shall consist of a president, a vice-president, a secretary-treasurer and three members of an executive board, who shall constitute a board of six members.
* * *

Article IV.

Sec. 1. In case of trouble arising in any Local with the employer, it shall be the duty of the Local officers to try to effect a settlement; failing in this the grievance shall be presented to the Sub-District President in writing, who shall investigate the grievance or dispute and settle if possible. Should he fail he shall consult the District President, who shall settle the dispute either by suspending work or by such other methods as they may deem best. In case of a direct violation of agreements, the Sub-District President or Local Union affected are authorized to order a suspension of work.

Article V.

Revenue and Representation.

Sec. 1. The revenue of this organization shall be derived from Local Unions under its jurisdiction. They shall pay to the
16 Secretary-Treasurer the sum of 5 cts. per member per month; the same shall be checked off by checkweighman, the per capita tax to be forwarded to the Secretary-Treasurer not later than the 15th of each month for the month preceding.

Sec. 3. The convention shall have power to increase or reduce the per capita tax if they deem it necessary.

Article VI.

Salaries of Officers.

Sec. 1. The Salary of President shall be $80 per month and all necessary expenses in the performance of his duties.

Sec. 2. The salary of the Vice-President shall be $70 per month, and all necessary expenses in the performance of his duties.

Sec. 3. The salary of the Secretary-Treasurer shall be $75 per month, and all necessary expenses in the performance of his duties.

Sec. 6. The above prices are based on a 90¢ mining rate, and that these prices be increased or decreased the same per cent. as the miners.

Article VII.

Nomination and Election of Officers.

Sec. 7. All Checkweighmen employed by members of the United Mine Workers shall be members of the United Mine Workers six months prior to their election, except newly organized locals, and voted for and elected by those who pay to maintain them. Notice of election for Checkweighman shall be posted in some conspicuous place at the mines where Checkweighman is to be employed at least three days before the time set for such an election. It shall be the duty of such Checkweighman to keep a record of all men employed in and around the mine. Under no condition shall a checkweighman be considered an officer of the Local Union. The term for which a Checkweighman shall serve shall be left to the discretion of those who employ him. The above will not prevent any local officer from acting as Checkweighman.

Sec. 8. The term of all officers of Sub-District 5 of District 6 shall be from April 1st to March 31st of each year.

17

Article IX.

Sec. 1. That our Initiation Fee must conform with the National Constitution.

Sec. 2. That a fine of $10.00 in each case (be imposed) where it can be proven that a member of our Union leaves his district for West Virginia or any other unfair mine, and remains one month or more without depositing a Transfer Card, and returns without giving a satisfactory account of why he has not deposited his Transfer Card, and a fine to be collected by the Local Union where he is working.

Sec. 3. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.

Further indicating some of the purposes of said United Mine Workers of America, your orator refers to and says that the following are some of the provisions contained in the manual of District No. 6 of the United Mine Workers of America and of the manual of Sub-District 5 of District 6 United Mine Workers of America.

Opening.

The hour of the meeting having arrived, the President shall take the chair and give one rap with the gavel, upon which all officers and members shall be seated.

If no regular door keeper has been appointed, the President shall appoint one of the brothers to see that none but members of the Union are admitted.

The oath administered to each member on his admission and initiation is:

"I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"That I will not reveal to any employer or boss the name of any one a member of our Union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing
18 the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it. To all of this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America."

Your orator further says that the paid up membership of said District 6 United Mine Workers of America was in 1906, 36,372, and on March 1st, 1907, Sub-District 5 of District 6 U. M. W. of A. had 108 locals in good standing and paid up membership of 12,500.

Your orator says that the defendant, John Mitchell, is President of the United Mine Workers of America and of the International Union United Mine Workers of America; that the defendant, T. L. Lewis, is Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; that the defendant, W. B. Wilson, is Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; that the defendant, William Green, is President of District No. 6 United Mine Workers of America; that the defendant, D. H. Sullivan, is Vice-President of District No. 6 United Mine Workers of America; that the defendant, George W. Savage, is Secretary-Treasurer of District No. 6 United Mine Workers of America; that the defendant, A. R. Watkins, is President of Sub-District 5 of District 6 United Mine Workers of America; that the defendant, John Zelenka, is Vice-President of Sub-District 5 of District 6 United Mine Workers of America; that the defendant,

Lee Rankin, is Secretary-Treasurer of Sub-District 5 of District United Mine Workers of America; and that the defendant, Thom Hughes, is an organizer of the United Mine Workers of America and that each and all of the said defendants, John Mitchell, T. L Lewis, W. B. Wilson, William Green, D. H. Sullican, George W Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thom Hughes, have agreed, confederated, combined and formed themselv into a conspiracy, under the name of the United Mine Workers America, to unlawfully persuade, entice and procure your orator miners or mine workers, employed by your orator and working fo your orator in or around your orator's mine, to break, violat
19 and disregard their several contracts with your orator, a with the avowed purpose of compelling your orator to unioniz its plant, without your orator's consent, and to such end have unlaw fully and maliciously agreed, confederated, combined and forme themselves into a conspiracy to compel by threats and intimidatio and by other unlawful means your orator's said employees to joi the Union and to apply to their own relation with your orator, i the matter of their employment, the rules of the Union, and t enable said Union to apply its rules and regulations to your orato under penalty of closing down your orator's mine, provided you orator still refuses to unionize its plant and recognize the Union.

Your orator says that it has no contractual relation whatever with any one of the defendants hereto and that each of said defendant is fully aware that your orator is operating a non-union mine and will not consent to operate a Union mine; that its employees are non-union; that said employees are required by your orator at the time of entering service to agree not to become connected with the Union, while employed by your orator, and that if they do join the Union, their employment with the orator shall cease; that with such understanding your orator's employees enter into its employment and that they are now working for your orator under such contract and with such conditions, all of which is known to these defendants and to each of them, as aforesaid.

Your orator further says that the said John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes, individually, and as officers, agents, employees and servants, as aforesaid, of said United Mine Workers of America and of its said subordinate associations or branches are fully aware that your orator's said employees are satisfied with their employment; that your orator is engaged in mining coal and in fulfilling contracts for coal; that it would be impossible to fulfill those contracts without the labor of its said employees and that it would entail upon your orator great financial loss to have its ability to fulfill its contracts interfered with by the failure of its men to work longer for your orator, and likewise would entail great loss and damage to your orator to have its mine shut down and to have a strike declared, yet your orator says that the said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now

about to finally accomplish, namely: to cause your orator's mine to be shut down, its plant to remain idle, its contracts to be
20 broken and unfulfilled until such time as your orator shall submit to the demand of the Union, that it shall unionize its plant and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the Union, paramount to the orders of your orator, their employer, and until in thus unionizing its plant your orator shall surrender its control and the management of its business to the Union of the various rules and regulations laid down by the Union and accede in advance to every demand the said Union by its said officers, agents, employees and servants may make.

Your orator says the effectuating of this purpose is imminent and the damage threatened is great and irremediable, and that your orator's loss so far has been in excess of $2,000.00 exclusive of interest and costs, while on the accomplishment of said purpose of said defendants and the shutting down of your orator's mine the damage to your orator would be still greater and incapable of definite ascertainment, being incalculable, but amounting to many thousands of dollars.

Your orator further says that it pays as much as the Union scale of wage to its said employees, and that the said defendants in thus unlawfully and maliciously agreeing together, confederating, combining and conspiring to effectuate by unlawful means the unionizing of your orator's mine are simply seeking power, for the purpose of strengthening the Union in future contests with employers of labor, to compel all miners and mine workers to join the Union, establish a monoply and force employers of that kind of labor, and especially to force your orator, to yield to the Union's demands, or else to give up its business.

Your orator says that the Union is not a competitor of your orator in the labor market; that the Union does not employ labor and is not an employer of labor.

Your orator says that at the Annual Convention of the United Mine Workers of America, held at Indianapolis, Indiana, January 15th to January 22nd, inclusive, 1907, the said defendants, John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka and Lee Rankin, were present and participated in its proceedings, during which it was openly stated with reference to the objects of the Union,—"Organized labor contends that as industry cannot exist labor, labor has the right to say under what conditions it shall be employed, thereby dictating the management of the productive end of the business."

Your orator says that at the same convention the defendant, T. L. Lewis, stated that he had charge of the organizing force
21 under the direction of the President; that there has been a tremendous loss in the membership of the Union as a result of the strike of April 1, 1906; that he had been instrumental in building up three national organizations of mine workers and was one of the delegates and had attended the Convention which laid

the foundation of the United Mine Workers of America; that the Union had "closed shop" wage agreements with operators whereunder 181,384 persons were employed in the year 1905, and that all of those men were required to be members of the Union; that the American continent is not large enough to maintain two organizations of miners, and that he favored one organization of the mine workers of the American continent and a complete recognition of the Union's right to organize in every mining district in the country.

Said defendant, W. B. Wilson, at said Convention, read his report as Secretary-Treasurer, in which he said—that resultant from the strike of April 1, 1906, the Union had had a large number of men on strike and a comparatively small amount of money in the Treasury and that the Union had been unable to contribute sufficient money to the various districts to enable the payment of very large strike benefits; that this created dissatisfaction and that the question was frequently asked—"What has become of our money;" that he had been in charge of the finances of the organization and that there was paid for aid to strikers in the years 1900 to 1906, inclusive, $5,191,554.77, and that to this amount the cost of organizing was to be added.

Your orator says that at said convention a Committee's Report was unanimously adopted, which contained the following: "Your committee recommend that this convention heartily approve of the Board's action in withdrawing a part of our organizing force from active service, as a result of a depleted treasury, but we further recommend that the force be increased whenever, in the discretion of the Board, our fund would warrant."

Your orator says that at said Convention said defendant, T. L. Lewis, in making an address in speaking of organizing West Virginia and the unorganized sections of Pennsylvania, said:

"We will organize them by a strike movement"; while another delegate in his address at the same convention, at the same time, said: "I agree with President Green and Vice-President Lewis that you never can get those men organized except at the end of a general strike, but I warn you not to go into it until you are thoroughly prepared"; and in addressing the Convention at the same
22 time in the same discussion another delegate in recommending and explaining organization said, speaking of the Union's method,—"If we are able at a colliery to force all the men to become members of the Union we do so. If we are too weak, we do not attempt it, but keep gradually working among the men until we are able to accomplish our end," while John Mitchell in addressing the Convention as President said: "I believe it is possible, indeed I believe it is probable, that in the not distant future we will be able to inaugurate a movement in West Virginia and the other unorganized fields that will involve them in a strike, and then we will expect you to furnish the sinews of war, as you have done in the past, to keep these men in idleness"; and again, "If one year hence it is my judgment that a suspension of mining throughout the United States would be best, I will favor that policy."

Your orator says that at a Convention of Sub-District 5 of District 6 United Mine Workers of America held at Wheeling, March 14-19, 1907, the said defendants, A. R. Watkins, Lee Rankin, T. L. Lewis, John Zelenka and Thomas Hughes were present and participated in the proceedings.

Said defendant, A. R. Watkins, in his report which he submitted to the Convention as President of Sub-District 5 of District 6 U. M. W. of A. said: "The general strike in our sub-district last year was characterized by a great deal of bitter feeling by a few operators trying to operate their mines on a non-union basis. The attempt of those operators to operate their mines was defeated by the splendid loyalty of our members in standing shoulder to shoulder in that bitter struggle. You and those who stood so loyally to the organization deserve great credit for your conduct, under the trying conditions that existed in some sections of the district during the strike." * * * "At our last Annual Convention it was unanimously decided that the Eastern Ohio scale should apply to the West Virginia Pan Handle counties. The operators of those counties refused to meet us in joint convention to sign a general scale. Some of the operators even refused to sign a contract and this resulted in several local strikes, all of which were settled except the one now on at Elm Grove where the men are on strike and are standing firm. It is with regret that some of the locals in the Pan Handle broke away and the members went to work without any union or without getting a scale signed.

I am of the opinion that there are many good active union men in the Pan Handle counties, and if we all work together we can organize every mine worker in that section and establish scale rates," and expressed his wish that "Time may enable us by active
23 work, to make the United Mine Workers the most glorious and powerful of all trades unions."

The defendant, Lee Rankin, in his report to that Convention as Secretary-Treasurer of Sub-District 5 of District 6 U. M. W. of A. said, in speaking of the strike declared April 1, 1906,—"After several attempts to reach an agreement with the Operators of sub-district 5 our members were compelled to strike and that strike developed into the most bitter struggle that has taken place since the formation of our sub-district.

The failure of the district organization to provide each striking member with benefits to the amount of $3.00 per week caused considerable friction and this was taken advantage of by the enemies of the organization. What for a time seemed to be a division in our ranks encouraged certain operators with the hope that they could crush organization. In this hope they were doomed to disappointment, as later developments fully demonstrated.

When the district organization found that they could not comply with the constitution in the payment of strike benefits, a system of paying relief in orders was established. This policy was condemned and denounced by a few men, who did not stop to consider why the system was established.

After a great deal of work on the part of your representatives, the reason for adopting such a policy was made clear to the members, who then took renewed courage and showed a determination to win in the struggle that then existed.

With all the obstacles that we had to overcome last year, we have reason to feel proud that sub-district 5 came out of the strike with such credit to itself and the principles of unionism that it represents.

To the fidelity, unity and activity of the mine workers of this sub-district is due the credit for winning in the struggle of last year. If any mistakes were made in that contest, let us profit by the experience of the past and be that much better prepared for the future," and again said "We have one mine at Bellaire, O., and five mines in the Pan Handle district which I believe should be organized. I believe those mines can be organized and in my opinion this convention should adopt some plan to organize those mines."

Your orator says that the five mines referred to in the statement above made by said defendant, Lee Rankin, are Hitchman Coal & Coke Company, Glendale Coal Company, Elm Grove Coal Company, Richland Coal Company and Beech Bottom Coal Company.

Adopting that suggestion of the defendant, Lee Rankin, the following resolution was then adopted by the Convention.

24 Resolution No. 8.

"Whereas, there are miners in the Pan Handle District and Ohio that are not organized, and believing every mine should be organized, be it

Resolved, by this Ninth Annual Convention that the Sub-District officers together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done," and

Your orator says that at said convention last mentioned a resolution was also adopted as follows:

Resolution No. 10.

"Whereas, There is a growing tendency among some operators in Eastern Ohio to violate contract provisions, and having more than one mine, leave the mine idle rather than comply with agreements or settle disputes.

Whereas, *be* believe "an injury to one is the concern of all," and believing that disputes should be settled promptly,

Resolved, That we, the delegates of this Ninth Annual Convention, authorize the officers to close all mines of one company when such company fails to comply with contracts or settle disputes."

Your orator says that in the foregoing quotation of the language of the defendant, T. L. Lewis, reading—"It is with regret that some of the locals in the Pan Handle broke away and the members went to work without any union or without getting a scale signed," the said defendant, T. L. Lewis, referred to the Locals of the United Mine Workers of America which existed at the mine of the Hitchman

Coal & Coke Company and at the mine of the Glendale Coal Company at the time the said strike was declared, April 1, 1906.

Your orator says that the Hitchman Coal and Coke Company and the Glendale Coal Company are owned by the same persons; that the same persons are members of the Board of Directors of each corporation and that W. H. Koch is a stockholder, a director and General Manager of each of said mines, while the business of the Glendale Coal Company is managed from the office of the Hitchman Coal & Coke Company.

Your orator says that the said defendants and each of them treated the two mines as a single concern, and have so dealt with your orator, and your orator in filing this bill refers to and makes a part of it, so far as the same may properly be done, a similar bill, coincidently prepared and filed in this court, seeking the same redress against
25 said defendants and each of them on behalf of the Glendale Coal Company as your orator in this proceeding seeks on its own behalf and makes such reference and use of all supporting exhibits and affidavits.

Your orator says that in refusing to recognize the Union after the declaration of said strike April 1, 1906, and after its men had left your orator's employment, pursuant to said strike, and in thereafter and now running its mine non-union your orator did not seek to reduce the wages of its said employees nor cause its said employees to work for less than the scale of wages established by said United Mine Workers of America, nor does your orator now seek nor contemplate any reduction in the wages of its present employees. Your orator's sole purpose in running non-union and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representative of the said United Mine Workers of America was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants.

Your orator says that these same defendants have for some years last past been in business such as it is herein shown they are now engaged in; that they are well acquainted one with the other, and that they constitute a part of certain upper officials of the United Mine Workers, in whose hands the management of the affairs of said Union have been centralized.

Your orator says that while your orator's mine remained idle after the shut down April 16, 1906, efforts were frequently made by some one or more of said defendants to induce your orator to sign the scale and run Union, but every request of that kind met with a refusal. After your orator started up non-union about June 12th, 1906, as aforesaid, efforts were repeatedly made by one or more of the defendants to induce your orator to unionize its mine, and, failing in that, efforts were made by some one or more of said defendants to bring about by inducement, persuasion, threats, and intimidation, and by various means and devices unlawfully to induce your orator's employees to cease working for your orator, and by use of like means, devices, intimidation, threats, persuasion and inducements to prevent

men willing to work for your orator not to engage to work, or if having engaged to work, then not to go to work, for your orator; but despite their efforts, your orator was able to increase the number of its employees and to increase its business, which is conducted successfully and peacefully and lawfully from that time until the present.

Your orator says that upon different occasions, since starting up non-union, as aforesaid, the different officials of the United Mine Workers of America, amongst them the defendants, John
26 Zelanka, A. R. Watkins, D. H. Sullivan and William Green, visited the General Manager of your orator at his office at the Hitchman mine and talked to him on the subject of the recognition of the Union, the signing of the scale and a reemployment of your orator's employees under the technical guise of thus entering into contract relations with your orator's employees as members of the United Mine Workers of America, and for the purpose of doing away with the express provision of your orator's contract with each of its employees that they should not become members of the Union, and if they did that their employment should thereby cease, and proposed to your orator that it recognize the Union, sign the scale and so reemploy its men. Your orator refused each and all of these propositions.

Your orator says that about July 1, 1907, the defendants, William Green, John Zelanka and A. R. Watkins, came to the office of your orator's General Manager, and had a conversation with him regarding the forming of a Miner's Union or rather the putting of your orator's employees under the jurisdiction of the United Mine Workers of America, and while your orator on that occasion, through its General Manager, distinctly stated that the proposition of said defendants would not be considered at all, still said Zelenka subsequently reported to your orator's employees, and caused that report to be spread amongst them, that he, Zelenka, Green and Watkins had had a conference with your orator's General Manager and that said General Manager had agreed to allow the United Mine Workers of America to put all of your orator's employees into the Union, and made the further statement, which he caused to be circulated amongst your orator's employees, that it was up to the employees of your orator to join the Union, or else that they would be out of a job at an early day, because only Union men would be permitted to work at the mine and that those of your orator's employees who did not join the Union would not be permitted to get a job any place else. Your orator says that its General Manager shortly after this occurence complained of the action mentioned and that said Zelenka, Green and Watkins each denied making any such statement or circulating any such report. Yet your orator says its statement in this respect is true and that in the action referred to and complained of to said defendants, said defendants were simply carrying out their unlawful purpose heretofore formed, as aforesaid, to unionize your orator's mine without its consent, there being involved in the said unionizing the doing of the many unlawful acts and for the many unlawful purposes herein stated.

Your orator says that its employees are non-union men who have entered into employment with your orator with the
27 understanding that your orator shall continue to run a non-union mine; that some of your orator's employees, employed under such condition and with such understanding, have bought property and homes and expect to have permanent employment with your orator, so running its mine non-union, and with the understanding and expectation on their part that while in the employ of your orator they shall be protected in such employment.

Your orator says that sometime during the middle of this summer of 1907, the defendants, Green, Watkins and Zelenka, called on your orator's General Manager at his office, and said Green was spokesman. He said he would like to talk organization. Your orator's General Manager stated to them then that while unionizing of the mine was out of the question yet if they had any business proposition to submit it would be listened to. Green urged that under your orator's present arrangement or contract with its employees the men felt at liberty to do as they pleased and did not feel any restraint, while if your orator would make a contract with him as president of the United Mine Workers (he is President of District 6, U. M. W. of A.) he could hold the men in check, see that all agreements incorporated in the scale were fulfilled and carried out to the letter and generally that he would see that the men lived up to their contract. To this, your orator's General Manager replied that from personal experience in the past, in dealing with the Union, he had found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering. Green then requested your orator's General Manager to think the matter over and said he would see him again about it within a couple of weeks. Several weeks after this said Green, Watkins and Zelenka met your orator's General Manager, while the latter was at the McClure House, in Wheeling, and the latter then told Green that he could see nothing in the Union's proposition that would interest him in any manner. Green then asked said General Manager if he would not put the proposition up to your orator's Board of Directors. This he did, and your orator's Board unanimously refused to have anything whatever to do with the United Mine Workers of America. Shortly after that, said defendant, Green, telephoned your orator's General Manager, asked if he had submitted the Union's proposition to your orator's Directors and was told that the proposition had been submitted and that the Directors refused absolutely to consider the matter in any manner whatever.

Your orator says that in the dealings that antedated the declaration of the strike of April 1, 1906, your orator's General Manager talked with the defendant, D. H. Sullivan, and also with
28 the defendant, William Green, and told them both that in case they brought your orator's men out on strike they would be taking away from them something they would never be able to give back, that is—reemployment with your orator. Yet despite this warning, the Union ordered the strike. Your orator's same

official made the same statement to the defendant, Watkins, at about the same time and before April 1, 1906. And these statements have been by your orator's General Manager called to the attention of these same men during the repeated conferences they have had on the subject of reunionizing the mine since the declaration of the strike aforesaid.

Your orator says that under the rules of said United Mine Workers of America enforced against your orator and its employees, while your orator ran its mine Union, certain moneys, being wages earned by your orator's employees, then members of the Union, were withheld by your orator from their pay and paid over with the consent of the employees to the Secretary-Treasurer of the Local Union at your orator's mine; and at your orator's mine there was paid over by your orator to the Secretary-Treasurer of the Local Union during the two years ending April 1, 1906, a total of $9,155.88. A very much less amount was paid over by the Glendale Coal Company inasmuch as the owners of the Hitchman Coal & Coke Company had become owners of the Glendale Coal Company only a few months prior to said strike, April 1, 1906. On one or more of the occasions heretofore referred to when some one or more of said defendants besought your orator to unionize its mine, your orator's General Manager stated to said defendants that with them as officers of the Union it was not so much a question of looking after the interests of the men employed by your orator as it was a question of money and that they, these defendants, were in the business for what they could get out of it, and their attention was called to the fact that nearly $10,000.00 had been turned over to them from the Hitchman mine alone in the two years just prior to the strike.

Yet your orator says that although it has refused to permit it, still the said defendants, further proceeding to carry out their conspiracy, are now endeavoring to unionize your orator's mine, and threaten, and your orator has reasonable ground to fear that they will, and so alleges, close down your orator's mine and keep it closed until your orator will agree to sign the scale and employ none but union labor.

Your orator says that on or about September 7th, 1907, the defendant, Thomas Hughes, was noticed about the Glendale mine and about the Hitchman mine intercepting the miners, taking lists of names of employees and trying to induce the men by
29 persuasion, threats, coercion and intimidation, and by various other unlawful methods and devices, to quit working for your orator and to join the Union, and such efforts said Hughes is keeping up at each mine, although he has been ordered off of the premises of each mine and has been directed to stay off and to let your orator's employees alone.

Your orator says that as a result of the labors of the defendant, Hughes, who has been assisted by others of the defendants, from time to time, by their counsel and advice aiding and abetting him, with their presence, about your orator's mine and about the Glendale mine, the said defendants succeeded in getting twenty-four of

the employees of the Glendale mine to agree to join the Union and to quit the service of the Glendale Coal Company. And your orator says that while the said defendants have so far been unable to bring about or induce your orator's employees to quit its service, still the said Hughes has recently stated to one of your orator's miners whom he was trying to induce to leave your orator's service and join the Union, that he, Hughes, had succeeded in having one hundred and twenty-five men at the Hitchman mine sign their names agreeing to become members of the United Mine Workers of America and that just as soon as he got twenty-five more names he was going to shut the Hitchman mine down; and in this connection your orator says that fifty-four of your orator's present employees have in writing signed a statement that they are satisfied with their employment with your orator, with the wages paid to them, and with their work, and that they would like to remain in your orator's employ. Your orator employs from one hundred and seventy-five to two hundred men at its mine as a general rule and now has in its employ one hundred and sixty to one hundred and seventy-five men.

Your orator says that the said United Mine Workers of America, the said International Union United Mine Workers of America, the said District No. 6 United Mine Workers of America, and the said Sub-District 5 of District 6 United Mine Workers of America, voluntary associations as aforesaid are under their Constitutions violating the common and statutory law of the State of West Virginia as well as the Constitution of said State; especially in this, to-wit; in the provisions of Section 1, Section 3 and Section 4 of Article X., Constitution International Union, U. M. W. of A.; and in the provisions of Section 1, and Section 2 of Article VIII, and Section 15 of Article IX., Constitution District No. 6, U. M. W. of A.; and in the provisions of Section 2 and Section 3 of Article 1, Section 1 of Article IV., Section 6 of Article VI. and Sections 2 and 3 of Article IX., Constitution Sub-District 5 of District 6, U. M. W. of A.; and as well in the said oath which is administered to each member of the U. M. W. of A. on his initiation.

Your orator filed herewith as part hereof the Constitution of the International Union United Mine Workers of America, the Constitution of District No. 6 United Mine Workers of America, the Constitution of Sub-District 5 of District 6 United Mine Workers of America, the proceedings of the Eighteenth Annual Convention of the United Mine Workers of America, held in Indianapolis, Indiana, January 15th to 22d, 1907, and the proceedings of the Ninth Annual Convention of Sub-District 5 of District 6 United Mine Workers of America, held at Wheeling, W. Va., March 14-19, 1907, to the extent only that they show the constitutional provisions hereinbefore quoted, the members' oath and the statements made during said several conventions particularly pointed out and alleged herein, as well as the said Resolutions No. 8 and No. 10 of the said Convention of Sub-District 5 of District 6, U. M. W. of A., held at Wheeling, March 14-19, 1907, as aforesaid; but asks to be permitted to withdraw the said Constitutions and the said proceedings of said Conventions, upon filing with the Clerk of this Court copies of such

portions of said Constitutions and of said Conventions proceedings, as are made part hereof, certified to be such copies by such Clerk.

Your orator says that the said John Mitchell, the said T. L. Lewis, the said W. B. Wilson, acting in their several official capacities hereinbefore stated; the said William Green, the said D. H. Sullivan, the said George W. Savage, acting in their several official capacities hereinbefore stated; the said A. R. Watkins, the said John Zelenka and the said Lee Rankin, acting in their several official capacities hereinbefore stated, are representative of the said United Mine Workers of America, the said International Union United Mine Workers of America, the said District 6 United Mine Workers of America, and the said Sub-District of District 6 United Mine Workers of America, respectively; and that the said Thomas Hughes is acting as an organizer of said United Mine Workers of America, all voluntary associations; that the principal office of said United Mine Workers of America and of said International Union U. M. W. of A. is at Indianapolis, Indiana, the office of said District No. 6 U. M. W. of A. is at Columbus, Ohio, and that said Sub-District 5 of District 6 U. M. W. of A. has no office, business being transacted at the places of residence of the said A. R. Watkins, John Zelenka and Lee Rankin, President, Vice-President and Secretary-Treasurer, respectively, all residing within the State of Ohio as aforesaid; that the jurisdiction of this court is invoked on
31 the ground that your orator is a resident of the Northern District of West Virginia and a citizen of said State, and that each of the said defendants is a resident of a different state, to-wit; no defendant is a resident of the State of West Virginia, and that the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars.

Your orator says that while membership of the said United Mine Workers of America, of the said District No. 6 U. M. W. of A. and of said Sub-District 5 of District 6 U. M. W. of A. is large as hereinbefore stated, yet the names and addresses of the said members of the said several associations are to your orator unknown; that if any of them should happen to be residents of the State of West Virginia they are not necessary parties hereto, are not interfering with your orator in the matters herein complained of, and that they cannot be joined without ousting the jurisdiction of this court as to the other parties, the said defendants hereto, of whose actings and doings, purposes and proposed acts and doings, your orator herein complains as hereinbefore set forth.

Your orator further says that unless enjoined by this court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuation or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate busi-

ness in mining and shipping coal, and will compel your orator to contract with its employees through the said defendants as officers of the said associations under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the Union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and further will compel your orator to agree that each of its future employees as members of the said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employees would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the state of West Virginia.

32 Your orator further says that in effecting their said object of unionizing your orator's mine the said defendants propose and threaten to, and your orator being so informed and believing it to be true, alleges on such information and belief that said defendants will and are about to, indulge in all of the many methods of accomplishing their result by the use of threats, intimidation, force, violent or abusive language, picketing your orator's premises, picketing or patrolling or guarding the streets and approaches to your orator's premises and going to the homes or boarding houses of your orator's employees for the purpose of intimidating or coercing them to leave your orator's employment and to picket railroad and street cars passing to and from or through your orator's premises for the purpose of intercepting your orator's employees in going to or from your orator's premises and for the purpose of intercepting and preventing persons coming to your orator's premises for the purpose of seeking or for the purpose of entering into your orator's employment.

To the end, therefore, that your orator may have that relief which it can only obtain in a Court of Equity, and that the said defendants may each answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, your orator now prays the court that the said John Mitchell, the said T. L. Lewis and the said W. B. Wilson, each, individually, and as President, Vice-President and Secretary-Treasurer, respectively, of the said United Mine Workers of America and of the said International Union United Mine Workers of America; the said William Green, the said D. H. Sullivan and the said George W. Savage, each, individually, and as President, Vice-President and Secretary-Treasurer, respectively, of the said District No. 6 United Mine Workers of America; the said A. R. Watkins, the said John Zelenka and the said Lee Rankin, each, individually, and as President, Vice-President and Secretary-Treasurer, respectively, of the said Sub-District 5 of District 6 United Mine Workers of America; and the said Thomas Hughes; and each and every of them, their committees, agents, servants, confederates and associates, be re-

strained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with employees of your orator for the purpose of unionizing your orator's mine, without your orator's consent, by representing or causing to be represented in express or implied terms, to any of your orator's employees, or to any person who might become an employee of your orator, that such person will suffer or is likely to suffer some loss or trouble in continuing in or entering the employment of your orator, assigning, representing or causing to be represented in express or implied
33 terms to such employee or employees that such loss or trouble will or may come by reason of your orator not recognizing the United Mine Workers of America, or because your orator runs a non-union mine; that the said defendants and each and every of them, their committees, agents, servants, confederates and associates, be restrained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with employees of your orator for the purpose of unionizing your orator's mine, without your orator's consent, and in aid of such purpose knowingly and wilfully bringing about in any manner the breaking by your orator's employees of contracts of service known to them at the time to exist, which your orator now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by your orator's employees of contracts of service which may hereafter be entered into by persons with your orator and be known to them while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing your orator's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave your orator's service, giving or assigning directly or indirectly as a reason for any such act so brought about, or enticement and leaving of your orator's service, that your orator does not recognize the United Mine Workers of America, or that your orator runs a non-union mine, or that the interest of the United Mine Workers of America requires that your orator shall not be permitted to run a non-union mine, or that the interest of the Union will be best promoted thereby; that the said defendants and each and every of them, their committees, agents, servants, confederates and associaties, be restrained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with the employees of your orator so as knowingly and wilfully to bring about in any manner the breaking by your orator's employees of contracts of service, known to them at the time to exist, which your orator now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by your orator's employees of contracts of service which may hereafter be entered into by persons with your orator, and be known to them, while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing your orator's employees, present or future, knowing of such relationship, while the

relationship of employer and employee, as to such employee
34 so enticed, exists, to leave your orator's service, without your orator's consent, against your orator's will, and to your orator's injury; that the said defendants and each and every of them, their committees, agents, servants, confederates and associates, may be by this court ordered and commanded to desist and refrain from in any manner interfering with, hindering or obstructing any of the business of your orator or its agents, servants or employees, in the discharge of their duties as such, at and about your orator's mine or elsewhere by trespassing on or entering upon the grounds and premises of your orator, or within its mine, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever, or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employees of your orator to refuse or fail to perform their duties as such employee; also from compelling or inducing or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any of the employees of your orator to leave its service or fail or refuse to perform their duties as such employees, or to compel or attempt to compel, by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in or about your orator's mine and works from so accepting employment therein; also from entering upon or establishing a picket or pickets of men on or patrolling railroad or street cars passing through or adjacent to your orator's property for the purpose of inducing or compelling by threats, intimidation, violence, violent or abusive language, or persuasion, any employee of your orator to fail or refuse to perform his duties as such, or for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to your orator's mine to accept employment with your orator, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, persuasion, or in any other manner whatsoever, to refuse or fail to accept service with your orator; also from compelling or inducing or attempting to compel or induce by threats, force, intimidation, or violent or abusive language, any employee of your orator to refuse or fail to perform his duties as such employee, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employee to leave the service of your orator, and, by like methods, to prevent or attempt to prevent any person desiring to accept employment with your orator in or about its mine or works or elsewhere, from doing so by threats, violence,
35 force, intimidation, or violent or abusive language; also from interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion or entreaty with any person in the employ of your orator who has contracted with and is in the actual service of your orator to entice or induce him to quit the service of your orator or to fail or refuse to perform his duties under his contract of employment, and from ordering, aiding, directing,

assisting, or abetting in any manner what-oever any person or persons to commit any or either of the acts aforesaid; that the said defendants and each and every of them, their committees, agents, servants, confederates and associates, may be by this court forbidden and restrained from congregating at or near the premises of your orator, and from picketing or patrolling said premises for the purpose of intimidating your orator's employees or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their service to your orator, and, in like manner, from inducing or coercing them to leave the employment of your orator, and from in any manner so interfering with your orator in carrying on its business in its usual and ordinary way and from interfering by threats, intimidation, violence, violent or abusive language, any person or persons who may be employed or seeking employment by your orator in the operation of your orator's mine and works; and that the said defendants and each and every of them, their committees, agents, servants, confederates and associates, may be by this court restrained and forbidden, either singly or in combination with others, from collecting in and about the approaches to your orator's mine and works, for the purpose of picketing or patrolling or guarding the streets and approaches to the property of your orator for the purpose of intimidating, threatening or coercing any of the employees of your orator from work in its said mine or works, or any persons seeking employment therein from entering into such employment, and from so interfering with said employees in going to and from their daily work in and about the mine and works of your orator; and that said defendants and each and every of them, their committees, agents, servants, confederates, and associates, may be by this court enjoined and restrained from going, either singly or collectively, to the homes or boarding houses of your orator's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of your orator; and that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require.

May it please your Honors to grant to your orator a writ of subpœna to be directed to the said John Mitchell, *and* a citizen
36 of the State of Indiana, individually, and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis of Brideport, Ohio, and a citizen of the State of Ohio, individually, and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a citizen of the State of Pennsylvania, individually, and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green of Coshocton, Ohio, and a citizen of the State of Ohio, individually, and as President of District No. 6 United Mine Workers of America; D. H. Sullivan of Coshocton, Ohio, and a citizen of the State of Ohio, individually, and as Vice-President of District No. 6 United Mine

Workers of America; George W. Savage of Columbus, Ohio, and a citizen of the State of Ohio, individually, and as Secretary-Treasurer of District No. 6 United Mine Workers of America; A. R. Watkins of Yorkville, Ohio, and a citizen of the State of Ohio, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America; John Zelenka of Warrenton, Ohio, and a citizen of the State of Ohio, individually, and as Vice-President of Sub-District 5 of District 6 United Mine Workers of America; Lee Rankin of Dillonvale, Ohio, and a citizen of the State of Ohio, individually, and as Secretary-Treasurer of Sub-District 5 of District 6 United Mine Workers of America; and Thomas Hughes of Shadyside, Ohio, and a citizen of the State of Ohio; thereby commanding them and each of them, individually, and in their respective official capacities at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against them and each of them, individually, and in their said official capacities, in the premises, as shall seem meet and agreeable to equity.

And your orator will ever pray.

HITCHMAN COAL & COKE COMPANY,
By E. T. HITCHMAN, *Its President.*
[SEAL.] GEORGE R. E. GILCHRIST, *of Counsel.*

37 STATE OF WEST VIRGINIA,
County of Ohio, ss:

Personally appeared before the undersigned, a Notary Public within and for Ohio County, West Virginia, E. T. Hitchman, who being first duly sworn, says that he is President of the Hitchman Coal & Coke Company, the complainant corporation; that he has read the foregoing bill of complaint and knows the contents thereof; that as to such matters and things therein as are alleged on information and belief, affiant believes them to be true, and the other matters and things therein stated are true in substance and in fact.

E. T. HITCHMAN.

Sworn to before me and subscribed in my presence this 23d day of October, A. D., 1907.

HERMAN A. HUNDT,
[SEAL.] *Notary Public of, in and for*
Ohio County, West Virginia.

Order Awarding Temporary Injunction.

And at another day, to-wit: On the 26th day of May, 1908, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of American and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Penn-
38 sylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Greene, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillionvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

At a Circuit Court of the United States for the Northern District of West Virginia held at Philippi, on the 26th day of May, 1908, came in the above entitled cause the plaintiff, by George R. E. Gilchrist, its counsel, and Adam B. Littlepage and Charles E. Hogg, appearing specially for the purpose set forth in the order of January 14, 1908, and for no other purpose, for the unserved defendants, John Mitchell and W. B. Wilson, individually, and in their official capacities, and Thomas Hughes; the plaintiff, by its counsel, asked and was granted leave to withdraw its motion made March 18th,

1908, respecting the said appearance of the defendant George W. Savage, individually, and in his said official capacity, it appearing that service was obtained upon said Savage on May 13th, 1908; and said Adam B. Littlepage and Charles E. Hogg still appearing specially for said remaining unserved defendants renewed their motion as made on their behalf January 14th, 1908, as set
39 forth in said order of January 14th, 1908, and the plea in abatement filed at that time on behalf of each of said unserved defendants; and plaintiff, by its counsel, then filed its motion in writing that said motion to dismiss be denied, that said plea in abatement be overruled, and that each of said unserved defendants be assigned to appear and answer over to the merits of the cause, all of which motions were argued by counsel and briefs to be filed on or before June 1st, 1908, leave of court for that purpose having been given, and the pleas and motions were then submitted to the court, said pleas of Mitchell, Wilson and Hughes being required to be filed when the brief of defendant's counsel is filed, and to be of the same character as the plea of Green, filed with the affidavit of Gilchrist accompanying plaintiff's motion of this date, and the court may consider the plea of Green as the counterpart of said other pleas mutatis mutandis.

And, thereupon, on said 26th day of May, 1908, at Philippi, at two o'clock P. M., came the plaintiff, by its said counsel, and the said Adam B. Littlepage and Charles E. Hogg appearing generally for all of the served defendants in this cause, and plaintiff's said motion for an injunction in this suit came on to be heard. Plaintiff, by its said counsel, then filed in support of its motion for an injunction the affidavits of W. H. Koch, dated January 7th, 1908, James Stewart, dated March 6th, 1908, Clyde Round, dated January 7th, 1908, J. M. Hart, dated January 11th, 1908, Robert Meyers, dated January 7th, 1908, S. A. Round, dated January 7th, 1908, E. C. Pickett, second affidavit, dated January 7th, 1908, Wes Corns, dated January 11th, 1908, E. C. Pickett, third affidavit, January 7th, 1908, William Daugherty, dated January 7th, 1908, John Hull, dated January 7th, 1908, J. W. Logston, dated January 13th, 1908, C. G. Davis, dated January 7th, 1908, C. G. Davis, second affidavit, dated January 7th, 1908, R. J. Cotts, dated March 13th, 1908, E. T. Hitchman, dated January 10th, 1908, Howard Hazlett, dated January 9th, 1908, E. C. Pickett, dated March 12th, 1908, William Daugherty, dated January 11th, 1908, John Oliver, dated January 11th, 1908, Albert Jarrett, dated January 11th, 1908, James Jarrett, dated January 11th, 1908, Conrad Weiss, dated January 11th, 1908, Clyde Round, dated January 13th, 1908, Wes Corns, dated March 11th, 1908, R. J. Cotts, dated January 7th, 1908, R. J. Cotts, second affidavit, dated January 7th, 1908, Mike Popage, dated December 31st, 1907, E. T. Hitchman, dated May 26th, 1908, and E. C. Pickett, dated January 7th, 1908.

Said motion for an injunction was thereupon argued by plaintiff's counsel, defendants' said counsel stating they did not
40 desire to be heard in opposition to said motion so far as the granting of a temporary injunction at this time was concerned and not consenting but objecting thereto.

Upon consideration whereof, it appearing to the court that a temporary injunction should be allowed as prayed for in said bill of complaint, it is therefore adjudged, ordered and decreed by the court that said defendants, and each and every of them, their committees, agents, servants, confederates and associates, be, and until the further order of this court, inhibited, restrained and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere with the employees of the plaintiff for the purpose of unionizing plaintiff's mine, without plaintiff's consent, by representing or causing to be represented in express or implied terms, to any of plaintiff's employees, or to any person who might become an employee of plaintiff, that such person will suffer or is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, assigning, representing, or causing to be represented in express or implied terms to such employee or employees that such loss or trouble will or may come by reason of plaintiff not recognizing the United Mine Workers of America, or because plaintiff runs a non-union mine.

From interfering and from combining, conspiring or attempting to interfere with employees of plaintiff for the purpose of unionizing plaintiff's mine, without plaintiff's consent and in aid of such purpose knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff and be known to them while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, giving or assigning directly or indirectly as a reason for any such act so brought about, or enticement and leaving of plaintiff's service, that plaintiff does not recognize the United Mine Workers of America, or that plaintiff runs a non-union mine, or that the interest of the United Mine Workers of America requires that plaintiff shall not be permitted to run a non-union mine, or that the interest of the Union will be best promoted thereby.

41 From interfering and from combining, conspiring or attempting to interfere with the employees of plaintiff so as knowingly and wilfully to bring about in any manner the breaking by plaintiff's employees of contracts of service, known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff, and be known to them, while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's em-

ployees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, without plaintiff's consent, against plaintiff's will, and to plaintiff's injury.

From interfering with, hindering or obstructing any of the business of plaintiff, or its agents, servants or employees, in the discharge of their duties as such, at and about plaintiff's mine, or elsewhere, by trespassing on or entering upon the grounds and premises of plaintiff, or within its mine, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever, or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employees of plaintiff to refuse or fail to perform their duties as such employees.

From compelling or inducing or attempting to compel or induce by threats, intimidation, force, or violence, or abusive or violent language, any of the employees of plaintiff to leave its service or fail or refuse to perform their duties as such employees, or to compel or attempt to compel by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in or about plaintiff's mine and works from so accepting employment therein.

From entering upon or establishing a picket or pickets of men on or patrolling railroad or street cars passing through or adjacent to the plaintiff's property for the purpose of inducing or compelling by threats, intimidation, violence, violent or abusive language, or persuasion, any employee of plaintiff to fail or refuse to perform his duties as such, or for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to plaintiff's mine to accept employment with plaintiff, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, persuasion, or in any other manner whatsoever, to refuse or fail to accept service with plaintiff.

42 From compelling or inducing or attempting to compel or induce by threats, force, intimidation, or violent or abusive language, any employee of said plaintiff to refuse or fail to perform his duties as such employee, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employee to leave the service of plaintiff, and, by like methods, to prevent or attempt to prevent any person desiring to accept employment with plaintiff in or about its mine or works or elsewhere, from doing so by threats, violence, intimidation, or violent or abusive language.

From interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion or entreaty with any person in the employ of plaintiff who has contracted with and is in the actual service of plaintiff to entire or induce him to quit the service of plaintiff or to fail or refuse to perform his duties under his contract of employment, and from ordering, aiding, directing, assisting, or

abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid.

From congregating at or near the premises of plaintiff, and from picketing or patrolling said premises for the purpose of intimidating plaintiff's employees or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their service to plaintiff, and, in like manner, from inducing or coercing them to leave the employment of plaintiff, and from in any manner so interfering with the plaintiff in carrying on its business in its usual and ordinary way, and from interfering by threats, intimidation, violence, violent or abusive language, any person or persons who may be employed or seeking employment by plaintiff in the operation of plaintiff's mine and works.

From either singly or in combination with others, collecting in and about the approaches to plaintiff's mine and works, for the purpose of picketing or patrolling or guarding the streets and approaches to the property of plaintiff for the purpose of intimidating, threatening or coercing any of plaintiff's employees from working in its said mine or works, or any person seeking employment therein, from entering into such employment, and from so interfering with said employees in going to and from their daily work in and about the mine and works of plaintiff.

And from either singly or collectively, going to the homes or boarding houses of plaintiff's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave plaintiff's employment.

43 This injunction shall not take effect until said plaintiff or some responsible person for it shall enter into a bond in the penal sum of two thousand dollars, with surety therein satisfactory to the clerk of this court, conditioned that said plaintiff shall pay all such costs and damages as are sustained by the defendants, or any of them, by reason of this injunction should it be hereafter dissolved.

Service of a copy of this order on the defendants, their committees, agents, servants, confederates and associates, or any of them, shall be deemed and held sufficient notice of this order.

The served defendant A. R. Watkins, by his counsel, thereupon filed his answer, and moved the dissolution of said injunction, and the other served defendants shall file their answers on or before the 1st Monday in July, 1908.

Plaintiff, by its said counsel, thereupon, asked leave to reserve and was given the right to take any lawful exceptions or make any proper objections to said answer, or those that shall hereafter be filed.

Said served defendants, by their said counsel, then moved the court that this cause be continued to the next regular term of this court to be held at Philippi November 3d, 1908, and it is so ordered.

Decree—Motion to Dissolve in Part and Modify Injunction.

And at another day, to-wit: On the 15th day of December, 1908, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL AND COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff.

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of American and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the Inter-
44 national Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6 United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

This day came T. L. Lewis, individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually and as President of District No. 6 United Mine Workers of America; D. H. Sullivan, individually and as Vice-President of District No. 6 United Mine Workers of America; George W. Savage, individually and as Secretary-Treasurer of District No. 6 United Mine Workers of America; A. R. Watkins, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America; John Zelenka, individually, and as Vice-*Vice*-President of Sub-District 5 of District 6 United Mine Workers of America, and Lee Rankin, individually and as Secretary-Treasurer of Sub-District 5 of
45 District 6 United Mine Workers of America, by Charles E. Hogg, their counsel, and moved the court to dissolve the

temporary injunction awarded in this case on the 26 day of May, 1908, on the face of the bill and its exhibits, in so far as the said injunction inhibits, restrains and enjoins the said defendants or any of them from the use of argument, reason and persuasion to induce the employees of the plaintiff, the Hitchman Coal & Coke Company, or any of them, to become members of the United Mine Workers of America or any of its subordinate branches; and also in so far as said injunction inhibits, restrains and enjoins the said defendants or any of them from interviewing or talking to any person or persons in the employment of the plaintiff, or about to enter the employment of the plaintiff, for the purpose of inducing such persons to become members of the United Mine Workers of America or any of its subordinate branches, in a peaceable and law-abiding manner and unaccompanied by intimidation, force, fraud, violence or coercion; and also in so far as said injunction inhibits, restrains and enjoins these defendants or any of them from visiting the homes of the plaintiff's employees or any of them, for the purpose of inducing such employees, by reason, persuasion and argument and unaccompanied by force, fraud, intimidation, violence or coercion, to become members of the United Mine Workers of America or any of its subordinate branches; and in so far also as the said injunction inhibits, restrains and enjoins the defendants or any of them from going near or approaching the premises of the plaintiff for the purpose of interviewing or talking to or inducing the employees of the plaintiff or any of them to become members of the United Mine Workers of America or any of its subordinate branches; and in so far also as said injunction inhibits, restrains and enjoins the said defendants or any of them from unionizing or attempting to unionize plaintiff's mine without its consent, if by the term "unionizing" is meant action on the part of these defendants or any of them to induce the employees of the plaintiff or any of them to become members of the United Mine Workers of America or any of its subordinate branches by the use of argument, reason and persuasion unaccompanied by force, fraud, violence, coercion or intimidation in any form whatsoever; and in so far also as said injunction inhibits, restrains and enjoins these defendants or any of them from interfering with plaintiff's employees or any of them, if by the term "interfering," is meant that these defendants or any of them shall be precluded from interviewing and visiting plaintiff's employees in a peaceable and law-abiding manner for the purpose of inducing such employees to become members of the United Mine Workers of America or any of its subordinate branches.

46 And the said defendants, appearing here for the purpose of making this motion, move that said temporary injunction be modified by dissolving the same in the particulars hereinbefore specified, and that such modification be made upon the face of the bill and its exhibits. But these defendants here state that in submitting said motion for partial dissolution and modification of said injunction, still insist that upon a final hearing of said cause upon bill and answer and proofs their motion heretofore submitted to dissolve this injunction should be sustained, hereby disclaiming

any intention of conceding by said motion for partial dissolution and modification, the truth of the allegations of the plaintiff's bill whereby fraud, coercion, intimidation or violence in any form whatsoever is imputed to these defendants with reference to the relationship of plaintiff to its employees or with reference to the transaction of plaintiff's business, as alleged in said bill, in any manner whatsoever.

And upon motion of said defendants, the said motion for a partial dissolution and correspondent modification of said temporary injunction is hereby set down for argument to be had thereon on the 30 day of January, 1909.

Decree Deferring Proceedings.

And at the same day, to-wit: On the 15th day of December, 1908, the following order was made and entered of record, to-wit:

No. —. In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of American and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Penn-
47 sylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6 United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

On this fifteenth day of December, 1908, came the plaintiff, by George R. E. Gilchrist, its counsel, and all the served defendants,

by Charles E. Hogg, their counsel, and the plaintiff, by its counsel, filed its motion in writing that the defendant, A. R. Watkins, be refused permission to file his amended answer which he tendered for filing August 20, 1908, and to the filing of which plaintiff's counsel at that time objected, and asked to be heard; and plaintiff, by its counsel, then filed its motion in writing that costs be not allowed for the separate answer of William Green, individually, and as President of District No. 6, United Mine Workers of America, nor for the separate answer of D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, nor for the joint and several answer- of all the served defendants assigning as grounds that all of these defendants have been and are represented by the same counsel and that such separate answers were not necessary and that they could all have been joined
48 together and that in filing all of said answers the defendants have violated Equity Rule 62; and plaintiff, by its counsel, then filed its motion in writing to strike from the separate answers of the defendants William Green and D. H. Sullivan certain portions which are contradicted by the admissions of the defendant A. R. Watkins in his original answer filed in this cause May 26, 1908, particularly mentioned in said written motion, and also moved to strike from the joint and several answers of all the served defendants certain portions that are contradicted by the admissions of the defendant A. R. Watkins in his original answer filed May 26, 1908, particularly mentioned in said written motion; and plaintiff, by its counsel, then filed its exceptions to the separate answer of the defendant William Green, individually, and as President of District No. 6, United Mine Workers of America, and its exceptions to the separate answer of the defendant D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, and its exceptions to the separate answer of the defendant A. R. Watkins, individually, and as President of Sub-District 5 of District 6, United Mine Workers of America, and its exceptions to the joint and several answer- of the defendants T. L. Lewis, individually, and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America, William Green, individually, and as President of District No. 6 United Mine Workers of America, D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, George W. Savage, individually, and as Secretary-Treasurer of District No. 6, United Mine Workers of America, A. R. Watkins, individually, and as President of Sub-District 5 of District 6, United Mine Workers of America, John Zelenka, individually, and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America, and Lee Rankin, individually, and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America.

Plaintiff's counsel then filed his brief in support of plaintiff's motion to refuse Watkins permision to file his amended answer, and also filed his brief in support of plaintiff's motions to strike the portions of the answers hereinbefore referred to.

And further consideration of these motions and these exceptions was deferred until the further order by the court, and pending the court's decision upon a motion this day made by the defendants by their said counsel that the injunction granted herein on May 26, 1908, be modified by dissolving the same in certain particulars.

49 *Opinion of Court.*

(Filed Sept. 21, 1909.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL COMPANY
vs.
JOHN MITCHEL et al.

Upon Motion to Modify Injunction.

Upon October 24, 1907, the plaintiff corporation presented its bill for injunction to a judge of this court against John Mitchell and nine others, alleging itself to be a corporation under the laws of West Virginia and the defendants to be citizens and residents of several different states other than West Virginia; that nine of said defendants first named are Presidents, Vice-Presidents and Secretary-Treasurers, respectively of the United Mine Workers of America, and of the International Union United Mine Workers of America, of District No. 6 United Mine Workers of America and of sub-district 5 of District No. 6 United Mine Workers of America, and the defendant Thomas Hughes to be an organizing agent of said organizations; that plaintiff is the owner of about 5,000 acres of coal, has a mine and mining plant on the Baltimore & Ohio Railroad, that is mining and shipping a daily output of about 1,400 tons of coal, largely under contracts, between 500 and 600 tons to the railroad for its daily engine fuel, has large contracts for future delivery; that prior to April 1st, 1906, it operated its mine by employment of men affiliated with the United Mine Workers of America but, on that day, a strike was ordered by the officers of the Union, and, on April 16, 1906, the men so employed, in obedience to the demands and orders of defendants, went out and ceased to work. It is charged that this strike was ordered because certain other operators refused to sign the scale demanded by the Union, that so far as plaintiff was concerned it was wholly without justification or excuse because it distinctly agreed to pay the scale price and any increased price fixed thereby from April 1st, 1906, the date of the strike order, whenever it might be fixed and agreed upon, with which proposition the miners themselves, whose labor was involved, were entirely satisfied; that notwithstanding this, at

the instance of defendants, its mine was shut down from April 16th to June 12th, 1906, to its great financial loss and embarrass-
50 ment by reason of its inability to comply with its existing contracts. The bill then sets forth in detail in effect that on the last named date in order to be able to run said mine it entered into a contract with its men whereby it agreed with them to run its mining operation wholly upon non-union basis, refusing absolutely to employ any union men, and whereby the men on their part agreed not to join or become members of this union and to work for plaintiff as non-union men; that plaintiff has since that time been running its mine under this contract with its men to the entire satisfaction of both, paying its men as high wages as paid in any of the union mines. It then charges the officers and agents of the Union with full knowledge of the existence of this contract, to have repeatedly sought to have plaintiff violate it and agree to reunionize its mine which plaintiff has refused to do, whereupon such union officers and agents are seeking by inducements, threats and intimidation, to induce plaintiff's employees, bound by said contract with it, to leave its service, break their contract, join the union and also to prevent other men from engaging in its employ, and this it is charged with the unlawful purpose to prevent any but union men to work in its mine, compel it to employ none but union men and to submit its business and its property to the jurisdiction and control of said union and its officers. The bill then proceeds to charge the United Mine Workers Union of America and its subordinate organizations to be unincorporated organizations, having unlawful purposes and designs to create a monopoly and trust in coal mining labor and in support of these allegations sets forth in extenso, what purports to be excerpts from the constitutions and by-laws of the supreme and subordinate unions, together with the obligation required to be taken by its members and extracts from the proceedings of its national conventions. A distinct conspiracy on the part of defendants as individuals is charged to secure, by reason of their positions as officers of this union, the abandonment by the men of their contract with plaintiff, their joining the union, the inability of plaintiff to employ others, and the entire shutting down of its mine to its irreparable loss and injury. Presented with this bill were some twenty-eight affidavits in support of its allegations. A temporary restraining order was granted until the next regular term of court to be held at Parkersburg on January 14, 1908, for which date plaintiff's motion for a temporary injunction was set down for hearing. This hearing, on motion of defendants, was continued until May 26, 1908, when plaintiff presented more than twenty additional affidavits and argued its motion for temporary injunction, counsel for defense stating they "did not desire
51 to be heard in opposition to said motion so far as the granting of a temporary injunction at the time was concerned and not consenting but objecting thereto." The temporary injunction was on that day granted in exact accord with the terms of the restraining order.

Answers have been filed, exceptions entered thereto, motions as

to certain unserved defendants to have said bill dismissed as to them have been made and a motion by defendants, disclaiming "any intention of conceding the truth of the allegations of the plaintiff's bill whereby fraud, coercion and intimidation or violence in any form whatsoever is imputed to them," has been entered to dissolve the injunction, "on the face of the bill and exhibits," in so far as said injunction restrains said defendants or any of them from the use of argument, reason and persuasion, to induce the employees of the plaintiffs or any of them to become members of the United Mine Workers of America or any of its subordinate branches; so far as it restrains them from interfering or talking to any person or persons in the employment of the plaintiff, or about to enter the employment of the plaintiff, for the purpose of inducing such persons to become members of the United Mine Workers of America or any of its subordinate branches, in a peaceable and law abiding manner and unaccompanied by intimidation, force, fraud, violence or coercion; also in so far as it restrains defendants from visiting the homes of plaintiff's employees for the purpose of inducing them by reason, persuasion and argument, unaccompanied by force, fraud, intimidation, violence or coercion, to become members of the United Mine Workers of America or any of its subordinate branches; in so far as it restrains defendants from going near the premises of plaintiff for the purpose of talking with or inducing the employees of plaintiff to become members of the United Mine Workers of America; in so far as it *as it* restrains from unionizing or attempting to do so plaintiff's mine if by 'unionizing' is meant action on the part of defendants to induce the employees of plaintiff to become members of the United Mine Workers of America by the use of argument, persuasion and reason unaccompanied by force, violence, coercion or intimidation; and also in so far as it restrains defendants from interfering with plaintiff's employees if by the term 'interfering' is meant that defendants shall be precluded from interviewing and visiting plaintiff's employees for the purpose of inducing them to become members of the union." This motion on April 7, 1909, was argued and submitted and is now to be determined.

52 DAYTON, *District Judge:*

That this motion has been most thoroughly and ably argued goes without saying, when the character and ability of counsel engaged is considered. It is a source of regret that because of a multitude of duties, I have not had even more time to consider the questions involved than I have taken, but the fact that all these questions may again be presented and considered upon a final hearing, and above all may be finally reviewed by a higher court with full power to correct any error I may commit, has led me to comply with request of counsel for an early decision as to this motion.

It is to be borne in mine that this motion is made only for partial dissolution and that too, without prejudice to defendants' right to move for full dissolution upon final hearing. It is based solely upon the ground that the allegations of the bill on its face warrant,

if they do not demand it. Under these circumstances, while I am entitled to construe the allegations of the bill and all of them in the light most favorable to the plaintiff as upon demurrer, I am not inclined, at this time, to consider the charges, substantially made, that the United Mine Workers of America is an unlawful organization seeking to establish a monopoly in labor contrary to the common law, or a trust therein contrary to the Sherman Act. Such questions deserve more consideration than I have had time yet to give them and may well be postponed to the final hearing after the case has been fully made up, if it then becomes necessary to decide them under the conditions at that time existing. Nor do I regard it necessary to discuss the utility or futility of labor organizations. The right of labor to organize for its mutual benefit and protection is as well settled and determined by law as the right of capital to organize for the same purpose. That one may resort to the voluntary association of individuals without incorporation and the other to articles of incorporation is wholly immaterial, provided the voluntary association be one for lawful purposes and be conducted in lawful manner. That such associations may be secret in character, may have and enforce by-laws, act through officers and agents, cannot longer be disputed. Their members may stand together, they may accumulate funds for the support of those of their number not employed, may unite with other unions, may advise with their officers and others as to their interests and employment, may expel those who refuse obedience to the authority of the association's laws, and may individually or collectively peaceably leave their employer's service when the terms thereof become unsatisfactory to them, as so clearly set forth by Taft, Judge, in Thomas v. C. N. O. & T. P. Ry. Co., 62 Fed., 803, by Thayer, Judge,
53 in Hopkins v. Oxley Stave Co., 28 C. C. A., 99, and by Mr. Justice Harlan in Arthur v. Oakes, 11 C. C. A., 209, 63 Fed., 310.

It is absolutely needless to add that, under ordinary circumstances, the right of the members of a labor union to solicit others and, by reason, argument and persuasion, induce them to join their labor association is just as clear a right as that of members of fraternal organizations such as Masons, Odd Fellows and the like to do the same thing. While all these things are true, it is not to be *be* forgotten, that associations organized for the best and noblest purposes, church organizations even, may be misused by those who have secured control for the purpose, and prostituted them to unlawful purposes and designs. When this is done, it becomes as much the duty of the law to restrain them from lawlessness as is its duty to stay the hand of the legally incorporated company of capital that has perverted its lawful purposes to lawless deeds. It is necessary for us in this case to recognize that this is not a controversy between plaintiff and its employees, it is not a strike,—it is not a case where the Labor Union has longer any legitimate interest or concern. If the allegations of this bill are true the employees of this company are not members of this union, have actually con-

tracted with the company not to become members of it as a condition precedent to their employment.

Mr. Justice Harlan, in Adair v. United States, 208 U. S., 161, speaking for the Supreme Court, says:

"While as already suggested, the right of liberty and property guaranteed by the constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services of another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right to the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever the reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant, Adair,—however unwise such a course may have been,—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so,—however unwise
54 such a course on his part might have been,—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

And many cases are cited in support of these principles. It necessarily follows that if the employer can discharge his employee because he belongs to a labor organization, and if the employee can quit his employment because his employer employs non-union men, they two, having these personal and individual rights, can contract with each other as to what the status of the employment in this particular shall be. The employee on his part may require as a condition precedent to the sale of his labor, that the employer shall buy it under the terms and upon the conditions prescribed by the labor union and moreover shall employ his other labor upon the same terms. If the employer contracts to do this he must be held to his contract for he has accepted the labor upon those conditions. Per contra, the employer may contract with his employee to buy his labor upon terms other than the union ones and, in order that the union ones may not be disturbing elements in the conduct of his business, may bind his employee not to become a member of the union and thereby disqualify himself, it may be by reason thereof, from continuing his employment upon the terms and conditions of the contract. These views seem to be clearly established in principle by this Adair case and the authorities cited therein. With full knowledge that such a contract has been legally consum-

mated between employer and employee, what legal status has the union in the premises? It may regret that its advice, help and assistance was not sought by the employee in disposing of his labor but now that it is disposed of can it come forward and incite either to break the contract? Its mission it claims is to aid and uplift labor but it could hardly fulfill this mission by persuading men to become breakers of contracts and the repudiators of their lawful promises and pledges, and if they do, their legitimate functions are prostituted into a conspiracy to destroy others' vested contract rights.

In Arthur v. Oakes, 11 C. C. A., 209, it is held:

According to the principles of the common law, a conspiracy upon the part of two or more persons, with the intent, by their combined power, to wrong others or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in the execution of such conspiracy. This is fundamental in our jurisprudence. So,

a combination or conspiracy to procure an employee or body
55 of employees to quit service in violation of the contract of service would be unlawful, and in a proper case might be enjoined, if the injury threatened would be irremediable at law. And the Supreme Court of the United States in Angle v. C. St. P. M. & O. R. Co., 151 U. S., 1, and Bitterman v. L. & N. R. Co., 207 U. S., 205, have distinctly set forth this same general principle in cases involving a different state of facts.

In Transportation Co. v. Oil Co., 50 W. Va., 611, the Supreme Court of Appeals of this state has held:

If one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable.

And in Thacker Coal Co. v. Burke, 59 W. Va., 253, this doctrine as to contracts generally is re-affirmed and applied to labor contracts. It is there held:

One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor.

And again: The act found in Code of 1899, section 14, appendix, p. 1053, does not authorize any individual, or number of individuals, to maliciously entice servants to desert service in which they are engaged, or to prevent them from engaging in such service under a contract for such service.

These cases, recent in date, decided by its court of last resort without dissenting voice, would seem absolutely to settle the law of this matter in this state. But it is insisted that to ask and induce, by reason, argument and persuasion, plaintiff's employees to join a labor union is not asking them directly to violate their labor contracts. It is, so far as this organization is concerned. They have not only contracted, as a condition to their employment, that they will not join this particular union, but if they do join it they must absolutely quit such employment because the plaintiff has contracted not to employ members of this union, and this union has on its part, by its laws, solemnly declared that none but its members shall be employed at the mine.

But in addition to this question of inducing the violation of lawful contracts, it seems to me very clear that no matter how meritorious an organization this United Mine Workers of America may be in purpose and intent, the allegations of this bill if true, and they must be conceded to be so upon the determination of this motion, disclose as plain a conspiracy upon the part of these defendants to injure and ruin the plaintiff as could well be conceived of. They have secured control of this organization; they have bound its members to obey their orders and do their will; clothed with this power they have said to plaintiff notwithstanding you have complied with all the requirements of the organization, have
56 agreed to all its terms and conditions, have employed only union men, have secured near $10,000 to the union's funds in the way of dues from your miners, we propose to stop your operations, require your men to cease working for you, shut down your mine, compel you to violate and lose your contracts, and in accordance with this purpose to injure, have actually carried out these declarations, have stopped operations, have called out the men and compelled them, against their will, to cease work, have shut down the mine and held it in this condition from April 16th to June 12th, some fifty working days, at a loss, judging from the output of the mine, that may be estimated, from $300 to $700 per day, and with then no promise to let-up before plaintiff's final ruin should be accomplished. What excuse is set up for so foul and injurious prostitution of this organization, claimed to be in existence for philanthropic and lawful purposes, to a conspiracy so glaringly designed to injure and destroy? The sole excuse is alleged to be that some of plaintiff's rival operators refused to comply with the union's demands and exactions! Rival operators whose actions plaintiff necessarily could not control! Rival operators who under many conditions might design and scheme to bring about this very condition of things in order to ruin plaintiff and destroy its rivalry! Such an excuse, if it be the only one that can be advanced, adds only insult to injury and makes more clear and irrefutable the existence of the conspiracy alleged. Actuated by a natural sympathy for labor and an earnest desire to uplift and aid it, which we all have, many sincere but misguided persons would concede to it an estate superior to and above that possessed by other classes in this republic of liberty and equal rights, and they are fond of denouncing courts of equity for staying the hands of labor leaders in their unlawful exercise of power to achieve this end. We must not forget that we have a constitution guaranteeing these equal rights and that courts established thereunder have no discretion in enforcing its guarantees in favor of all those who are denied them and may appeal for redress. As said by Snyder, Judge, in State v. Goodwill, 33 W. Va., 179, "A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this, is the right to labor or employ labor, make contracts in respects thereto upon such terms as may be agreed upon by the parties, to enforce all lawful con-

tracts, to sue, to give evidence, and to inherit, purchase, lease, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and op-
57 pression. * * * The vocation of an employer, as well as that of his employee, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the constitution. People v. Otis, 90 N. Y., 48. The right to use, buy and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the constitution."

And again: "The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances."

These principles were enunciated in a decision holding unconstitutional a legislative act, passed at the instance of labor organizations, which sought to regulate the method of payment of labor wages. The Adair case to which I have referred held unconstitutional an act of congress seeking to restrict the right of an employer to discharge his employee because of his membership in a labor organization. These are but two of many cases illustrating how carefully these inalienable property rights have been and must be guarded by the courts in order that our liberties under constitutional government may be perpetuated.

It seems clear that under the allegations of this bill a conspiracy has existed between these defendants to injure and destroy the plaintiff's business; that it has already occasioned a damage of many thousand dollars to it, which, it would seem from the authorities we have cited, plaintiff has a clear right to institute its action at law to recover against them personally and independent of their connection with the labor organization and any relation it, as such, may have to the controversy. The important question now arises whether, this injury being an accomplished fact, there remains any reason for the exercise of the restraining power of equity through the intervention of this injunction. Is this conspiracy a thing of the past or does it continue at the present time for the same original purpose to injure and destroy? Here the allegations can have no uncertain meaning. It is charged in effect that these defendants, thwarted in their purpose for the time being by the making of the contracts with the employees direct, now are actively seeking with renewed effort to achieve their unlawful purposes; that they have the same control over the labor organization; that its by-laws still require the same exclusion from work at the mines, under its control, of all non-union labor; that its members are to be bound by the same obligation to cease labor when ordered to do so by these defendants as its officers; that they were at the time the injunction was granted, actively seeking to persuade plaintiff's em-
58 ployees to break their contracts and become members of this organization bound by such laws and obligations; that their organizing agent has been sent upon the ground and has stated as shown by affidavit filed, that "he had succeeded in having one hun-

dred and twenty-five men at the Hitchman mine sign their names, agreeing to become members of the United Mine Workers, and that just as soon as he got twenty-five more names he was going to shut the Hitchman mine down."

Surely these things if true negative any idea of abandonment of the conspiracy, and they would, if true, fully justify the charge that plaintiff is in imminent danger of irreparable loss and injury unless equity shall intervene. It would then seem that such intervention is necessary for the protection of all parties concerned. The language of the Circuit Court of Appeals (Fourth Circuit) in Atwell v. United States, 89 C. C. A., 97, applied there to the court's discretionary power to punish for contempt, may well be here applied to the necessity for it to exercise the injunctive power to a case like this:

Very frequently those who complain the loudest against its exercise are ultimately benefited the most. Men, inflamed by passion, are frequently not capable of rightly judging of their own conduct or of foreseeing the consequences thereof. In such case the restraining power on the part of judges, acting under solemn obligations to do "equal right to the poor and to the rich," chastened and humbled by the sense of the weighty responsibilities laid upon them, may save such persons from liability to civil and criminal actions, calculated to bring to them ruin and loss of liberty.

The motion to modify or dissolve this injunction in any particular must at this time at least be overruled.

Decree Refusing to Modify Injunction.

And at another day, to-wit: On the 6th day of October, 1909 the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized Under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the
59 United Mine Workers of American and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America; and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

This cause came on again to be heard upon the motion of the served defendants made December 15, 1908, for a partial dissolution and correspondent modification of the temporary injunction heretofore awarded in this cause on the twenty-sixth day of May, 1908, which was submitted on argument and briefs of counsel April 7, 1909.

And the court, now being advised of its decision, in accordance

with its written opinion filed in this cause at Philippi, Sep-
60 tember 21, 1909, delivered for convenience of court and counsel in open court at Wheeling, September 21, 1909, doth overrule the said motion of the served defendants for a partial dissolution and correspondent modification of said temporary injunction of May 26, 1908, as made by said defendants December 15, 1908, and the court doth hereby continue in full force and effect in all respects the temporary injunction heretofore awarded in this cause, until the further order of the court.

And the further proceedings in this cause which were stayed by an order entered herein December 15, 1908, are ordered to be resumed, and this cause is now set down for 2 o'clock P. M., on Tuesday, the second day of November, 1909, the first day of the next term of this court, to be held at Philippi, to be heard upon plaintiff's motion made December 15, 1908, and referred to in said order of said date, that the defendant, A. R. Watkins, be refused permission to file his amended answer, which he tendered for filing August 20, 1908; and to be at that time also heard upon plaintiff's motion made December 15, 1908; and referred to in said order of said date, that costs be not allowed for the separate answer of William Green, individually, and as President of District No. 6, United Mine Workers of America, nor for the separate answer of D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, nor for the joint and several answer of all the served defendants; and to be at that time also heard upon plaintiff's motion in writing to strike from the separate answers of the defendants, William Green and D. H. Sullivan, certain portions which are contradicted by the admissions of the defendant, A. R. Watkins, in his original answer filed in this cause May 26, 1908, particularly mentioned in said written motion, and to strike from the joint and several answer of all of the served defendants certain portions that are contradicted by the admissions of the defendant, A. R. Watkins, in his original answer, filed *filed* May 26, 1908, particularly mentioned in said written motion; and to be at that time also heard upon plaintiff's exceptions filed December 15, 1908, and referred to in said order of said date, to the separate answer of the defendant, William Green, individually, and as President of District No. 6, United Mine Workers of America, and to the separate answer of the defendant, D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, and to the separate answer of the defendant, A. R. Watkins, individually, and as President of Sub-District 5 of District 6, United
Mine Workers of America, and to the joint and several
61 answer of the defendants, T. L. Lewis, individually, and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America, William Green, individually, and as President of District No. 6, United Mine Workers of America, D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, George W. Savage, individually, and as Secretary-Treasurer of District No. 6, United Mine Workers of America, A. R. Watkins, in-

dividually, and as President of Sub-District 5 of District 6, United Mine Workers of America, John Zelenka, individually, and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America, and Lee Rankin, individually, and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America.

It is directed that this order be entered as of September 21, 1909, upon the records of this court at Philippi, where this cause is pending.

Decree Filing Answers.

And at another day, to-wit: On the 5th day of September, 1910, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE CO.
vs.
JOHN MITCHELL and Others.

On this the 5th day of September, 1910, came T. L. Lewis, individually, and as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually, and as president of District No. 6 United Mine Workers of America; D. H. Sullivan, individually, and as vice-president of District No. 6 United Mine Workers of America; George W. Savage, individually, and as secretary-treasurer of District No. 6 United Mine Workers of America; John Zelenka, individually, and as vice-president of Sub-District 5 of District 6 United Mine Workers of America, and Lee Rankin, individually, and as secretary-treasurer of Sub-District 5 of District 6 United Mine Workers of America, by Charles E. Hogg, their attorney, and filed their joint and several answer to the plaintiff's bill of complaint.

And at the same time came A. R. Watkins, individually, and as president of Sub-District 5 of District 6 United Mine Workers of America, by Charles E. Hogg, his attorney, and filed his separate answer to said bill.

62 *Joint and Several Answer of T. L. Lewis et al.*

(Filed Sept. 5, 1910.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY
vs.
JOHN MITCHELL AND OTHERS.

The joint and several answer of the defendants, T. L. Lewis, individually and as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually and as president of District No. 6, United Mine Workers of America; D. H. Sullivan, individually and as vice-president of District No. 6, United Mine Workers of America; George W. Savage, individually and as secretary-treasurer of District No. 6, United Mine Workers of America; John Zelenka, individually and as vice-president of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, individually and as secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America, to the bill of complaint of the Hitchman Coal & Coke Company, a corporation organized under and by virtue of the laws of the State of West Virginia and a citizen of said state, filed in said court.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

These respondents, now and at all times hereafter saving to themselves and each to himself all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are and each of them is advised it is material for them or him to make answer unto, answering say:

That they admit that the Hitchman Coal & Coke Company is a corporation organized under and by virtue of the laws of the State of West Virginia, having its principal office at Wheeling, in Ohio County, in said State; that they have — knowledge, information or belief as to whether or not it is the owner of about 5,000 acres of coal situated contiguous to its coal
63 mine, which is located at Benwood; that they admit that its coal mine is equipped with the necessary plant for mining coal and has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by land originate on that road and at its mine; that while these respondents are not informed as to such fact, yet they believe

that it is true that the plaintiff has been for some time past, and is now, engaged in the mining of coal and shipping the same to the open markets of the United States; these respondents also say that while they are not informed as to such matter yet they believe that it is true that the product of the plaintiff's mine is large, amounting to about 1,400 tons per day, but that they have no information, knowledge or belief, and therefore cannot deny or admit, that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months when coal is carried to the northwest by steamers upon the lakes while navigation is not interrupted by ice, while another portion of its trade has been for years and now is supplying coal for fuel for engines of the Baltimore & Ohio Railroad Company, delivered by a coaling device to the engines at its tipple, and likewise from large storage bins which have been erected and are in use by the plaintiff and by said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct located near the round-house of said railroad company at Benwood, in the construction of which steel trestle and coal bins plaintiff has expended and now has invested a large sum of money; these respondents admit that in mining coal the coal as mined is brought to the surface and mouth of the mine, and then for interstate commerce is delivered to the common carrier and carried by it to its destination within the United States but without the state of West Virginia; these respondents have no information, knowledge or belief as to the matter, and therefore can neither admit nor deny, that plaintiff has made large contracts for the future delivery of coal to points within and without the state of West Virginia but within the United States, especially for lake trade; that defendants are not informed, nor do they know, and therefore can not admit or deny, that plaintiff alone furnishes daily to said Baltimore & Ohio Railroad Company between 500 and 600 tons engine coal; these respondents have no knowledge, information and belief, and therefore can neither admit nor deny, that the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall seasons of the year, and especially of this year as to its said contracts not yet filled, but which it has
64 the ability, and unless unlawfully interfered with by the defendants expects, to fill, as alleged in said bill; but these respondents deny and each of them denies that they or any of them have unlawfully interfered in any manner with the operations of the plaintiff in the fulfillment of any of its contracts; these respondents admit that prior to April 1, 1906, plaintiff operated its said mine by employing a large number of men who were affiliated with said United Mine Workers of America, and admit that on April 1, 1906, a strike having been ordered by said association, the employees of the plaintiff who were working for it at that time continued to work until April 16, 1906, and on that day, under renewed demands of said United Mine Workers of America, went out on a strike and ceased to work for the plaintiff; and admit that said strike so declared is still in force so far as plaintiff and its mine is con-

cerned; but these respondents deny and each of them denies that at the time plaintiff's said employees went out on a strike they had no grievance, had no complaint to plaintiff, and respondents believe and therefore admit that plaintiff had not failed to comply with its then contracts, with said employees with reference to their work; these respondents admit that said strike was ordered by said association, that said plaintiff's employees went upon said strike as aforesaid in pursuance thereof, for the reason that certain coal operators in other sections of the country had refused to accede to certain demands of said association, but deny that the ordering out of plaintiff's said employees and their going out on a strike as aforesaid were means, among other things, used by said association at that time for the purpose of compelling said coal operators to sign a scale which had been prepared and was being insisted upon by said association as the price of its permission being given to its members to remain at work for said coal operators; but aver that the object of going on said strike was not only to aid the other members of said association, but also the employees of the said plaintiff, to secure shorter hours and more favorable conditions for working in the mine of the said plaintiff; that it is true that at that time plaintiff was advised of the controversy between said association and said coal operators, and that it proposed to its employees that they continue at work for the plaintiff pending the signing of the scale by said coal operators, and that on the signing of the scale plaintiff would pay its said employees any additional sum that would have been earned by them during the time intervening between April 1, 1906, and the signing of the scale, provided that the scale when signed should provide for an advance in wages on work on and after April 1, 1906;

but these respondents deny the allegation in said bill con-
65 tained that while plaintiff's said employees were ready and willing to accept plaintiff's proposition, nevertheless the said employees, being members of the United Mine Workers of America, were by that association ordered to strike, and, after having continued in plaintiff's employ until April 16, 1906, went on a strike as aforesaid under the renewed order of said United Mine Workers of America that they should strike, and deny that the going out on a strike on April 16, 1906, was without justification and without excuse, and greatly to plaintiff's injury, embarrassment in business and financial loss, owing to its inability to carry out its contracts which it then had for the sale and delivery of coal and for supplying coal to the engines of the said Baltimore & Ohio Railroad Company at its tipple and bins aforesaid; these respondents admit that plaintiff's mine was shut down and was not operated from April 16, 1906, until June 12, 1906, and admit that upon resumption of operation on June 12, 1906, plaintiff started to run its mine on a non-union basis, but these respondents say that they do not know of their own knowledge, nor have they any information upon the subject, nor have they any belief relating to the matter, that every man who accepted employment at the mine of plaintiff was told at the time of entering plaintiff's service that there was no union at the mine, that the company would not allow any, and that no union man

could remain in the employ of the company while recognizing and giving paramount allegiance to the union and obeying its orders, and if any employee of the company joined the union he could not work any longer for the company; and these respondents says that they have no knowledge, information and belief, and therefore can neither admit nor deny, that under those circumstances and with full knowledge of the said conditions of employment many men applied to plaintiff for work, and being employed entered the employment of plaintiff under the express contract not to join the United Mine Workers of America, and worked in its mine and have continued so to do until the present time with satisfaction to themselves and to the plaintiff, as in said bill is alleged, and respondents admit that from time to time since plaintiff has been operating its said mine on a non-union basis efforts have been repeatedly made by the officers and agents representing the United Mine Workers of America and its subordinate associations or branches to induce the plaintiff to agree to re-unionize its mine and to sign the scale of the United Mine Workers of America; but that in their efforts to accomplish this these respondents aver no fraud, violence, coercion or other wrongful act was done by them, but that they met with the representatives of the plaintiff in a peaceable and friendly
66 manner and discussed the same with them; and respondents deny that plaintiff has repeatedly refused to have anything to do with the United Mine Workers of America or any of its subordinate associations or branches, or with any of its officers, agents, employees or servants, and deny that it has made known to them and each of them plaintiff's determination to run its mine non-union and its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employees and servants, with its operation of its mine or with its business, and these respondents deny that they have in any manner improperly or otherwise interfered with the operation of plaintiff's mine or its men, and deny that said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees and servants, have sought and are now seeking by inducements, threats and intimidation, either with or without physical violence, to cause the plaintiff's employees to leave its service and to cause others who have engaged to enter its service to break their engagements of service and not work for plaintiff, and deny that they have prevented others from working for plaintiff, and deny that either with an avowed or actual purpose or any other purpose they are compelling or are attempting to compel plaintiff to recognize the union, or to force plaintiff to employ none but persons who are members of the United Mine Workers of America, and deny that they are attempting to compel plaintiff or have endeavored to compel plaintiff to pay such scale of wages as said United Mine Workers of America arbitrarily fix and demand, and deny that they are attempting or endeavoring to submit plaintiff's business and its property to the jurisdiction and control of said union, becoming by the union's rules obliged to employ or to discharge whom the said union, its subordinate associations or branches and its officers, agents,

employees and servants shall direct or require, as in said bill is alleged.

These respondents, for further answer unto said bill, say that they deny that said United Mine Workers of America, including its said subordinate associations or branches, is a secret, voluntary organization, having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes that the matters and things in said bill complained of have arisen, as in said bill is alleged, and deny that any of the objects, either expressed or otherwise, of said United Mine Workers of America are unlawful, and deny that they are attempting to do anything unlawful in the work of promoting said organization.

67 These respondents, for further answer unto said bill, say that they admit that said United Mine Workers of America is not incorporated, and was organized on or about January 25, 1890, and admit that from the proceedings of its last annual convention, which was held in Indianapolis, Indiana, from January 15 to January 22, inclusive, 1907, it appears to have had a membership of 230,667 in 1906; that its income for the fiscal year ending November 30, 1906, was $1,081,408.32, its expenditures for the same period were $1,232,994.01, and that its balance on hand December 1, 1906, was $337,960.71, and admit that it is claimed for it that it is the largest labor organization in America.

These respondents admit that indicative of the character and purpose of said United Mine Workers of America and its subordinate associations or branches are the excerpts from the constitution of the United Mine Workers of America and of the International Union United Mine Workers of America, appearing in said bill, taken from articles I., II., III., IV., V., VII., IX., X., XII., XIII. and XIV., and that said excerpts are correct. These respondents also admit that the excerpts from the constitution of District No. 6 United Mine Workers of America, as taken from articles I., II., III., VI., VIII., and IX., are correct. These respondents further admit that the excerpts from the constitution of Sub-District 5 of District 6 United Mine Workers of America, taken from articles I., II., IV., V., VI., VII. and IX., are correct. These respondents further answering said bill admit that the matters set forth in the bill, showing the formality, used in opening the meetings of said organization, headed "Opening" are correct, including the form of the oath administered to the members.

Respondents admit that the paid up membership of District 6 United Mine Workers of America was in 1906, 36,372, and on March 1, 1907, Sub-District 5 of District 6 U. M. W. of A. had 108 locals in good standing and a paid up membership of 12,500.

These respondents further admit that the defendant John Mitchell is president of the United Mine Workers of America, and that the other defendants therein named are officers of said organization as set forth in said bill; but these respondents deny and each of them denies that said defendants have agreed, confederated, combined and formed themselves into a conspiracy under the name of the United Mine Workers of America to unlawfully persuade, en-

tice and procure plaintiff's miners or mine workers employed by plaintiff and working for plaintiff in and around plaintiff's mine to break, violate, disregard their several contracts with the
68 plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without plaintiff's consent, as alleged in said bill, and deny that to such end they have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel by threats and intimidation and by other unlawful means the plaintiff's said employees to join the union, and apply to their own relation with plaintiff in the matter of their employment the rules of the union, and to enable the said union to apply its rules and regulations to plaintiff, under penalty of closing down plaintiff's mine provided plaintiff still refuses to unionize its mine and recognize the union, as in said bill is charged against these respondents, and deny that they have been guilty of any unlawful conduct or acts with reference to the plaintiff's business mentioned in said bill.

These respondents for further answer unto said bill admit that the plaintiff has no contractual relation whatever with any one of the defendants hereto, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and will not consent to operate a union mine; that its employees are non-union men; but these respondents deny that they are aware that said employees are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed by plaintiff, and deny that they are aware that if they do join the union their employment with the plaintiff shall cease; and deny that they are aware that with such understanding plaintiff's employees entered into its employment, and deny that they defendants are aware that plaintiff's employees are now working for plaintiff under such contract and with such conditions, and deny that all of this was known to the defendants and to each of them before and at the time of the institution of this suit. Respondents say that the only thing upon which they were informed or of which they had any knowledge was that plaintiff was running a non-union mine and had declined to unionize its mine.

These respondents for further answer unto said bill say that they deny that the said John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin, and Thomas Hughes, either individually or as officers, agents, employees and servants of said United Mine Workers of America and its said subordinate associations or branches, are fully aware or have any knowledge that plaintiff's said employees are satisfied with their employment; that they admit that they are aware, however, that plaintiff is engaged in mining coal and in fulfilling contracts for coal, and admit that it would
69 be impossible to fulfill these contracts, if any they have, without the labor of its said employees, and, although they have no information, knowledge or belief on the subject, believe that it would entail upon plaintiff great financial loss to have its ability to fulfill its contracts interfered with by the failure of its men to work

longer for plaintiff, and likewise would entail great loss and damage upon plaintiff to have its mine shut down and a strike declared; but these respondents deny that *that* the said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out; and now about to finally accomplish, namely: to cause plaintiff's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as plaintiff shall submit to the demand of the union that it shall unionize its plant, and, having submitted to such demand by employing only union men, shall become subject to the orders of the union, paramount to the orders of plaintiff, their employer, as alleged in said bill, and deny that in thus unionizing its plant plaintiff shall surrender its control and the management of its business to the union and the various rules and regulations laid down by the union and accede in advance to every demand by said union that its said officers, agents, employees and servants may make, as in said bill is alleged.

These respondents further deny that allegation in plaintiff's bill wherein it says "the effectuating of this purpose is imminent and the damage threatened is great and irremediable, and that your orator's loss so far has been in excess of two thousand dollars, exclusive of interest and costs, while on the accomplishment of said purpose of said defendants and the shutting down of your orator's mine the damage to your orator would be still greater and incapable of definite ascertainment, being incalculable, and amounting to many thousands of dollars."

These respondents further answering said bill say that they do not know, but they believe, that the plaintiff pays as much as the union's scale of wages to its said employees, but deny that the said defendants unlawfully and maliciously are agreeing together, confederating, combining and conspiring to effectuate by unlawful means the unionizing of plaintiff's mine simply for the purpose of seeking power and for the purpose of strengthening the union in future contests with employers of labor, and to compel all miners and mine workers to join the union, and establish a monopoly, and force employers of that kind of labor, and especially to force
70 plaintiff, to yield to the union's demands or else to give up its business as alleged in said bill.

These respondents say that they admit that the union is not a competitor of plaintiff in the labor market; that the union does not employ labor, and is not an employer of labor.

These respondents, for further answer unto said bill, say that they admit that at the annual convention of the United Mine Workers of America, held at Indianapolis, Indiana, January 15 to 22, inclusive, 1907, the said defendants John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage and A. R. Watkins, John Zelenka and Lee Rankin were present and participated in its proceedings, and admit that it was openly stated with reference to the objects of said union as follows: "Organized labor contends that as industry cannot exist without labor, labor has the

right to say under what conditions it shall be employed," but deny that the expression was used in said meeting "thereby dictating the management of the productive end of the business," as in said bill is alleged. These respondents say that the use of the language above quoted does not indicate an intention on the part of said United Mine Workers to dictate the management of the productive end of the business of coal mining, and respondents deny that there was any language used in said convention conveying the idea or intending to convey the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but these respondents aver that said organization should have the opportunity to be heard, and has the right to say, under peaceable methods and the forms of the law, what the conditions ought to be with reference to said mines and the operation thereof to insure health and safety in the mining and production of coal generally, and that this was the matter then before said convention when the language above quoted was used.

These respondents for further answer say that while they do not recollect distinctly what did occur in the said convention they believe that it is true that the defendant T. L. Lewis stated that he had charge of the organizing force under the direction of the president; that there has been a tremendous loss in the membership of the union as a result of the strike of May 1, 1906; that he had been instrumental in building up three national organizations of mine workers, and was one of the delegates and attended the convention which laid the foundation of the United Mine Workers of America; that the union had "closed shop" wage agreements with operators whereunder 181,384 persons were employed in the year 1905, and

71 that all of those persons were required to be members of the union; that respondents admit that it was stated in said meeting that the American continent, meaning however the United States and British America, is not large enough to maintain two organizations of miners, and that he, said Lewis, favored one organization of the mine workers of the American continent and the complete recognition of the union's right to organize in every mining district in the country.

And these respondents further aver that they believe, though they do not remember distinctly, that it was said in said convention by the defendant W. B. Wilson what is stated in said bill, and admit the same to be true for the purposes of this suit; but these respondents further aver that the occurrences and discussions in said convention, alluded to in said bill, only related to the then condition of the United Mine Workers of America and the consideration of the best policy to promote its objects, which objects are expressed in the constitution, and has for its objects the uniting of the mine employees that produce or handle coal or coke in or around the mines, and to ameliorate their condition by methods of conciliation, arbitration or strikes, and that the proceedings in said convention did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union

men, and such allegations can only be treated as surplusage for the purposes of said bill.

Respondents further aver that it is true that at said convention a committee's report was unanimously adopted containing the matters set forth in said bill.

These respondents further admit that that part of the bill setting forth, the statements made by T. L. Lewis and John Mitchell are true, but that it was simply a tentative presentation of the situation that then confronted the organization, and did not have for its object the disturbance of plaintiff's mines or the men employed thereat, nor had it anything whatever to do with the plaintiff's business.

These respondents further answering say that at the convention of Sub-District 5 of District 6 United Mine Workers of America held in March, 1907, the defendants, A. R. Watkins, Lee Rankin, T. L. Lewis, John Zelenka and Thomas Hughes were present and participated in the proceedings. These respondents also admit that that which appears in the bill as being said by A. R. Watkins in his report is true, and that that part of the bill which sets forth what appears in the report of Lee Rankin as secretary-treasurer of Sub-District 5 of District 6 is also true; that that part of the bill which sets out Resolution No. 8, as well as Resolution No. 10, is true; but these respondents deny that they are in anywise connected
72 with the operation of the plaintiff's mines, or have anything to do with the interference of the plaintiff's employees.

These respondents, for further answer unto said bill, say that they deny that part of the language imputed to T. L. Lewis reading, "It is with regret that some of the locals in the pan handle broke away and the members went to work without any union or without getting a scale signed," referred to the locals of the United Mine Workers of Ameirca which existed near the mine of the Hitchman Coal & Coke Company and the mine of the Glendale Coal Company, as in said bill is alleged.

Respondents further answering say that they have no knowledge, information or belief as to whether or not the Hitchman and the Glendale companies are owned by the same persons or whether the same persons are members of the board of directors of each corporation, or whether W. H. *Kok* is a stockholder, a director and general manager of each of said mines, while the business of the Glendale Coal Company is managed from the office of the Hitchman Coal & Coke Company, as in said bill is alleged, and therefore they can neither admit nor deny said allegation.

These respondents further answering said bill, say that they deny that said defendants and each of them treated the two mines as a single concern and have so dealt with plaintiff, as in said bill is alleged.

These respondents for further answer unto said bill say that they have no knowledge, information or belief, and therefore can neither admit nor deny, the allegation made in said bill that plaintiff in refusing to recognize the union after the declaration of said strike of April 1, 1906, and after its men had left plaintiff's employment pursuant to said strike, and in thereafter and now running its mine

non-union, did not seek to reduce the wages of said employees or to cause said employees to work for less than the scale of wages established by the United Mine Workers of America, as in said bill is alleged. And these respondents, having no information or belief on the subject can neither admit nor deny the allegatin of said bill that plaintiff's sole purpose in running non-union and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of said United Mine Workers of America, was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants; but, be that as it may, these respondents deny that they have attempted to op-ress or intermeddle with the business of the plaintiff in any manner whatsoever, but aver that they have
73 only approached the representatives of the said company in a peaceable and law-abiding manner and its employes for the purpose of soliciting membership from the employees of the plaintiff to the United Mine Workers of America.

These respondents says that they do not understand what is meant by the allegation in said bill that "these said defendants have for some years last past been in such business as is here shown they are now engaged in"; if it means an unlawful business, then these respondents deny the said allegation. These respondents admit that they are well acquainted with one another, as in said bill is alleged and that they constitute a part of the higher officials of the United Mine Workers of America, but deny that in their hands the management of the affairs of said union have been or are centralized.

These respondents, for further answer unto said bill, say that it is true that while plaintiff's mine remained idle after it was shut down April 16, 1906, efforts were frequently made by some one or more of said defendants to induce plaintiff to sign the scale and run union, but every request of that kind met with refusal, but these respondents deny that they used any force, fraud, violence, intimidation, or unlawful methods of any kind, to induce the plaintiff to sign the scale and run union. These respondents further say that after plaintiff started up non-union about June 12, 1906, efforts were repeatedly made by one or more of said defendants to induce plaintiff to run its mine on a union basis, but these respondents deny that, failing in that, efforts were made by some one or more of said defendants to bring about by inducement, persuasion, threats and intimidation, and by various means and devices, unlawfully to induce plaintiff's employees to cease working for plaintiff, and also deny that by use of like means, devices, intimidation, threats, persuasion and inducements to prevent men willing to work for plaintiff not to engage to work, or after having engaged to work then not to go to work for plaintiff, as in said bill is alleged; and these respondents admit that plaintiff was able to increase the number of its employees and to increase its business, which it has conducted successfully and peacefully and lawfully from the time it started non-union to the present, but deny that this was done despite any efforts or acts of interference with the plaintiff's business on the part of these defendants or any of them.

These respondents for further answer unto said bill say that it is true that upon different occasions after starting up non-union the different officials of the United Mine Workers of America, but not all of them, amongst whom were the defendants John Ze-
74 lenka, A. R. Watkins, D. H. Sullivan and William Green, visited the general manager of plaintiff at his office at the Hitchman mine and talked to him on the subject of the recognition of the union, the signing of the scale and the re-employment of plaintiff's employees, but deny that it was under the technical guise of thus entering into contract relations with plaintiff's employees of the United Mine Workers of America and for the purpose of doing away with the express provisions of plaintiff's contract with each of its employees that they should not become members of the union and if they did that their employment should thereby cease, as in said bill is alleged; but these respondents free of any technical guise aver that the said representatives of the United Mine Workers of America openly and fairly visited the general manager of the said plaintiff, was cordially received by him, and informed by him that they could see the men and talk with them, and that if said men desired to join the union he would interpose no objection thereto, and that the said representatives of the United Mine Workers did not seek to have plaintiff unionize its mine under any technical guise, but desired that the plaintiff should employ union men at its mines under the usual and ordinary contracts made by the union in its relations with coal operators; that it is also true that the plaintiff did refuse to enter into any contract with the United Mine Workers having for its object the sole employment of organized labor at its said mines.

These respondents further say that it is true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office of plaintiff's general manager and had a conversation with him regarding the forming of a miners' union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, but deny that plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered at all, and deny that said Zelenka subsequently reported to plaintiff's employees and caused that report to be circulated amongst them that he, Zelenka, Green and Watkins had had a conference with plaintiff's general manager and that said general manager had agreed to allow the United Mine Workers of America to put all of plaintiff's employees into the union, and deny that he, said Zelenka, made the further statement, which he caused to be circulated among plaintiff's employees, that it was up to the employees of the plaintiff to join the union or else they would be out of a job at an early day be-
75 cause only union men would be permitted to work in the mine and that those of plaintiff's employees who did not join the union would not be permitted to get a job any place; nor did he, said Zelenka, use such language or language of like purport of character. Respondents further say that it is also true that plaintiff's general manager did complain of the action mentioned, and

that said Zelenka, Green and Watkins each denied making any such statement or circulating any such report, because such statement or report had never been made or circulated by them, and for them to admit such statement would have been to admit that which was untrue. And respondents deny that plaintiff's statement in this regard is true, and in the action referred to and complained of to said defendants deny that said defendants were simply carrying out their unlawful purpose heretofore formed to unionize plaintiff's mine without its consent, and deny that the said respondents or any of them have done anything unlawful with reference to plaintiff's mine or its employees or otherwise.

These respondents say it is true that plaintiff's employees are non-union men who have entered into employment with plaintiff, but these respondents have no knowledge, information or belief, and therefore can neither admit nor deny the allegation made in said bill that said employees have entered the employment of the plaintiff with the understanding that plaintiff shall continue to run a non-union mine, nor have these respondents any information, knowledge or belief, and therefore can neither admit nor deny the allegation that some of the plaintiff's employees have bought property and homes and expect to have permanent employment with plaintiff, so running its mine non-union, and with the understanding and expectation that while in the employ of the plaintiff they shall be protected in such employment.

These respondents, for further answer unto said bill, say that it is true that some time during the middle of this summer of 1907 the defendants Green, Watkins and Zelenka called on plaintiff's general manager at his office, and that said Green was spokesman. The respondents admit that said Green expressed a desire to talk to said general manager in regard to organizing plaintiff's mines, but respondents deny that said general manager stated to them that while unionizing of the mine was out of the question yet if they had any business proposition to submit it would be listened to, and deny the conversation between said parties as set forth in said bill.

These respondents, for further answer unto said bill, say that they deny that plaintiff's general manager told said D. H. Sullivan and William Green that in case they brought plaintiff's men
76 out on a strike they would be taking away from them something that they would never be able to give back, that is, reemployment by plaintiff, and deny that the same statement was made to the defendant Watkins, as in said bill is alleged.

These respondents, for further answer unto said bill, say that it is true that under the rules of the United Mine Workers of America, there was paid by plaintiff to the secretary-treasurer of the local union the amount specified in said bill.

And these respondents deny that on one or more of the occasions heretofore referred to, as set forth in said bill, when one or more of said defendants sought plaintiff to unionize its mine, plaintiff's general manager stated to said defendants that with them as officers of the union it was not so much a question of looking after the interests of the men employed by the plaintiff as it was a question of

money, and deny that they these defendants were in the business for what they could get out of it, and deny that such statement to them was made by said general manager, and deny that their attention was called to the fact that nearly $10,000 had been turned over to them from the Hitchman mine alone in the two years just prior to the strike.

And these respondents further deny that the said defendants or any of them are proceeding to carry out their conspiracy or any other conspiracy, and are now endeavoring to unionize plaintiff's mine, and deny that they threaten so to do, and deny that plaintiff has reasonable ground to feel that they will do so, and deny that they intend to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor.

These respondents further deny that on or about September 7, 1907, the defendant Thomas Hughes was noticed at the Glendale mine and about the Hitchman mine intercepting the miners, taking lists of names of employees, and trying to induce the men by persuasion, threats, coercion and intimidation and by various other unlawful methods and devices to quit working for plaintiff and to join the union, and deny that such efforts or any other efforts have been made by the said Hughes to interfere with the employees and operation of the plaintiff in the working of its mine, and deny that the said Hughes had any authority from the United Mine Workers or any organization connected therewith to do anything to induce plaintiff's employees to cease working for plaintiff.

These respondents, for further answer unto said bill, say that they deny that as a result of the labors of the defendant Hughes, who has been assisted by others of the defendants from time to time
77 by their counsel and advice, aiding and abetting him with their presence, about plaintiff's mine and about the Glendale mine, that the said defendants succeeded in getting 24 of the employees of the Glendale mine to agree to join the union and to quit the service of the Glendale Coal Company, as in said bill is alleged. And respondents deny the further allegation in said bill that while the said defendants have so far been unable to bring about or induce plaintiff's employees to quit its service, still the said Hughes has recently stated to one of the plaintiff's miners whom he was trying to induce to leave plaintiff's service and join the union that he, Hughes, had succeeded in having 125 men at the Hitchman mine agree to become members of the United Mine Workers of America, and that just as soon as he got 25 more names he was going to shut down the Hitchman mine; and it may be true, although these respondents have no knowledge, information or belief relating thereto, and can therefore neither admit nor deny the allegation, that 54 of plaintiff's present employees have in writing signed a statement that they are satisfied with their employment with plaintiff, with the wages paid to them, and with their work, and they would like to remain in plaintiff's employ and respondents admit that plaintiffs employ from 175 to 200 men in its mine as a general rule, and now has in its employ from 160 to 175 men.

These respondents further say that they deny that the said United

Mine Workers of America and the said International Union United Mine Workers of America, the said District No. 6 United Mine Workers of America, and the said Sub-District 5 of District 6 United Mine Workers of America are, under their constitutions, violating the common law and statutory law of the state of West Virginia, as well as the constitution of said state in any manner whatever, and especially in the particulars designated in said bill, but aver that the said organizations are in every respect lawful and that their objects and purposes are lawful.

These respondents further answering say that they admit that the said John Mitchell, the said T. L. Lewis, the said W. B. Wilson are officers of the said organization, and that said Thomas Hughes is acting as an organizer of said United Mine Workers, and that the principal office thereof is at Indianapolis, Indiana, and that the offices of the subordinate organizations are located as in said bill is alleged, and that the defendants reside in the states in said bill alleged, and that no defendant is a resident of the state of West Virginia, but deny that the matter in dispute exceeds exclusive of interest and costs the sum of $2,000.

78 These respondents further say that they have no knowledge, information or belief and can neither admit nor deny the fact that the names and addresses of the members of the said several associations are to the plaintiff unknown, but they aver that a large number of the members of the said organization, from fifteen thousand to twenty thousand or more, are residents of the state of West Virginia, and deny that they are not necessary parties to this bill, inasmuch as the said bill charges that the organization of which they constitute a part is in many respects unlawful, as in said bill set forth, and that before said organization of which they are members can be declared to be unlawful they should be made parties hereto, and that for that purpose they are indispensable parties; and being indispensable parties, it is immaterial that their joinder will oust this court of its jurisdiction, and that they should be made parties hereto, as disclosed by the purposes of said bill.

These respondents for further answer unto said bill say that they deny that said defendants are acting individually and agreeing, confederating, combining and forming themselves into a conspiracy, under the name of the United Mine Workers of America, and deny that they will in pursuance of any unlawful purpose and design, by enticement, persuasion or coercion in any form whatsoever, bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, as alleged in said bill, and deny that they will without the consent and against the will of plaintiff compel plaintiff to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and deny that defendants will compel plaintiff to contract with its employees through the said defendants as officers of the said associations, under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the union to dictate the persons whom plaintiff shall employ and those

whom its shall discharge, the wages it shall pay, and deny that they will compel plaintiff to agree that each of its future employees as members of the said United Mine Workers of America shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employees would owe to plaintiff, and deny that they will thus take charge of, dictate the management of, and virtually control plaintiff's business, and deny that they will perpetrate acts of oppression and wrong upon plaintiff which distinctly violate plaintiff's contractual, common-law, statutory and constitutional rights as a citizen of the state of West Virginia.

79 These respondents for further answer unto said bill say that they deny that they are attempting to effect the unionizing of plaintiff's mine, and deny that they propose and threaten to do any unlawful acts or employ any unlawful methods to accomplish any unlawful results, and deny that they are using threats, intimidation, force, violence or abusive language, and deny that they are picketing plaintiff's premises, picketing or patrolling or guarding the streets and approaches to plaintiff's premises, and deny that they are going to the homes or boarding houses of plaintiff's employees for the purpose of intimidating or coercing them to leave plaintiff's employment, and deny that they are picketing the railroad and street cars passing to and from or through plaintiff's premises for the purpose of intercepting plaintiff's employees in going to or from plaintiff's premises and for the purpose of intercepting and preventing persons coming to plaintiff's premises for the purpose of seeking or for the purpose of entering into plaintiff's employment.

But these respondents aver that they have by peaceable and law-abiding methods sought to interview the employees of the plaintiff at their homes and upon the streets and highways and other places where the respondents had a right to be, for the purpose of using reason, argument and persuasion to induce them to become members of the United Mine Workers of America, and have thus endeavored to show and present to the said employees that it would be greatly to their advantage and welfare to be members of the United Mine Workers, whose object is to protect labor and promote its welfare by securing if possible through lawful methods higher wages, shorter hours, and better condition at the mines for the safety and health of the employees, and in various other lawful methods aiding the coal miner in the prosecution of his employment, and in providing the necessaries of life for himself and family, and to thus make him a more useful factor in society and as a citizen of the state.

And these respondents deny that the plaintiff is entitled to the relief prayed for in its said bill, or to any other specific or general relief whatsoever.

And these respondents deny all unlawful combination, conspiracy, confederacy, and unlawful acts of any sort whatsoever sought by the said bill to be imputed to these respondents or to any of them.

All of which matters and things these respondents are ready to verify, maintain and prove, as this honorable court may direct.

And they humbly pray that the temporary injunction heretofore

granted in this cause may be vacated and dissolved, and that
80 they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

T. L. LEWIS,
Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America;
WILLIAM GREEN,
Individually and as President of District No. 6, United Mine Workers of America;
D. H. SULLIVAN,
Individually and as Vice-President of District No. 6, United Mine Workers of America;
GEORGE W. SAVAGE,
Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America;
JOHN ZELENKA,
Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; and
LEE RANKIN,
Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America,
By CHAS. E. HOGG,
Counsel for said Defendants.

Separate Answer of A. R. Watkins.

(Filed Sept. 5, 1910.)

In the District Court of the United States in and for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE CO.
vs.
JOHN MITCHELL and Others.

The Separate Answer of A. R. Watkins, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America, to the Bill of Complaint of the Hitchman Coal & Coke Company, a Corporation organized under and by Virtue of the Laws of the State of West Virginia, filed in said Court.

81 To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

This respondent now and at all times hereafter saving to himself all manner of benefit and advantage of exceptions which can and

may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as he is advised it is material for him to make answer unto, answering says that he admits that the Hitchman Coal & Coke Company is a corporation organized under and by virtue of the laws of the state of West Virginia, having its principal office at Wheeling, in Ohio County in said State; that he has no knowledge, information or belief as to whether or not it is the owner of about 5,000 acres of coal situated contiguous to its coal mine, which is located at Benwood; that he admits that its coal mine is equipped with the necessary plant for mining coal, and has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by land originate on that road and at its mine; that this respondent is not informed as to such fact, yet he believes that it is true that the plaintiff has been for some time past, and is now, engaged in the mining of coal and shipping the same to the open markets of the United States; this respondent also says that while he is not informed as to such matter yet he believes that it is true that the product of the plaintiff's mine is large, amounting to about 1,400 tons per day, but that he has no information, knowledge or belief, and therefore can not deny or admit, that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months when coal is carried to the northwest by steamers upon the lakes while navigation is not interrupted by ice, while another portion of its trade has been for years and now is supplying coal for fuel for engines of the Baltimore & Ohio Railroad Company, delivered by a coaling devise to the engines at its tipple, and likewise from large storage bins which have been erected and are in use by the plaintiff and by said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct located near the roundhouse of said railroad company at Benwood, in the construction of which steel trestle and coal bins plaintiff has expended and now has invested a large sum of money; this respondent admits that in mining coal the coal as mined is brought to the surface and mouth of the mine and then for interstate commerce is delivered
82 to the common carrier and carried by it to its destination within the United States but without the state of West Virginia; this respondent has no information, knowledge or belief as to the matter, and therefore can neither admit nor deny that plaintiff has made large contracts for the future delivery of coal to points within and without the state of West Virginia but within the United States, especially for lake trade; that respondent is not informed, nor does he know, and therefore can not admit or deny, that plaintiff alone furnishes daily to said Baltimore & Ohio Railroad Company between 500 and 600 tons engine coal; this respondent has no knowledge, information and belief, and therefore can neither admit nor deny, that the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall seasons of the year, and especially of this year as to its said contracts not yet filled, but which it has the ability, and unless unlaw-

fully interfered with by the defendants expects, to fill, as alleged in said bill; but this respondent denies that said defendants or any of them have unlawfully interfered in any manner with the operations of the plaintiff in the fulfillment of any of its contracts; this respondent admits that prior to April 1, 1906, plaintiff operated its said mine by employing a large number of men who were affiliated with said United Mine Workers of America, and admits that on April 1, 1906, a strike having been ordered by said association, the employees of the plaintiff who were working for it at that time continued to work until April 16, 1906, and on that day, under renewed demands of said United Mine Workers of America, went out on a strike and ceased to work for the plaintiff; and admits that said strike so declared is still in force so far as plaintiff and its mine is concerned; but this respondent denies that at the time plaintiff's said employees went out on a strike that they had no grievance, had no complaint to plaintiff, and respondent believes and therefore admits that plaintiff had not failed to comply with its then contracts with said employees with reference to their work; this respondent admits that said strike was ordered by said association, that said plaintiff's employees went upon said strike as aforesaid in pursuance thereof, for the reason that certain coal operators in other sections of the country had refused to accede to certain demands of said association, but denies that the ordering out of plaintiff's said employees and their going out on a strike as aforesaid were means, among other things, used by said association at that time for the purpose of compelling said coal operators to sign a scale which had been prepared and was being insisted upon by said association as the price of its permission being given to its members to remain at work for said coal
83 operators, but avers that the object of going on said strike was not only to aid the other members of said association, but also the employees of the said plaintiff, to secure shorter hours and more favorable conditions for working in the mine of the said plaintiff; that it is true that at that time plaintiff was advised of the controversy between said association and said coal operators, and that it proposed to its employees that they continue at work for the plaintiff pending the signing of the scale by said coal operators, and that on the signing of the scale plaintiff would pay its said employees any additional sum that would have been earned by them during the time intervening between April 1, 1906, and the signing of the scale, provided the scale when signed should provide for an advance in wages on work on and after April 1, 1906; but this respondent denies the allegation in said bill contained that while plaintiff's said employees were ready and willing to accept plaintiff's proposition, nevertheless, the said employees, being members of the United Mine Workers of America, were by that association ordered to strike, and, after having continued in plaintiff's employ until April 16, 1906, went on a strike as aforesaid under the renewed order of said United Mine Workers of America that they should strike, and denies that the going out on a strike on April 16, 1906, was without justification and without excuse, and greatly to plaintiff's injury, embarrassment in business and financial loss, owing to its inability to carry out its contracts which it then

had for the sale and delivery of coal and for supplying coal to the engines of the said Baltimore & Ohio Railroad Company at its tipple and bins aforesaid; this respondent admits that plaintiff's mine was shut down and was not operated from April 16, 1906, until June 12, 1906, and admits that upon resumption of operation on June 12, 1906, plaintiff started to run its mine on a non-union basis, but this respondent says that he does not know of his own knowledge, nor has he any information on the subject, nor has he any belief relating to the matter, that every man who accepted employment at the mine of plaintiff was told at the time of entering plaintiff's service that there was no union at the mine, that the company would not allow any, and that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and obeying its orders, and if any employee of this company joined the union he could not work any longer for the company; and this respondent says that he has no knowledge, information and belief, and therefore can neither admit nor deny, that under those circumstances and with full knowledge of the said conditions of employment many men applied to plaintiff for work, and being
84 employed entered the employment of plaintiff under the express contract not to join the United Mine Workers of America, and worked in its mine and have continued so to do until the present time with satisfaction to themselves and to the plaintiff, as in said bill is alleged, and respondent admits that from time to time since plaintiff has been operating its said mine on a non-union basis efforts have been repeatedly made by officers and agents representing the United Mine Workers of America and its subordinate associations or branches to induce the plaintiff to agree to re-unionize its mine and to sign the scale of the United Mine Workers of America; but that in their efforts to accomplish this the defendants aver no fraud, violence, coercion or other wrongful act was done by them, but that they met with the representatives of the plaintiff in a peaceable and friendly manner and discussed the same with them; and respondent denies that plaintiff has repeatedly refused to have anything to do with the United Mine Workers of America or any of its subordinate associations or branches, or with any of its officers, agents, employees or servants, and denies that it has made known to them and each of them plaintiff's determination to run its mine non-union and its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employees and servants, with its operation of its mine or with its business, and this respondent denies that said defendants have in any manner improperly or otherwise interfered with the operation of plaintiff's mine or its men, and denies that said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees and servants, have sought and are now seeking by inducements, threats, and intimidation, either with or without physical violence, to cause the plaintiff's employees to leave its service and to cause others who have engaged to enter its service to break their engagements of service and not work for plaintiff, and denies that said defendants have presented others

from working for plaintiff, and denies that either with an avowed or actual purpose or any other purpose said defendants are compelling or are attempting to compel plaintiff to recognize the union, or to force plaintiff to employ none but persons who are members of the United Mine Workers of America, and denies that they are attempting to compel plaintiff or have endeavored to compel plaintiff to pay such scale of wages as said United Mine Workers of America arbitrarily fix and demand, and denies that they are attempting or endeavoring to submit plaintiff's business and its property to the jurisdiction and control of said union, becoming by the union's rules obliged to employ or to discharge whom the said union,
85 its subordinate associations or branches and its officers, agents, employees and servants shall direct or require, as in said bill is alleged.

This respondent, for further answer unto said bill, says that he denies that said United Mine Workers of America, including its said subordinate associations or branches is a secret, voluntary organization having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes that the matters and things in said bill complained of have arisen, as in said bill is alleged, and denies that any of the objects, either expressed or otherwise, of said United Mine Workers of America are unlawful and denies that the said defendants are attempting to do anything unlawful in the work of promoting said organization.

This respondent, for further answer unto said bill, says that he admits that said United Mine Workers of America is not incorporated and was organized on or about January 25, 1890, and admits that from the proceedings of its last annual convention, which was held at Indianapolis, Indiana, from January 15 to January 22, inclusive, 1907, it appears to have had a membership of 230,667 in 1906; that its income for the fiscal year ending November 30, 1906, was $1,081,408.32, its expenditures for the same period were $1,232,-994.01, and that its balance on hand December 1, 1906, was $337,-960.71, and admits that it is claimed for it that it is the largest labor organization in America.

This respondent admits that indicative of the character and purpose of said United Mine Workers of America and its subordinate associations or branches are the excerpts from the constitution of the United Mine Workers of America and of the International Union United Mine Workers of America, appearing in said bill, taken from article- I., II., III., IV., V., VII., IX., X., XII., XIII. and XIV., and that said excerpts are correct. This respondent also admits that the excerpts from the constitution of District No. 6 United Mine Workers of America, as taken from articles I., II., III., VI., VIII. and IX. are correct. This respondent further admits that the excerpts from the constitution of Sub-District 5 of District 6 United Mine Workers of America, taken from articles I., II., IV., V., VI., VII. and IX. are correct. This respondent further admits that the matters set forth in the bill, showing the formality used in

opening the meetings of said organization, headed "Opening," are correct, including the form of the oath administered to the members.

Respondent admits that the paid up membership of District No. 6 United Mine Workers of America was in 1906, 36,372,
86 and on March 1, 1907, Sub-District 5 of District 6 U. M. W. of A. had 108 locals in good standing and a paid up membership of 12,500.

This respondent further admits that the defendant John Mitchell is president of the United Mine Workers of America, and that the other defendants therein named are officers of said organization as set forth in said bill; but this respondent denies that said defendants have agreed, confederated, combined and formed themselves into a conspiracy under the name of the United Mine Workers of America to unlawfully persuade, entice and procure plaintiff's miners or mine workers employed by plaintiff and working for plaintiff in and around plaintiff's mine to break, violate, disregard their several contracts with the plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without plaintiff's consent, as alleged in said bill, and denies that to such end they have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel by threats and intimidation and by other unlawful means the plaintiff's said employees to join the union, and apply to their own relation with plaintiff in the matter of their employment the rules of the union, and to enable the said union to apply its rules and regulations to plaintiff, under penalty of closing down plaintiff's mine provided plaintiff still refuses to unionize its mine and recognize the union, as in said bill is charged, and denies that they have been guilty of any unlawful conduct or acts with reference to the plaintiff's business mentioned in said bill.

This respondent, for further answer unto said bill, admits that the plaintiff has no contractual relation whatever with any one of the defendants hereto, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and will not consent to operate a union mine; that its employees are non-union men; but this respondent denies that said defendants are aware that said employees are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed by plaintiff, and denies that they are aware that if said employees do join the union th-ir employment with the plaintiff shall cease; and denies that said defendants are aware that with such understanding plaintiff's employees entered into its employment, and denies that the defendants are aware that plaintiff's employees are now working for plaintiff under such contract and with such conditions, and denies that all of this was known to the defendants and each of them before and at the time of the institution of this suit. Respondent says that the only thing upon which the
87 defendants were informed or of which they had any knowledge was that plaintiff was running a non-union mine and had declined to unionize its mine.

This respondent, for further answer unto said bill, says that he

denies that the said John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes, either individually or as officers, agents, employees and servants of said United Mine Workers of America and its said subordinate associations or branches, are fully aware or have any knowledge that plaintiff's said employees are satisfied with their employment; he admits that the defendants are aware, however, that plaintiff is engaged in mining coal and in fulfilling contracts for coal, and admits that it would be impossible to fulfill these contracts, if any it has, without the labor of its said employees, and, although he has no information, knowledge or belief on the subject, believes that it would entail upon plaintiff great financial loss to have its ability to fulfill its contracts interfered with by the failure of its men to work longer for plaintiff, and likewise would entail great loss and damage upon plaintiff to have its mine shut down and a strike declared; but this respondent denies that said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out, and now about to finally accomplish, namely; to cause plaintiff's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as plaintiff shall submit to the demand of the union that it shall unionize its plant, and, having submitted to such demand by employing only union men, shall become subject to the orders of the union, paramount to the orders of the plaintiff, their employer, as alleged in said bill, and denies that in thus unionizing its plant plaintiff shall surrender its control and the management of its business to the union and the various rules and regulations laid down by the union and accede in advance to every demand by said union that its said officers, agents, employees and servants may make, as in said bill is alleged.

This respondent further denies that allegation in plaintiff's bill wherein it says "the effectuating of this purpose is imminent and the damage threatened is great and irremediable, and that your orator's loss so far has been in excess of two thousand dollars exclusive of interest and costs, while on the accomplishment of said purpose of said defendants and the shutting down of your orator's mine the damage to your orator would be still greater and incapable of definite ascertainment, being incalculable, and amounting
88 to many thousands of dollars."

This respondent further answering says that he does not know, but he believes, that plaintiff pays as much as the union's scale of wages to its said employees, but denies that said defendants unlawfully and maliciously are agreeing together, confederating, combining and conspiring to effectuate by unlawful means the unionizing of plaintiff's mine simply for the purpose of seeking power and for the purpose of strengthening the union in future contests with employers of labor, and to compel all miners and mine workers to join the union, and establish a monopoly, and force employers of that kind of labor, and especially to force plaintiff,

to yield to the union's demands or else to give up its business, as alleged in said bill.

This respondent says that he admits that the union is not a competitor of plaintiff in the labor market; that the union does not employ labor, and is not an employer of labor.

This respondent, for further answer unto said bill, says that he admits that at the annual convention of the United Mine Workers of America, held at Indianapolis, Indiana, January 15 to 22, inclusive, 1907, the said defendants John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage and A. R. Watkins, John Zelenka and Lee Rankin were present and participated in its proceedings, and admits that it was openly stated with reference to the object of said union as follows "Organized labor contends that as industry can not exist without labor, labor has the right to say under what conditions it shall be employed," but denies that the expression was used in said meeting "thereby dictating the management of the productive end of the business," as in said bill is alleged. This respondent says that the use of the language above quoted does not indicate an intention on the part of said United Mine Workers to dictate the management of the productive end of the business of coal mining, and respondent denies that there was any language used in said convention conveying the idea or intending to convey the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but this respondent avers that said organization should have the opportunity to be heard, and has the right to say, under peaceable methods and the forms of the law, what the conditions ought to be with reference to said mines and the operation thereof to insure health and safety in the mining and production of coal generally, and that this was the matter then before said convention when the language above quoted was used.

89 This respondent for further answer says that while he does not recollect distinctly what did occur in the said convention he believes that it is true that the defendant T. L. Lewis stated that he had charge of the organizing force under the direction of the president; that there has been a tremendous loss in the membership of the union as a result of the strike of May 1, 1906; that he had been instrumental in building up three national organizations of mine workers, and was one of the delegates and attended the convention which laid the foundation of the United Mine Workers of America; that the union had "closed shop" wage agreements with operators whereunder 181,384 persons were employed in the year 1905, and that all of those persons were required to be memebrs of the union; that respondent admits that it was stated in said meeting that the American continent, meaning however the United States and British America, is not large enough to maintain two organizations of miners, and that he, said Lewis, favored one organization of the mine workers of the American continent and the complete recognition of the union's right to organize in every mining district in the country.

And respondent further avers that he believes, though he does

not remember distinctly, that it was said in said convention by the defendant W. B. Wilson what is stated in said bill, and admits the same to be true for the purposes of this suit; but this respondent further avers that the occurrences and discussions in said convention, alluded to in said bill, only related to the then condition of the United Mine Workers of America and the consideration of the best policy to promote its objects, which objects are expressed in the constitution, and has for its object the uniting of the mine employees that produce or handle coal or coke in or around the mines, and to ameliorate their condition by methods of conciliation, arbitration or strikes, and that the proceedings in said convention did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union men, and such allegations can only be treated as surplusage for the purposes of said bill. Respondent further avers that it is true that at said convention a committee's report was unanimously adopted containing the matter set forth in said bill.

This respondent further admits that that part of the bill setting forth the statements made by T. L. Lewis and John Mitchell are true but that it was simply a tentative presentation of the situation that then confronted the organization, and did not have for its object the disturbance of plaintiff's mines or the men em-
90 ployed thereat, nor had it anything whatever to do with the plaintiff's business.

This respondent further answering says that at the convention of Sub-District 5 of District 6 United Mine Workers of America held in March, 1907, the defendants A. R. Watkins, Lee Rankin, T. L. Lewis, John Zelenka, and Thomas Hughes were present and participated in the proceedings. This respondent also admits that that which appears in the bill as being said by A. R. Watkins in his report is true, and that that part of the bill which sets forth what appears in the report of Lee Rankin as secretary-treasurer of Sub-District 5 of District 6 is also true; that that part of the bill which sets out Resolutions Nos. 8 and 10 is true; but this respondent denies that the defendants are in anywise connected with the operation of the plaintiff's mines, or have anything to do with the interference of the plaintiff's employees.

This respondent, for further answer unto said bill, says that he denies that part of the language imputed to T. L. Lewis reading, "It is with regret that some of the locals in the pan handle broke away and the members went to work without any union or without getting a scale signed," referred to the locals of the United Mine Workers of America which existed near the mine of the Hitchman Coal & Coke Co. and the mine of the Glendale Coal Co., as in said bill is alleged.

Respondent further answering says that he has no knowledge, information or belief as to whether or not the Hitchman and the Glendale companies are owned by the same persons, or whether the same persons are members of the board of directors of each corporation, or whether W. H. Koch is a stockholder, a director and general manager of each of said mines, while the business of the

Glendale Coal Co. is managed from the office of the Hitchman Coal & Coke Co., as in said bill is alleged, and therefore he can neither admit nor deny said allegation.

This respondent, further answering said bill, says that he denies that said defendants and each of them treated the two mines as a single concern and have so dealt with plaintiff, as in said bill is alleged.

This respondent, for further answer unto said bill, says that he has no knowledge, information or belief, and therefore can neither admit nor deny, the allegations made in said bill that plaintiff in refusing to recognize the union after the declaration of said strike of April 1, 1906, and after its men had left plaintiff's employ pursuant to said strike, and in thereafter and now running its mine non-union, did not seek to reduce the wages of said employees or to cause them to work for less than the scale of wages es-
91 tablished by the United Mine Workers of America, as in said bill is alleged. And this respondent, having no information or belief on the subject, can neither admit nor deny the allegation of said bill that plaintiff's sole purpose in running non-union and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of said United Mine Workers of America, was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants; but be that as it may, this respondent denies that the defendants have attempted to oppress or intermeddle with the business of the plaintiff in any manner whatsoever, but avers that they have only approached the representatives of the said company in a peaceable and law-abiding manner and its employees for the purpose of soliciting membership from the employees of the plaintiff to the United Mine Workers of America.

This respondent says that he does not understand what is meant by the allegation in said bill that "these said defendants have for some years last past been in such business as is here shown they are now engaged in"; if it means an unlawful business, then this respondent denies said allegation. Respondent admits that the defendants are well acquainted with one another, as in said bill alleged, and that they constitute a part of the higher officers of the United Mine Workers, but denies that in their hands the management of the affairs of said union have been or are centralized.

This respondent, for further answer unto said bill, says that it is true that while plaintiff's mine remained idle after it was shut down April 16, 1906, efforts were frequently made by some one or more of said defendants to induce plaintiff to sign the scale and run union, but every request of that kind met with refusal, but this respondent denies that said defendants used any force, fraud, violence, intimidation, or unlawful methods of any kind, to induce plaintiff to sign the scale and run union. This respondent further says that after plaintiff started up non-union about June 12, 1906, efforts were repeatedly made by one or more of said defendants to induce plaintiff to run its mine on a union basis, but this respondent denies that, failing in that, efforts were made by some one or more of said defendants to

bring about by inducement, persuasion, threats and intimidation, and by various means and devices, unlawfully to induce plaintiff's employees to cease working for plaintiff, and also denies that by use of like means, devices, intimidation, threats, persuasion and inducements to prevent men willing to work for plaintiff not to engage to work, or after having engaged to work then not to go to
92 work for plaintiff, as in said bill is alleged; and this respondent admits that plaintiff was able to increase the number of its employees and to increase its business, which it has conducted successfully and peacefully and lawfully from the time it started non-union to the present, but denies that this was done despite any efforts or acts of interference with the plaintiff's business on the part of the defendants or any of them.

This respondent for further answer unto said bill says that it is true that upon different occasions after starting up non-union the different officials of the United Mine Workers of America, but not all of them, among whom were the defendants John Zelenka, A. R. Watkins, D. H. Sullivan and William Green, visited the general manager of plaintiff at his office at the Hitchman mine and talked to him on the subject of the recognition of the union, the signing of the scale and the re-employment of plaintiff's employees, but denies that it was under the technical guise of thus entering into contract relations with plaintiff's employees of the United Mine Workers of America and for the purpose of doing away with the express provisions of plaintiff's contract with each of its employees that they should not become members of the union and if they did that their employment should thereby cease, as in said bill is alleged; but this respondent avers that free of any technical guise the said representatives of the United Mine Workers of America openly and fairly visited the general manager of plaintiff, was cordially received by him, and informed by him that they could see the men and talk with them, and if said men desired to join the union he would interpose no objection thereto, and that the said representatives of the United Mine Workers did not seek to have plaintiff unionize its mine under any technical guise, but desired that plaintiff should employ union men at its mines under the usual and ordinary contracts made by the union in its relations with coal operators; that it is also true that plaintiff did refuse to enter into any contract with the United Mine Workers having for its object the sole employment of organized labor at its mines.

This respondent further says that it is true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office of plaintiff's general manager and had a conversation with him regarding the forming of a miner's union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, but denies that plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered at
93 all, and denies that said Zelenka consequently reported to plaintiff's employees and caused that report to be circulated amongst them that he, Zelenka, Green and Watkins had had a

conference with plaintiff's general manager and that said general manager had agreed to allow the United Mine Workers of America to put all of plaintiff's employees into the union, and denies that he, said Zelenka, made the further statement, which he caused to be circulated among plaintiff's employees, that it was up to the employees of plaintiff to join the union or else they would be out of a job at an early day because only union men would be permitted to work at the mine, and that those of plaintiff's employees who did not join the union would not be permitted to get a job any place; nor did he, said Zelenka, use such language or language of like purport or character. Respondent says that it is true that plaintiff's general manager did complain of the action mentioned, and that said Zelenka, Green and Watkins each denied making any such statement or circulating any such report, because such statement or report had never been made or circulated by them, and for them to admit such statement would have been to admit that which was untrue. And respondent denies that plaintiff's statement in this regard is true, and in the action referred to and complained of to said defendants denies that said defendants were simply carrying out their unlawful purpose heretofore formed to unionize plaintiff's mine without its consent, and denies that said defendants or any of them have done anything unlawful with reference to plaintiff's mine or its employees or otherwise.

This respondent says that it is true that plaintiff's employees are non-union men who have entered into employment with plaintiff, but this respondent has no knowledge information or belief, and therefore can neither admit nor deny the allegation made in said bill that said employees have entered the employment of the plaintiff with the understanding that plaintiff shall continue to run a non-union mine, nor has this respondent any information, knowledge or belief, and therefore can neither admit nor deny the allegation that some of plaintiff's employees have bought property and homes and expect to have permanent employment with plaintiff, so running its mine non-union, and with the understanding and expectation that while in the employ of the plaintiff they shall be protected in such employment.

This respondent, for further answer unto said bill, says that it is true that some time during the middle of this summer of 1907 the defendants Green, Watkins and Zelenka called upon plaintiff's general manager at his office, and that said Green was spokesman.

94 Respondent admits that said Green expressed a desire to talk to said general manager in regard to organizing plaintiff's mines, but denies that said general manager stated to them that while unionizing the mine was out of the question, yet if they had any business proposition to submit it would be listened to, and denies the conversation between said parties as set forth in said bill.

Respondent says that he denies that plaintiff's general manager told said D. H. Sullivan and William Green that in case they brought plaintiff's men out on a strike they would be taking away from them something they would never be able to get back, that is,

re-employment by plaintiff, and denies that the same statement was made to this respondent, as in said bill is alleged.

Respondent, for further answer, says that it is true that under the rules of the United Mine Workers of America, there was paid by plaintiff to the secretary-treasurer of the local union the amount specified in said bill.

And respondent denies that on one or more of the occasions heretofore referred to, as set forth in said bill, when one or more of said defendants sought plaintiff to unionize its mine, plaintiff's general manager stated to said defendants that with them as officers of the union it was not so much a question of looking after the interest of the men employed by the plaintiff as it was a question of money, and denies that they the defendants were in the business for what they could get out of it, and denies that such statement to them was made by said general manager, and denies that their attention was called to the fact that nearly $10,000 had been turned over to them from the Hitchman mine alone in the two years just prior to the strike.

And this respondent further denies that said defendants or any of them are proceeding to carry out their conspiracy or any other conspiracy, and are now endeavoring to unionize plaintiff's mine, and denies that they threaten so to do, and denies that plaintiff has reasonable ground to fear that they will do so, and denies that they intend to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor.

This respondent further denies that on or about September 7, 1907, the defendant Thomas Hughes was noticed at the Glendale mine and about the Hitchman mine intercepting the miners, taking lists of names of employees, and trying to induce the men by persuasion, threats, coercion and intimidation and by various other unlawful methods and devices to quit working for plaintiff and to join the union, and denies that such efforts or any other efforts have been made by the said Hughes to interfere with the em-
95 ployees and operation of the plaintiff in the working of its mine, and denies that the said Hughes had any authority from the United Mine Workers or any organization connected therewith to do anything to induce plaintiff's employees to cease working for plaintiff.

This respondent, for further answer unto said bill, says that he denies that as a result of the labors of the defendant Hughes, who has been assisted by others of the defendants from time to time by their counsel and advice, aiding and abetting him with their presence, about plaintiff's mine and about the Glendale mine, that the said defendants succeeded in getting 24 of the employees of the Glendale mine to agree to join the union and to quit the service of the Glendale Coal Co., as in said bill is alleged. And respondent denies the further allegation in said bill that while said defendants have so far been unable to bring about or induce plaintiff's employees to quit its service, still the said Hughes has recently stated to one of the plaintiff's miners whom he was trying to induce to

leave plaintiff's service and join the union that he Hughes had succeeded in having 125 men at the Hitchman mine agree to become members of the United Mine Workers of America, and that just as soon as he got 25 more names he was going to shut down the Hitchman mine; and it may be true, although respondents has no knowledge, information or belief relating thereto, and can therefore neither admit nor deny the allegation that 54 of plaintiff's present employees have in writing signed a statement that they are satisfied with their employment with plaintiff, with the wages paid to them and with their work, and they would like to remain in plaintiff's employ; and respondent admits that plaintiffs employs from 175 to 200 men in its mine as a general rule, and now has in its employ from 160 to 175 men.

This respondent for further answer says that he denies that said United Mine Workers of America and the said International Union United Mine Workers of America, the said District No.6 United Mine Workers of America, and the said Sub-District 5 of District 6 United Mine Workers of America are, under their constitutions, violating the common law and statutory law of the State of West Virginia, as well as the constitution of said state in any manner whatsoever, and especially in the particulars designated in said bill, but avers that the said organizations are in every respect lawful and that their objects and purposes are lawful.

This respondent further answering says that he admits that said John Mitchell, T. L. Lewis, W. B. Wilson are officers of said organization, and that said Thomas Hughes is acting as an organizer of said United Mine Workers, and that the principal office thereof is at Indianapolis, Indiana, and that the offices of the sub-
96 ordinate associations are located as in said bill is alleged, and that the defendants reside in the states in said bill alleged, and that no defendant is a resident of the state of West Virginia, but denies that the matter in dispute exceeds exclusive of interest and costs the sum of $2,000.

This respondent, for further answer unto said bill, says that he has no knowledge, information and belief, and can neither admit nor deny the fact as alleged in said bill that the names and addresses of the members of the said several associations are to the plaintiff unknown, but he avers that a large number of members of said organization are residents of the state of West Virginia, and he denies that such members as reside in West Virginia are not necessary parties to this bill, inasmuch as the said bill charges that the United Mine Workers of America is an unlawful body; and therefore before said organization the members of which reside in West Virginia can be declared in this suit to be unlawful, such West Virginia members should be made parties hereto, and for that purpose they are indispensable parties; and, being indispensable patries, it is immaterial that their joinder will oust this court of its jurisdiction.

And this respondent avers that the United Mine Workers of America is a voluntary association and organization, unincorporated, is made up of district organizations and sub-district organizations

located in various states of the Union; that District No. 17 of the United Mine Workers of America is located entirely within the state of West Virginia, composed of about 9,000 men; that the president of said District No. 17 is Ben Davis, a citizen of West Virginia, who resides in the city of Charleston, in said state; that L. F. Lanham is vice-president of said District No. 17, and is a citizen of West Virginia, and resides in said city of Charleston, in said state; that Benjamin F. Morris is secretary-treasurer of District No. 17, and is a citizen of West Virginia, and resides in said city of Charleston in said State; that the president of Sub-District No. 1 of District 17 is B. S. Hastings, a citizen of West Virginia and a resident of the town of Montgomery in said state; that B. A. Kramer is secretary of Sub-District No. 1 of District 17, is a citizen of West Virginia, and resides in said town of Montgomery in said state; that the district executive board of said District No. 17 is composed of the following members: Van D. Johnson, a citizen of West Virginia, and who resides at Burwell, in said state; W. W. Hall, a citizen of West Virginia, and who resides at Eagle in said state; W. E. Javis, a citizen of West Virginia, and who resides at Mucklow, in said state, and W. E. Smith, a citizen of West Virginia, and
97 who resides at Tunnelton, in said state. This respondent is unable to give the names of the 9,000 men who are members of the United Mine Workers of America and belong to District No. 17 of said union, but avers that all of said members of said District No. 17 are citizens of West Virginia and reside in the state of West Virginia and are subject to the jurisdiction of District No. 17, which is operating as a district and as part of the United Mine Workers of America in the state of West Virginia in the southern part thereof; that they are all interested in maintaining the legality of said organization, because if the same is declared to be unlawful they can no longer continue their organization but will be required to abandon the same.

And this respondent further answering says that he is advised that this court ought not to take jurisdiction of this respondent or any of the other defendants to this suit as members of the United Mine Workers of America, because the members of said organization who have their residence and citizenship within the territory composing District No. 17 of said union are all citizens and residents of the state of West Virginia, and that this court ought not to proceed to pass upon the question of the legality of the said organization without such representation of District No. 17 composed of 9,000 members, all citizens of West Virginia, and who are vitally interested in the questions now before the court embodied in the said bill.

This respondent for further answer unto said bill says that de denies that said defendants are acting individually and agreeing, confederating, combining and forming themselves into a conspiracy, under the name of the United Mine Workers of America, and denies that they will in pursuance of any unlawful purpose and design, by enticement, persuasion or coercion in any form whatsoever, bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, as alleged in said bill, and denies that they will without the

consent and against the will of plaintiff compel it to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and denies that defendants will compel plaintiff to contract with its employees through said defendants as officers of said associations, under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the union to dictate the persons whom plaintiff shall employ and those whom it shall discharge, the wages it shall pay, and denies that the defendants will compel plaintiff to agree that each of its future employees as members of said United Mine Workers of America shall owe and
98 yield to said union an allegiance which shall in all things be paramount to that which said employees would owe to plaintiff, and denies that the defendants will thus take charge of, dictate the management of, and virtually control plaintiff's business, and denies that the defendants will perpetrate acts of oppression and wrong upon plaintiff which distinctly violate its contractual, common-law, statutory and constitutional rights as a citizen of the state of West Virginia.

This respondent, for further answer unto said bill, says that he denines that the defendants are attempting to effect the unionizing of plaintiff's mine, and denies that they propose and threaten to do any unlawful acts or employ any unlawful methods to accomplish any unlawful results, and denies that they are using threats, intimidation, force, violence or abusive language, and denies that they are picketing plaintiff's premises, picketing or patrolling or guarding the streets and approaches to plaintiff's premises, and denies that they are going to the homes or boarding houses of plaintiff's employees for the purpose of intimidating or coercing them to leave plaintiff's employment, and denies that they are picketing the railroad and street cars passing to and from or through plaintiff's premises for the purpose of intercepting plaintiff's employees in going to or from plaintiff's premises and for the purpose of intercepting and preventing persons coming to plaintiff's premises for the purpose of seeking or for the purpose of entering into plaintiff's employment.

But this respondent avers that the defendants have by peaceable and law-abiding methods sought to interview the employees of the plaintiff at their homes and upon the streets and highways and other places where the defendants had a right to be, for the purpose of using reason, argument and persuasion to induce them to become members of the United Mine Workers of America, and have thus endeavored to show and present to said employees that it would be greatly to their advantage and welfare to be members of the union, whose object is to protect labor and promote its welfare by securing if possible through lawful methods higher wages, shorter hours, and better conditions at the mines for the safety and health of the employees, and in various other lawful methods aiding the coal miner in the prosecution of his employment and in providing the necessaries of life for himself and family, and to thus make him a more useful factor in society and as a citizen of the state.

And this respondent denies that the plaintiff is entitled to the relief prayed for in its said bill, or to any other specific or general relief whatsoever.

99 And this respondent denies all unlawful combination, conspiracy, confederacy and unlawful acts of any sort whatsoever sought by the said bill to be imputed to the defendants or any of them.

All of which matters and things this respondent is ready to verify, maintain and prove, as this honorable court may direct.

And he humbly prays that the temporary injunction heretofore granted in this cause may be vacated and dissolved, and that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. R. WATKINS,
Individually and as President of Sub-District 5 of District No. 6, United Mine Workers of America,
By CHAS. E. HOGG,
Counsel for the Defendant.

Replications.

On November 5th, 1910, a general replication was filed by the complainant to the joint and several answer of the defendants, T. L. Lewis, et al., filed herein on September 5th, 1910; and on the same date a general replication was also filed by the complainant to the separate answer of A. R. Watkins filed herein on September 5th, 1910, and on said November 5th, 1910, separate orders were entered filing said respective general replications.

Decree Relating to Answers Withdrawn.

And at another day, to-wit: On the 5th day of November, 1910, the following order was made and entered of record, to-wit:

No. 7. In Equity.

HITCHMAN COAL AND COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union
100 United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America; and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

On this fifth day of November, 1910, came the plaintiff, by George R. E. Gilchrist, its counsel, and filed its motion in writing that the clerk of this court do produce certain papers from the file

in this cause and certain orders from the books of record of this court in this cause, specifically described in said written motion, and that upon production and inspection by the court an order be entered filing said papers and said orders as documentary evidence to be read on behalf of plaintiff at the hearing of this cause, saving all just exceptions.

101 And the clerk of this court having now produced in open court the said papers from the said file in this court in this cause and the said orders from the books of record of this court in this cause, and the court having inspected them, and being satisfied with their authentication, doth grant plaintiff's said motion, and it is here ordered that the following papers from the file in this court in this cause and the following orders from the books of record of this court in this cause be and they are hereby filed to be read as evidence on behalf of the plaintiff upon the issue joined, at the hearing, saving all just exceptions—

1. Sworn separate answer of the above-named defendant A. R. Watkins, individually, and as President of the Sub-District 5 of District 6 United Mine Workers of America, which was filed May 26, 1908.

2. Order entered in this cause June 26, 1908, extending to July 16, 1908, the time within which the remaining served defendants were required to file their answers in this cause

3. Joint and several answer of the above-named defendants, T. L. Lewis, individually, and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually, and as President of District No. 6 United Mine Workers of America; D. H. Sullivan, individually, and as Vice-President of District No. 6 United Mine Workers of America; George W. Savage, individually, and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America; John Zelenka, individually, and as Vice-President of Sub-District 5 of District 6 United Mine Workers of America; and Lee Rankin, individually, and as Secretary-Treasurer of Sub-District 5 of District 6 United Mine Workers of America, which was filed July 13, 1908.

4. Separate answer of the above-named defendant, William Green, individually, and as President of District No. 6 United Mine Workers of America, which was filed July 13, 1908.

5. Separate answer of the above-named defendant, D. H. Sullivan, individually, and as Vice-President of District No. 6 United Mine Workers of America, which was filed July 13, 1908.

102 6. Order entered in this cause July 13, 1908, filing the answers mentioned above under 3, 4 and 5.

7. Sworn separate answer as amended of the above-named defend-

ant, A. R. Watkins, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America, and the affidavit of said A. R. Watkins accompanying his said sworn amended answer, and the affidavit of Charles E. Hogg and the affidavit of Uriah Barnes, both accompanying said sworn amended answer, being the same papers referred to in the order next mentioned.

8. Order entered in this cause August 20, 1908, tendering for filing the said sworn separate answer as amended of the above-named defendant, A. R. Watkins, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America, and the affidavit of said A. R. Watkins accompanying his said sworn amended answer, and the affidavit of Charles E. Hogg and the affidavit of Uriah Barnes, both accompanying said sworn amended answer.

9. Order entered in this cause July 22, 1910, withdrawing the separate answers of William Green and D. H. Sullivan and the original and amended answers of A. R. Watkins and the joint and several answer of all the served defendants, application for permission to withdraw them having been made by the counsel of record for said defendants and having been granted with the condition that said papers are not to be removed from the file.

And the court reserves the right to hereafter fix the time within which exceptions are to be made.

Separate Answer of A. R. Watkins.

(Filed May 26, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen
103 of the State of Indiana, Individually and as President of the United Mine Workers of American and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

The Separate Answer of the Defendant A. R. Watkins, Individually and as President of Sub-District 5 of District No. 6, United Mine Workers of America, to the Bill of Complaint of the Hitchman Coal & Coke Company, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, and a Citizen of the said State, filed in said Court.

104 To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

This defendant, now and at all times hereafter saving to himself all manner of benefit and advantage of exceptions which can or may

be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering says:

That he believes that it is true that the said Hitchman Coal & Coal Company is a corporation organized under and by virtue of the laws of the state of West Virginia, having its principal office at Wheeling, in Ohio County, in said State; and that it may be that it is the owner of about 5,000 acres of coal situated contiguous to its coal mine, which is located at Benwood, in said state; that it may be also true that its coal mine is equipped with the necessary plant for mining coal, and that it has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by rail originate on that road and at its mine; that it may also be true that it has been for some time past and is now engaged in mining coal and shipping the same to the open markets of the United States; that it may be true that the product of its mine is large, amounting to about 1,400 tons per day, and that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months, when coal is carried to the Northwest by steamers on the lakes while navigation is not impeded by ice, while another portion of its trade has been for years and now is the supplying of coal for fuel for the engines of the said Baltimore & Ohio Railroad, delivered by a coaling device to the engines at its tipple and likewise from large storage bins which have been erected and are in use by said plaintiff and said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct, located near the round house of said railroad company near Benwood, in the construction of which steel trestle and coal bins the plaintiff has expended and now has invested a large sum of money; that it may also be true that in mining coal the coal as mined is brought to the surface and mouth of the mine, and then for interstate commerce is delivered to the common carrier and by it delivered to its destination within the United States and without the state of West Virginia; that it may also be true the plaintiff has made large contracts for future delivery of coal to points
105 within and without the state of West Virginia, and within the United States, especially for the lake trade"; that it may be also true the plaintiff only furnishes daily to said Baltimore & Ohio Railroad Company between five and six hundred tons of engine coal; that it may also be true the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall season of the year, and especially may this be true of this year as to its said contracts not yet fulfilled and which it has the ability, and unless unlawfully interfered with by the defendants it expects, to fill; but this respondent says as to whether or not all these matters so alleged in said bill are true he is not informed and so can neither deny nor admit the same, but calls for strict proof thereof.

And this defendant for further answer unto said bill says that

it is true that prior to April 1, 1906, the plaintiff operated its said mine by employing a large number of men who were affiliated with the United Mine Workers of America, and that on said April 1, 1906, a strike having been ordered by said association, the employees of the plaintiff, who were working for it at that time, continued to work for it until April 16, 1906, and on that day they ceased to work for the plaintiff by reason of said strike; but this respondent denies that the strike so ordered and declared is still in force so far as plaintiff's said mine is concerned. This respondent avers that the said employees of plaintiff who ceased to work because of said strike did so in order that said organization might be enabled to restore to the members of the United Mine Workers the scale of prices of 1903, which was a higher and better price than that paid in 1905 and up to April 16, 1906; and that because the said plaintiff did not at once agree to accede to the scale of prices adopted by said Mine Workers' organization it became necessary for said employees to remain out of work in order to promote the adoption of the scale of prices which had been proposed by the organization prior to April 1, 1906, and had the said employees of the plaintiff then working for said plaintiff acceded to the demands of the said plaintiff it would have been impossible to carry out the policy of the said United Mine Workers of America with reference to the adoption and promotion of a just and uniform scale of prices for the work of their members. It may be true that said employees of the plaintiff belonging to said organization were ready and willing to accept the said plaintiff's proposition as contained in its said bill so far as their personal inclinations were concerned, but as members of the United Mine Workers of America they fully knew that to promote the policy of their organization, which is to ameliorate their condition as mine
106 workers by methods of conciliation, arbitration or strikes, they could not consistently accede to the terms of employment or continuation of employment then proposed to them by the said plaintiff; and for this reason the said employees belonging to said organization did on April 16, 1906, go out on strike under the continued orders of the United Mine Workers of America, but this respondent denies that such going out on a strike on April 16, 1906, was without justification and without excuse.

This respondent, further answering, says that it may be true that said mine of plaintiff was shut down and not operated after April 16, 1906, until June 12, 1906, as alleged in said bill. It is true, as respondent believes and so avers, that the plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine; that the company would not allow any; that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and its orders, and that if any employees of the company joined the union they could not work any longer for the plaintiff. It may be also true that thereupon, with knowledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under

an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff.

It is also true, as respondent is advised, that from time to time, since the plaintiff has been operating at said mine on a non-union basis, efforts have been made by the officers and agents representing the United Mine Workers of America, and its subordinate organizations or branches, to induce plaintiff to agree to employ union men at its said mine and to sign the scale of the United Mine Workers of America, and that plaintiff has repeatedly refused to have anything to do with the United Mine Workers of America or any of its subordinate associations or branches, or with any of its officers, agents, employees or servants, and has made known to them and each of them plaintiff's determination to run its mine with non-union men and of its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employees or servants, with its operation of its mine or with its business.

And this respondent, for further answer unto said bill, denies that the said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees or
107 servants, have sought or are now seeking, by any means whatsoever except arguments, persuasion and other peaceable and legal methods, to cause the employees of the plaintiff to become members of the United Mine Workers of America, and denies that they have at any time endeavored by any means to cause plaintiff's employees to leave its service, or to so cause others who have engaged to enter plaintiff's service to break their engagements or service and not work for plaintiff, or to prevent others from working for plaintiff, with the professed, avowed and actual purpose of compelling the plaintiff to recognize the United Mine Workers of America and to employ only persons who are members thereof, and to compel plaintiff to pay such scale of wages as said United Mine Workers of America may arbitrarily fix and demand, and denies that said United Mine Workers, or its representatives or agents, have endeavored to cause the plaintiff to submit its business or property to the jurisdiction or control of the United Mine Workers of America, as is in said bill alleged.

This respondent, for further answer unto said bill, says that he admits that the United Mine Workers of America, including its said subordinate associations and branches, is a voluntary organization, having certain express objects, as alleged in said bill, but denies that any of the said objects are unlawful or that said organization is a secret organization, but avers that all its objects are lawful, and denies that the said organization or any of its members or officers, including this respondent and the other defendants to this bill, is making any endeavor to carry out any unlawful purpose, as alleged in said bill, but on the contrary, the only objects of the said United Mine Workers of America, including all its subordinate associations and branches, together with all members thereof, are to unite employees that produce or handle coal or coke in and around coal mines and

to ameliorate their condition by methods of conciliation, arbitration or strikes, and to thus advance the welfare of the members of this organization, to better enable them to carry on their vocations in life, to promote their endeavors in a lawful and peaceable manner to secure the blessings of liberty to themselves and their families, to better promote their pursuit of happiness and to secure to themselves more advantageous contracts with their employers.

Your respondent, for further answer unto said bill, says that so much of the constitution of the United Mine Workers of America as is set forth in said bill is correct, but that some parts thereof are omitted.

108 This respondent, for further answer unto said bill, says that he denies that the defendants to this bill, to-wit: John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes, each and all or any of them, as alleged in said bill, have agreed, confederated, combined or formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure plaintiff's miners or mine workers, employed by plaintiff and working for plaintiff in and around plaintiff's mine, to break, violate and disregard their several contracts with plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without its consent, and denies that to such end they have unlawfully and maliciously agree-, confederated, combined and formed themselves into a conspiracy to compel, by threats and intimidation or by other unlawful means, said plaintiff's employees to join the union and apply to their own relation with plaintiff in the matter of their employment the rules of the union, to enable said union to apply its rules and regulations to plaintiff under penalty of closing down plaintiff's mine, provided plaintiff still refused to unionize its plant and recognize the union, as alleged in said bill. But this respondent does aver that some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employees of the said plaintiff, and have in a peaceable and friendly manner invited said employees, so conversed with, to join said organization of the United Mine Workers of America, and have used moderate argument and persuasion at the homes of some of the employees to induce them to become members of the United Mine Workers, endeavoring to show such employees that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization.

And this respondent, for further answer unto said bill, says that it is true that the said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine; that its men are non-union men; that said employees are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed, and that if they do join the union their said

employment shall cease; that with such understanding plaintiff's employees entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill,
109 but this respondent avers that any condition, stipulation, contracts or agreements on the part of said plaintiff with its said employees as a condition upon which they shall enter into employment and continue in their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and can not be made a condition upon which to base any valid and binding contract or obligation between employer and employee.

This respondent, for further answer unto said bill, says that the allegations therein contained charging the defendants to said bill with knowledge that the said employees of plaintiff are satisfied with their employment, that plaintiff is engage- in mining coal and filling contracts for coal, that it would be impossible to fill these contracts without the labor of its employees, and that it would entail upon the plaintiff great financial loss to be deprived of its ability to fulfill its said contracts by failure of its men to work longer for it, and would likewise entail great loss and damage to plaintiff to have its mine shut down and to have a strike declared, can not be considered as important and material for the purpose of said bill, because this respondent says that he denies that said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely, to cause plaintiff's mine to be shut down and its plant to remain idle and its contracts to be broken and unfilled until such time as plaintiff shall submit to the demands of the union; that it shall unionize its plant, and, having submitted to such demand and having unionized its plant by employing only union men, who shall become subject to the orders of this union, paramount to the orders of the plaintiff, their employer, it will thus surrender control and management of its business to the union and become subject to and acquiesce in the enforcement by the union of the various rules and regulations laid down by the union and accede in advance to every demand the said union by its officers, agents, employees and servants may make. And respondent here denies that by soliciting the said employees of the plaintiff to join the union it necessarily follows that it is endeavoring to compel the plaintiff to operate its mine by union labor, and avers that it is a *non-asquitur* that by the peaceful methods employed by defendants to induce the employees of said plaintiff to join the United Mine Workers of America the said plaintiff will thereby be compelled to conduct its business and carry on the
110 operation of its plant by union men only and be subject to the control and dictation of the United Mine Workers of America; that the United Mine Workers of America do not attempt by force, intimidation, fraud or violence to coerce any employer of men in and about his coal mine to engage union men to do such work and to submit to the dictation and control of the United Mine

Workers of America against his will and consent, but only seek to induce, if possible, by peaceable methods, an employer to employ union men, and thus promote in a reasonable and proper manner the said labor organization.

This respondent for further answer unto said bill says that he denies that the effectuating of any purpose on the part of the said defendants or the said union is imminent or that the damage threatened is great and irreparable, as alleged in said bill, and denies that plaintiff's loss by reason of any acts done by the defendants or any of them, with reference to the men now in the employ of said plaintiff, has been in excess of $2,000 exclusive of interest and costs, or to any other men, by reason of acts of said defendants or any of them, and denies that said defendants or any of them have made any effort to shut down plaintiff's mine and therefore denies that plaintiff has suffered any damage by reason of any acts of the defendants or any of them, as alleged and attempted to be shown by argument and inference in said bill.

This respondent for further answer unto said bill says that it may be true that the plaintiff pays as much as the union scale of wages to its said employees, but denies that the said defendants or any of them are in any manner unlawfully and maliciously agreeing together, confederating, combining or conspiring to effectuate by unlawful means the unionizing of plaintiff's mine, but does say that, for the purpose of giving standing and effectiveness to the said United Mine Workers of America with the employers of labor, they are using all peaceable means by arguments and reasoning with the employees of said plaintiff to become members of the said union, but denies that they are endeavoring to create a monopoly to force employers and especially the plaintiff by unlawful means to engage union men, against their will and consent, but avers that they are endeavoring to increase the membership of the said organization, to accomplish its purpose of making it desirable and profitable on the part of employers to engage union men to work in and about their mines, so as thereby to settle all differences between the employer and employee by the peaceful methods of conciliation, arbitration or strikes, as contemplated by the constitution of the United Mine Workers of America.

111 And this respondent for further answer unto said bill says that he admits that the union is not a competitor with the plaintiff in the labor market, and that the union does not employ labor, as in said bill is alleged, but avers that its large membership has been the means of supplying men in and about the mining and shipping of coal to a large number of extensive operators engaged in the mining and shipping of coal in the states of West Virginia, Pennsylvania, Ohio, Indiana, and Illionis, and that in these places where union men have been employed the relations between employer and employee have been agreeable, and the said union has been the means of bringing about a good state of feeling and a healthy condition with reference to the status of capital and labor between each other in said states.

This respondent for further answer unto said bill says that if it

was openly stated with reference to the objects of said union at its annual convention, held at Indianapolis from January 15 to January 22, inclusive, 1907, as alleged in said bill, to-wit: "Organized labor contends that as industry can not exist without labor, labor has the right to say under what conditions it shall be employed," it does not follow that it thereby intends to dictate the management and productive end of the business, and respondent denies that there was any such language used in said convention conveying the idea that said organization has for its object the dictating of the management of said coal mines and the business relating thereto. But it should be heard, and has the right to say, under peaceable methods and under the forms of law, what the conditions should be to insure health and safety in working in mines in the mining and production of coal.

And this respondent for further answer unto said bill avers that the said United Mine Workers of America, by peaceable and law-abiding methods, have the right to canvass for membership and solicit men to become members of the said United Mine Workers of America throughout the United States where coal mines exist and can be properly operated, provided the work of thus promoting membership and acquiring new members is conducted in a peaceable manner and by the use of reason and argument and without resorting to force, fraud, violence, intimidation or other wrong.

This respondent for further answer unto said bill says that that part of the same appearing on pages 26 and 27, purporting to give the language of the defendants T. L. Lewis, W. B. Wilson and John Mitchell, in said convetion, only related to the then condition of the United Mine Workers of America, and the discussion of the best policy to promote its objects, which objects are expressed in
112 the constitution and have hereinbefore been stated, and said discussion did not involve the use of force, violence, intimidation or other wrongful means to bring about the promotion of the objects of said union, but was simply in furtherance of its purpose of resorting to strikes of a general nature, and did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union men, and they are therefore idle allegations, and can only be regarded as surplusage for the purposes of said bill.

This respondent for further answer unto said bill with reference to the allegations therein contained, appearing on pages 28, 29, 30 and 31, relating to the general action of the convention of Sub-District 5 of District 6 of the United Mine Workers of America, held in Wheeling, West Virginia, in March, 1907, denies that anything in that part of said bill, appearing on pages 28 to 31, inclusive, has any bearing upon the rights or interests of the plaintiff in this bill, and avers that such allegations are entirely foreign to its purpose, and constitute only surplusage, and are so immaterial that any answer thereto would only raise an issue the determination of which could not affect the rights of either party to this suit.

This respondent for further answer unto said bill says that as to the allegations contained in the bill filed on behalf of the

Glendale Coal Company against the said defendants to this bill, this defendant avers that so far as said allegations charge this respondent and the said defendants with any intimidation, coercion, fraud, combination, threats, violence or wrongful acts of any kind, the same are hereby positively denied as if the same were denied specifically and consecutive as set forth and alleged in the said bill of the said Glendale Coal Company.

This respondent for further answer unto said bill says that it may be true that plaintiff, in refusing to recognize the union after the declaration of said strike on April 1, 1906, and after its men had left plaintiff's employment pursuant to said strike, and thereafter running its mine non-union, did not seek to reduce the wages of its employees, or cause them to work for less than the scale of wages established by the United Mine Workers of America; and it may be true that plaintiff does not now seek or contemplate any reduction in the wages of its present employees. And respondent also says that it may be true that plaintiff's sole purpose in running non-union, and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of the United Mine Workers of America, is to escape from intolerable oppression and vicious intermeddling by said defendants. But if this is the purpose and
113 object of said plaintiff, as alleged in said bill, this respondent denies that the said defendants or any of them has done anything to hamper or interrupt said plaintiff in the running of its mine, and denies that the said defendants or any of them have sought to impose intolerable oppression upon said plaintiff, or have been guilty of any vicious intermeddling with the business of employees of the plaintiff, as in said bill is alleged.

This respondent for further answer unto said bill says that the said defendants have, it is true, for some years last past been associated together as members of the United Mine Workers of America, and that they are well acquainted with each other, and that they constitute a part of the higher officers of the United Mine Workers of America, and they deny that the management of said union has been centralized in their hands, but that the whole of the United Mine Workers, in convention assembled, manage and control their own affairs, and that the said defendants are only offices entrusted with the executive business of said organization.

This respondent for further answer unto said bill says that it is true that after the plaintiff's mine was shut down, which occurred on April 16, 1906, efforts were frequently made by one or more of said defendants to induce the plaintiff to sign the scale and run its mine on a union basis, but that the request so made by the defendants was refused, and that subsequently requests were made of a like character, but this respondent denies that upon failure of the said plaintiff to employ union men at its mine as requested, as alleged in said bill, that said defendants or any of them made efforts by threats, intimidations, or any other unlawful device or means, to induce plaintiff's employees to cease working for plaintiff, and denies that by like means, such intimidation, threats

or other unlawful methods, the said defendants or any of them endeavored to induce the employees of said plaintiff not to engage to work, and having engaged to work to not to go to work for plaintiff; and it is true that plaintiff was able to increase the number of its employees and increase its business, which it is conducting successfully and lawfully from that time to the present, and so far as this respondent is advised the said plaintiff is still conducting its business in a peaceful manner and free from any unlawful acts such as fraud, violence, intimidation and threats from the said defendants or any of them towards the said plaintiff and its said employees.

And this respondent for further answer unto said bill says that it may be true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office
114 of the plaintiff's general manager and had a conversation with him regarding the forming of a miner's union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, and while plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered, it is not true that said Zelenka subsequently reported to plaintiff's employees, and caused that report to be spread among them, that he, Zelenka, Green and Watkins, had a conference with plaintiff's general manager and that said general manager had arranged to allow the United Mine Workers to put all the plaintiff's employees into the union; and denies that they or either of them made the further statement which he caused to be circulated among the plaintiff's employees that it was up to the employees of the plaintiff to join the union or else they would be cut out of a job at an early day, because only union men would be permitted to work at the mine, and that plaintiff's employees who did not join the union would not be permited to get a job any place, as alleged in said bill. And it is true that the said general manager did complain of the alleged action, and inasmuch as it had not occurred, the said Zelenka, Green and Watkins positively denied making any such statement or circulating any such report. And respondent denies that the plaintiff's statement in this respect as alleged in said bill is true, and denies that in the action referred to, complained of to said defendants, that said defendants were simply carrying out their unlawful purpose, and denies that they had any unlawful purpose, as alleged in said bill, to unionize plaintiff's mine without its consent, and denies that there could be involved even in unionizing said mine, the doing of any unlawful act, and for any unlawful purpose or purposes as stated in said bill.

This respondent for further answer unto said bill says that it is true that plaintiff's employees are not union men, and they entered into employment with the plaintiff with the agreement that the plaintiff shall continue to run a non-union mine; and it may be true that some of plaintiff's employees, employed under such conditions and with such understandings, have bought property and homes, and expect to have permanent employment with the plain-

tiff, so running its mine non-union; and with the understanding and expectation on their part that they shall be protected in such employment. But be that as it may, this respondent here positively avers that the said defendants or any of them have done nothing to force or compel by physical violence or other wrongful means the employees of said plaintiff or any of them to quit the em-
115 ployment of plaintiff, but have only presented to them in a peaceable and reasonable manner the opportunity and advantages which will accrue to them by becoming members of the United Mine Workers of America, and thus joining the already large body of men working in and about coal mines in promoting the objects of the United Mine Workers of America, which are to unite mine employees that produce coal or coke in and around the mines, and thus ameliorate their condition by methods of conciliation, arbitration or strikes, because this respondent avers that in the absence of the proper organization of large bodies of men that are generally employed in and about the coal mines of the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, over which territory the methods of the United Mine Workers are largely applied, peace and order can far better be maintained when disagreements arise between employer and employee, as they have often done heretofore and will continue to do so, and it is far better for the operator as well as the laborer to be thus under the control of the said union than not to belong to any organization, as these differences, difficulties and strikes incident to such employment can be much better adjusted by reason of the said organization; and it is to promote the peace and welfare of the operator and miner that the Mine Workers' organization originated and is being maintained.

And this respondent for further answer unto said bill says that it is true that some time during the middle of the summer of 1907 the defendants Green, Watkins and Zelenka called on plaintiff's general manager at his office, and that said Green then stated that he would like to talk orginization. Plaintiff's general manager stated to said parties then that while unionizing the mines was out of the question, yet if they had any business proposition to submit it would be listened to, whereupon said Green urged that under plaintiff's present arrangement or contract with its employees the men felt at liberty to do as they pleased, and did not feel any restraint, while if plaintiff would make a contract with him as President of the United Mine Workers of America, District 6, (U. M. W. of A.), he could hold the men in check, see that all agreements incorporated in the scale were fulfilled and carried out to the letter, and generally he would see that the men lived up to their contract. And it is true that to this plaintiff's general manager replied that from personal experience in the past in dealing with the union he had found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering, whereupon Green then requested plaintiff's general manager to think the matter over, and said he would see him
116 again about it in a couple of weeks; and that several weeks after said Green, Watkins and Zelenka saw the plaintiff's

general manager while the latter was at the McLure House in Wheeling, and the latter told Green that he could see nothing in the proposition that interested him in any manner; that Green then asked said general manager if he would not submit the proposition to plaintiff's board of directors; that the said general manager did this, and that plaintiff's board unanimously refused to have anything whatever to do with the United Mine Workers, and shortly after that said defendant Green telephoned the plaintiff's general manager and asked if he had submitted the union proposition to plaintiff's directors, and was told that the proposition had been submitted, and that the directors absolutely refused to consider the matter in any manner whatever.

This respondent for further answer unto said bill says that he denies that said defendants are proceeding to carry out any conspiracy, and denies that they are now endeavoring to unionize plaintiff's mine, and denies that the said defendants or any of them threaten to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor. This respondent does aver that certain representatives of the United Mine Workers of America have visited some of the employees of the said plaintiff, and tried by reason and argument to persuade them to join the union, as of right they might do.

This respondent for further answer unto said bill says that it is true that on or about September 7, 1907, the said defendant Thomas Hughes was about the Glendale mine and about the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employees and trying to induce the men by persuasion, but not by threats, coercion and intimidation, and by other unlawful methods and devices, to quit working for the plaintiff, and to join the union, and denies that any unlawful efforts are being kept up for the purpose of inducing the employees or any of them, by threats, coercion and intimidation, or any other unlawful methods and devices, to quit working at the plaintiff's mine.

And respondent for further answer unto said bill says that it is true that the said Hughes did induce about twenty-four of the employees of the Glendale Coal Company to agree to join the Union and quit the service of the Glendale Coal Company, but that in inducing said men so to do no threats, force, violence, intimidation or other unlawful means were employed by the said Hughes, and, furthermore, if such unlawful means had been employed, it
117 is a matter of which the said Hitchman Coal & Coke Company can not complain in this bill. And respondent says that it is true that the said defendants have been unable to bring about or induce plaintiff's employees to quit its service, but denies that the said Hughes has recently stated to one of plaintiff's miners, whom he was trying to induce to leave plaintiff's service and join the union, that he, Hughes, had succeeded in having one hundred and twenty-five men at the Hitchman mine sign their names, agreeing to become members of the United Mine Workers, and that just as soon as he could get twenty-five more names he was going to shut the Hitchman mine down, because the said Hughes, had he ob-

tained said signatures, had no power or authority to shut down the mine of the said plaintiff; nor was it his intention to do so, but only to have said miners join the union.

This respondent for further answer unto said bill says that he denies that the said United Mine Workers, the said International Union United Mine Workers of America, the said District No. 6 United Mine Workers of America, and the said Sub-District 5 of District 6 United Mine Workers of America are, under their constitutions, violating the common and statute law of the state of West Virginia as well as the Constitution of said state, and especially, as alleged in the said bill, in this, to-wit: In the provisions of sections 1, 3 and 4, of Article X., Constitution of International Union United Mine Workers of America; in the provision of sections 1 and 2 of Article VII., section 15 of Article IX., Constitution of District No. 6 United Mine Workers of America; and in the provisions of sections 2 and 3 of Article I., section 1 of Article IV., section 6 of Article VI., and sections 2 and 3 of Article IX., Constitution of Sub-District of District 6 United Mine Workers of America; as well as in the said oath that is administered to each member of the United Mine Workers of America on his initiation.

This respondent for further answer to said bill says that he denies that said defendants are combining and forming themselves into a conspiracy under the name of the United Mine Workers of America for any unlawfful purpose or design, by enticement, persuasion or coercion in any form to bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, and denies that the said defendants will, without the consent and against the will of the plaintiff, compel the plaintiff to recognize the said defendants and the said association, in the further transaction or any transaction of its legitimate business in mining and shipping coal, and denies that said defendants will compel plaintiff with its employees through the said defendants as officers of the said
118 association, under such rules and regulations as will enable the defendants to dictate the persons whom the plaintiff shall employ and whom it shall discharge, and the wages the plaintiff shall pay, and compel plaintiff to agree that each and every employee, as members of the said United Mine Workers of America, shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employees would owe to plaintiff; denies that they will thus take charge of and dictate the management of, and thus control, plaintiff's business, and perpetrate acts of oppression and wrong upon plaintiff, and distinctly violate plaintiff's contractual, common-law, statutory and consti-tional rights as a citizen of the state of West Virginia, as is in said bill alleged.

And this respondent for further answer unto said bill says that he denies that the said defendants propose and threaten to indulge in any methods of accomplishing any result or object by the use of threats, intimidation, violent or abusive language, picketing plaintiff's premises, picketing or patrolling or guarding the streets and approaches to plaintiff's premises and going to the homes and boarding houses of plaintiff's employees for the purpose of intimi-

dating or coercing them to leave plaintiff's employment and to picket railroad and street cars passing to and from and over plaintiff's premises, for the purpose of intercepting plaintiff's employees in going to and from plaintiff's premises, or for the purpose of intercepting or preventing persons going to plaintiff's premises for the purpose of seeking or for the purpose of entering plaintiff's employment, as in said bill is alleged.

And this defendant denies all unlawful combination, conspiring and confederating, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to verify, maintain and prove, as this Honorable Court may direct, and humbly prays that the temporary injunction or restraining order heretofore granted in this cause may be vacated and dissolved, and that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. R. WATKINS,
By CHAS. E. HOGG,
Of Counsel for Def't.

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Def't.

119 STATE OF WEST VIRGINIA,
County of Monongalia, ss:

Personally appeared before the undersigned, a Notary Public within and for the county of Monongalia and State of West Virginia A. R. Watkins, who, being first duly sworn, says that he is one of the defendants named in the foregoing cause and the defendant named in the foregoing answer; that the matters and things as alleged in said answer are true; and that the said answer is not interposed for delay.

A. R. WATKINS.

Sworn to before me and subscribed in my presence this 23rd day of May, A. D. 1908.

EDWARD G. DONLEY,
[SEAL.] *Notary Public Within and for the County of Monongalia and State of West Virginia.*

And at another day, to-wit: On the 26th day of June, 1908, the following order was made and entered of record, to-wit:

Decree Extending Time for Answers.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
v.
JOHN MITCHELL et als., Defendants.

On this June 26th, 1908, came, with the exception of the defendant A. R. Watkins, all of the served defendants, by Adam B. Littlepage and Charles E. Hogg, their counsel, moved for further time and asked that they be given until July 16, 1908, within which to file their answers to plaintiff's bill; and the plaintiff, by its counsel, George R. E. Gilchrist, consenting thereto, it is by the court ordered that the said served defendants have until July 16, 1908, within which to file their answers.

120 *Joint and Separate Answer of T. L. Lewis et al.*

(Filed July 13, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,
v.
JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State or Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R.

Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as
121 Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

The joint and several answer of T. L. Lewis, individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; and Lee Rankin, individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, to the bill of complaint of the Hitchman Coal and Coke Company, a corporation organized under and by virtue of the laws of the State of West Virginia and a citizen of said state, filed in said court.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

These defendants, now and at all times hereafter saving to themselves and each to himself all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are and each of them is advised it is material for them or him to make answer unto, answering say:

That it may be true that the said Hitchman Coal & Coke Company is a corporation, organized under and by virtue of the laws of the state of West Virginia, having its principal office at Wheeling, in Ohio County, in said state; that it may be that it is the owner of about 5,000 acres of coal situated contiguous to its coal mine, which is located at Benwood, in said state; that it may be also true that its coal mine is equipped with the necessary
122 plant for mining coal, and that it has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by rail originate on that road and at its mine; that it may also be true that it has been for some time past and is now engaged in mining coal and shipping the same to the open markets of the United States; that it may be true that the product

of its mine is large, amounting to about 1,400 tons per day, and that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months, when coal is carried to the northwest by steamers on the lakes while navigation is not impeded by ice, while another portion of its trade has been for years and now is the supplying of coal for fuel for the engines of the said Baltimore & Ohio Railroad, delivered by a coaling device to the engines at its tipple and likewise from large storage bins which have been erected and are in use by said plaintiff and said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct, located near the round house of said railroad company near Benwood, in the construction of which steel trestle and coal bins the plaintiff has expended a- now has invested a large sum of money; that it may also be true that in mining coal the coal as mined is brought to the surface and mouth of the mine, and then for interstate commerce is delivered to the common carrier and by it delivered to its destination within the United States and without the state of West Virginia; that it may also be true the plaintiff has made large contracts for future delivery of coal to points within and without the state of West Virginia and within the United States, especially for "lake trade"; that it may be also true the plaintiff only furnishes daily to said Baltimore & Ohio Railroad Company between five and six hundred tons of engine coal; that it may also be true the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall months of the year, and especially may this be true of this year as to its said contracts not yet fulfilled and which it has the ability, and unless unlawfully interfered with by the defendants it expects, to fill; but these respondents say as to whether or not all these matters so alleged in said bill are true they are not informed, and so can neither deny nor admit the same, but call for strict proof thereof.

And these respondents, for further answer unto said bill, jointly and severally say that it is true that prior to April 1, 1906, the plaintiff operated its said mine by employing a large number of men who were affiliated with the United Mine Workers of America,
123 and that on April 1, 1906, a strike having been ordered by said association, the employees of plaintiff who were working for it at that time continued to work for it until April 16, 1906, and on that day they ceased to work for the plaintiff by reason of said strike; but these respondents deny that the strike so ordered and declared is still in force so far as plaintiff and its said mine are concerned. These respondents aver that said employees of plaintiff who ceased to work because of said strike did so in order that said organization might be enabled to restore to the members of the United Mine Workers the scale of prices of 1903, which was a higher and better price than that paid in 1905 and up to April 16, 1906; and that because the said plaintiff did not at once agree to accede to the scale of prices adopted by said Mine Workers' organization it became necessary for said employees to remain out of

work in order to promote the adoption of the scale of prices which had been proposed by the organization prior to April 1, 1906, and had said employees of plaintiff then working for it acceded to the demands of said plaintiff it would have been impossible to carry out the policy of said United Mine Workers of America with reference to the adoption and promotion of a just and uniform scale of prices for the work of their members. It may be true that said employees of plaintiff belonging to said organization were ready and willing to accept said plaintiff's proposition as contained in said bill, so far as their personal inclinations were concerned, but as members of the United Mine Workers of America they fully knew that to promote the policy of their organization, which is to ameliorate their condition as mine workers by methods of conciliation, arbitration or strikes, they could not consistently accede to the terms of employment or continuation of employment then proposed to them by plaintiff; and for this reason said employees belonging to said organization did on April 16, 1906, go out on a strike under the continued orders of the United Mine Workers of America, but these respondents deny such going out on a strike was without justification and excuse. And these respondents aver that the employees engaged by the plaintiff under contract with the United Mine Workers of America on the first day of April, 1906, and who went out on a strike under orders issued by the United Mine Workers, would have remained in the employ of the plaintiff and not have quit the employ of plaintiff, had plaintiff been willing to sign the scale which the United Mine Workers had proposed, and which scale was, after April 1, 1906, signed by many of the operators in the states of Ohio, Indiana, Illinois, Pennsylvania and parts of West Virginia; and so by reason of the failure and refusal of the plaintiff to sign the scale submitted to it, the employees of
124 plaintiff who were then members of the United Mine Workers declined to continue to work for said plaintiff; and the reason that the employees of plaintiff declined to work for plaintiff was that said employees desired a definite and fixed scale, which carries with it a definite and fixed term of employment, and this the plaintiff declined to sign, but merely promised to pay whatever advance in price might be paid by other operators in case such other operators agreed to and did sign the scale; and therefore, to secure the signing of this scale carrying with it a definite term of employment for the period of two years at a fixed and definite price, it became necessary for the employees of plaintiff to go upon a strike in 1906.

These respondents, further answering, jointly and severally say it may be true that said mine of plaintiff was shut down and not operated after April 16, 1906, until June 12, 1906, as alleged in said bill. It may be true, and is, as respondents believe, that plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the company would not allow any, that no union man could remain in the employ of the company

while recognizing and giving paramount allegiance to the union and its orders, and that if any employees of the company join the union they could not work any longer for plaintiff. It may be also true that thereupon, with knowledge of said condition or employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff. But these respondents deny any knowledge on their part or on the part of any of them that the employees of plaintiff were and are required by it at the time of entering its service to agree not to become connected with the union while so employed; and these respondents deny any knowledge on their part or on the part of any of them that if said employees join the union their employment with plaintiff shall cease; and these respondents deny any knowledge on their part or on the part of any of them that with such understanding plaintiff's employees entered into its employment; and respondents deny any knowledge that such employees are now working for plaintiff under such contract and with such condition. But these respondents deny that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employees as to the advisability
125 or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union.

It is also true, as respondents are advised, that from time to time since the plaintiff has been operating said mine on a non-union basis, efforts have been made by the officers and agents representing the United Mine Workers and its subordinate associations and branches to induce plaintiff to agree to employ union men at its mine and to sign the scale of the United Mine Workers, and that plaintiff has repeatedly refused to have anything to do with the United Mine Workers or any of its subordinate associations or branches, or with any of its officers, agents, employees or servants, and has made known to them and each of them its determination to run its mine with non-union men and of its purpose not to permit any interference by said United Mine Workers, its subordinate associations or branches, its officers, agents, employees or servants, with its operation of its mine or with its business.

And these respondents, for further answer unto said bill, deny that said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees or servants, have sought or are now seeking, by any means whatsoever except arguments, persuasion and other peaceable and legal methods, to cause the employees of the plaintiff to become members of the United Mine Workers of America, and deny that they have at any time endeavored by any means to cause plaintiff's employees to leave its service, or to cause others who have engaged to enter its service to break their engag-ments of service and not work for plaintiff, or to prevent others from working for plaintiff, with the professed, avowed and actual purpose of compelling plaintiff to recognize the

union and to employ only persons who are members thereof, and to compel plaintiff to pay such scale of wages as said union may arbitrarily fix and demand, and deny that said United Mine Workers, or its representatives or agents, have endeavored to cause the plaintiff to submit its business or property to the jurisdiction or control of the union, as in said bill is alleged.

These respondents, for further answer unto said bill, jointly and severally say that they admit that the United Mine Workers of America, including its said subordinate associations and branches, is a voluntary organization having certain expressed objects, as alleged in said bill, but deny that any of said objects are unlawful, or that said organization is a secret one, but aver that all its objects are lawful, and deny that said organization or any of its members or officers, including these respondents and the other defend-
126 ants to this bill, is making any endeavor to carry out any unlawful purpose, as alleged in said bill, but, on the contrary, the only objects of said United Mine Workers, including all its subordinate associations and branches, together with all members thereof, are to unite employees that produce or handle coal or coke in and around coal mines and to ameliorate their condition by methods of conciliation, arbitration or strikes, and to thus advance the welfare of the members of this organization, to better enable them to carry on their vocations in life, to promote their endeavors in a lawful and peaceable manner to secure the blessings of liberty to themselves and their families, to better promote their pursuit of happiness, to *to* secure to themselves more advantageous contracts with their employers.

These respondents, for further answer unto said bill, say that so much of the constitution of the United Mine Workers as is set forth in said bill is correct, but that some parts thereof are omitted.

These respondents, for further answer unto said bill, jointly and severally say that they deny that the defendants to this bill, to-wit, John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, Geo. W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes, each and all or any of them, as alleged in said bill, have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure plaintiff's miners or mine workers, employed by and working for plaintiff in and around its mine, to break, violate and disregard their several contracts with plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without its consent, and deny that to such end they have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel, by threats and intimidation or by other unlawful means, said plaintiff's employees to join the union and apply to their own relation with plaintiff in the matter of their employment the rules of the union, to enable said union to apply its rules and regulations to plaintiff under penalty of closing down plaintiff's mine, provided plaintiff still refused to unionize its plant and recognize the union, as alleged in said bill. But these respondents do aver

that some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employees of plaintiff, and have in a peaceable and friendly manner invited said employees so conversed with to join said organization and have used moderate argument and persuasion at the homes of some of the em-
127 ployees to induce them to become members of the United Mine Workers, endeavoring to show such employees that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization.

And these respondents, for further answer unto said bill, say that it is true that said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and refused to consent to operate a union mine, that its men are non-union men; and it may be true that said employees are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do join the union their said employment shall cease, but of this respondents deny any knowledge on their part; and it may be true that with such understanding plaintiff's employees entered its employment, and are now working with it under such contract and condition as alleged in said bill, but of which defendants also have no knowledge; but, be this as it may, respondents aver that any condition, stipulation, contract or agreement on the part of said plaintiff with said employees as a condition upon which they shall enter into and continue their employment with it are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and can not be made a condition upon which to base any valid and binding contract or obligation between employer and employee.

These respondents, for further answer unto said bill, say that the allegations therein contained charging the defendants to said bill with knowledge that said employees of plaintiff are satisfied with their employment, that plaintiff is engaged in mining coal and filling contracts for coal, that it would be impossible to fill these contracts without the labor of its employees, and that it would entail upon plaintiff great financial loss to be deprived of its ability to fulfill its said contracts by failure of its men to work longer for it, and would likewise entail great loss and damage to plaintiff to have its mine shut down and to have a strike declared, can not be considered as important and material for the purpose of said bill, because these respondents say that they deny that said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely, to cause plaintiff's mine to be shut down and its plant to remain idle and its contracts to be broken and
128 unfulfilled until such time as plaintiff shall submit to the de-

mands of the union that it shall unionize its plant, and having submitted to such demand and having unionized its plant by employing only union men, who shall become subject to the orders of the union, paramount to the orders of the plaintiff, their employer, it will thus surrender control and management of its business to the union and become subject to and acquiesce in the enforcement by the union of the various rules and regulations laid down by the union to accede in advance to every demand said union by its officers, agents, employees and servants may make. And respondents here deny that by soliciting the said employees of plaintiff to join the union it necessarily follows that it is endeavoring to compel plaintiff to operate its mine by union labor, and aver that it is a non sequitur that by the peaceful methods employed by defendants to induce the employees of plaintiff to join the union said plaintiff will thereby be compelled to conduct its business and carry on the operation of its plant by union men only and be subject to the control and dictation of the United Mine Workers of America; that the United Mine Workers of America do not attempt by force, intimidation, fraud or violence to coerce any employer of men in and about his coal mine to engage union men to do such work and to submit to the dictation and control of the union against his will and consent, but only seek to induce, if possible, by peaceable methods, an employer to employ union men, and thus promote in a reasonable and proper manner the said labor organization.

These respondents, for further answer unto said bill, say that they deny that the effectuating of any purpose on the part of said defendants or said union is imminent, or that the damage threatened is great and irreparable, as alleged in said bill, and deny that plaintiff's loss by reason of any acts done by the defendants or any of them with reference to the men now in the employ of said plaintiff, has been in excess of $2,000 exclusive of interest and costs, or to any other sum, by reason of acts of said defendants or any of them, and deny that said defendants or any of them have made any effort to shut down plaintiff's mine, and therefore deny that plaintiff has suffered any damage by reason of any acts of the defendants or any of them, as alleged and attempted to be shown by argument and inference in said bill.

These respondents, for further answer unto said bill, say that it may be true that the plaintiff pays as much as the union scale of wages to its said employees, but deny that said defendants or any of them are in any manner unlawfully and maliciously agreeing together, confederating, combining or conspiring to effec-
129 tuate by unlawful means the unionizing of plaintiff's mine, but do say that, for the purpose of giving standing and effectiveness to said United Mine Workers of America with the employers of labor, they used peaceable means by arguments and reasoning with the employees of said plaintiff to become members of said union, but deny that they are endeavoring to create a monopoly to force employers and especially the plaintiff by unlawful means to engage union men, against their will and consent, but aver that they are endeavoring to increase the membership of said organization,

to accomplish its purpose of making it desirable and profitable on the part of employers to engage union men to work in and about their mine, so as thereby to settle all differences between the employer and employee by the peaceful methods of conciliation, arbitration or strikes, as contemplated by the constitution of the United Mine Workers of America.

And these respondents, for further answer unto said bill, say that they admit that the union is not a competitor with the plaintiff in the labor market, and that the union does not employ labor, as in said bill is alleged, but aver that its large membership has been the means of supplying men in and about the mining and shipping of coal to a large number of extensive operators engaged in the mining and shipping of coal in the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, and that in these places where union men have been employed the relations between employer and employee have been agreeable and the said union has been the means of bringing about a good state of feeling and a healthy condition with reference to the status of capital and labor between each other in said states.

These respondents, for further answer unto said bill, say that if it was openly stated with reference to the objects of said union at its annual convention, held at Indianapolis from January 15 to January 22, inclusive, 1907, as alleged in said bill, to-wit: "Organized labor contends that, as industry can not exist without labor, labor has the right to say under what conditions it shall be employed," it does not follow that it thereby intends to dictate the management and productive end of the business, and respondents deny that there was any such language used in said conveying *conveying* the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but it should be heard and has the right to say, under peaceable methods and under the forms of law, what the conditions should be to insure health and safety in mines in the mining and production of coal.

And these respondents, for further answer unto said bill aver that said United Mine Workers of America, by peaceable and law-
130 abiding methods, have the right to canvass for membership and solicit men to become members of said United Mine Workers throughout the United States where coal mines exist and can be properly operated, provided the work of thus promoting membership and acquiring new members is conducted in a peaceable manner and by the use of reason and argument and without resorting to force, fraud, violence, intimidation or other wrong.

These respondents, for further answer unto said bill, say that that part of the same appearing on pages 26 and 27, purporting to give the language of the defendants T. L. Lewis, W. B. Wilson and John Mitchell, in said convention, only related to the then condition of the United Mine Workers of America, and the discussion of the best policy to promote its objects, which objects are expressed in the constitution and have hereinbefore been stated, and said discussion did not involve the use of force, violence, intimidation or other wrongful means to bring about the promotion of the objects of said union, but was simply in furtherance of its purpose of resorting to strikes

of a general nature, and did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union men, and they are therefore idle allegations, and can only be regarded as surplusage for the purposes of said bill.

And these respondents aver that whatever was said in the deliberations of the United Mine Workers in their convention held at Indianapolis at the time mentioned in said bill was with reference to the policy of the organization in its negotiations with coal operators in all the states of Illinois, Indiana, Ohio, Pennsylvania, and West Virginia, or wherever its members are engaged in the work of mining coal; and whatever was said or done in said convention had no reference to the men employed by plaintiff in the year 1907; nor was the said matter of plaintiff's mine mentioned, nor was anything done or said in said convention having for its object any interference with the employees of plaintiff, either by argument, persuasion or otherwise; but all that was said and done in said convention had reference to the general policy and measures to be inaugurated by the union or to be maintained by it for the promotion of its growth and development by peaceable means, such as argument and persuasion, and by no other means, to advance its interests as an organization in the territory of the states just mentioned. And these respondents, for further answer unto said bill, aver that if said T. L. Lewis used the language imputed to him in said bill (but which is not admitted) to the effect or in substance that the American continent was not large enough to maintain two organizations of coal miners and that he favored one organization of the coal miners of the
131 American continent and the complete recognition of the union's right to organize in every mining district of the country, the said Lewis by the use of said language did not intend in any manner to refer to plaintiff's interest in mining or the plaintiff's men in its employ; but what said Lewis did mean was that, inasmuch as there are at that time two organizations of laborers in coal mines, one in Canada and one in the United States, there ought to be but one organization for the coal miners of the United States and Canada, so as to harmonize operations in the coal mines of these two territories one with one another, and thus better promote the purposes of the organization of the United Mine Workers, instead of having two organizations for this purpose, one in Canada and one in the United States, as then existing; nor was it the intention of said Lewis by use of said language, if such was by him used, to include therein the Western Federation of Miners, which has for its object the unionizing of those engaged in mining gold, silver, copper and other metals, and not the mining of coal; so that the interests of the United Mine Workers of America and those of the Western Federation of Miners are not the same, and the union with them would be of little, if any, practical advantage to either organization.

These respondents, for further answer unto said bill, with reference to the allegations therein contained, appearing on pages 28, 29, 30 and 31, relating to the general action of the convention of Sub-District 5 of District 6 of the United Mine Workers of America, held

in Wheeling, West Virginia, in March, 1907, deny that anything in that part of said bill, appearing on pages 28 to 31, inclusive, has any bearing upon the rights or interests of the plaintiff in this bill, and aver that such allegations are entirely foreign to its purpose, and constitute only surplusage, and are so immaterial that any answer thereto would only raise an issue the determination of which could not affect the rights of either part- to this *this* suit.

These respondents, for further answer unto said bill, say that as to the allegations contained in the bill filed on behalf of the Glendale Coal Company against said defendants to this bill, these defendants aver that so far as said allegations charge these respondents and said defendants with any intimidation, coercion, fraud, combination, threats, violence or wrongful acts of any kind, the same are hereby positively denied as if the same were denied specifically and consecutively as set forth and alleged in said bill of the Glendale Coal Company.

These respondents, for further answer unto said bill, say that it may be true that plaintiff, in refusing to recognize the union
132 after the declaration of said strike on April 1, 1906, and after its men had left its employment pursuant to said strike, and thereafter running its mine non-union, did not seek to reduce the wages of its employees, or cause them to work for less than the scale of wages established by the United Mine Workers; and it may be true that plaintiff does not now seek or contemplate any reduction in the wages of its present employees; and respondents also say it may be true that plaintiff's sole purpose in running non-union, and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of the United Mine Workers, is to escape from intolerable oppression and vicious intermeddling by said defendants; but if this is the purpose and object of said plaintiff, as alleged in said bill, these respondents deny said defendants or any of them has done anything to hamper or interrupt said plaintiff in the running of its mine, and deny that said defendants or any of them have sought to impose intolerable oppression upon said plaintiff, or have been guilty of any vicious intermeddling with the business or employees of the plaintiff, as in said bill is alleged.

These respondents, for further answer unto said bill, say that said defendants have, it is true, for some years last past been associated together as members of the United Mine Workers of America, and that they are well acquainted with each other, and that they constitute a part of the higher officers of the United Mine Workers of America, and they deny that the management of said union has been centralized in their hands, but that the whole of the United Mine Workers, in convention assembled, manage and control their own affairs, and that the said defendants are only officers entrusted with the executive business of said organization.

These respondents, for further answer unto said bill say that it is true that after the plaintiff's mine was shut down, which occurred on April 16, 1906, efforts were frequently made by one or more of said defendants to induce the plaintiff to sign the scale and run its mine on a union basis, but that the request so made by the defend-

ants was refused, and that subsequent requests were made of a like character, but these respondents deny that upon the failure of said plaintiff to employ union men at its mine as requested, as alleged in said bill, said defendants or any of them made efforts by threats, intimidation, or any other unlawful device or means, to induce plaintiff's employees to cease working for it, and deny that by like means, such as intimidation, threats, or other unlawful methods, said defendants or any of them endeavored to induce the employees of said plaintiff not to engage to work, and, having engaged to work, not to go to work for plaintiff, and it is true that plain-
133 tiff was able to increase the number of its employees and increase its business which it has been conducting successfully and lawfully from that time to the present, and so far as these respondents are advised said plaintiff is still conducting its business in a peaceful manner and free from any unlawful acts such as fraud, violence, intimidation and threats from said defendants or any of them towards said plaintiff and its employees.

And these respondents, for further answer unto said bill, say that it may be true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office of the plaintiff's general manager and had a conversation with him regarding the forming of a miners' union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, and while plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered, it is not true that said Zelenka subsequently reported to plaintiff's employees, and caused that report to be spread among them, that he, Zelenka, Green and Watkins, had a conference with plaintiff's general manager and that said general manager had arranged to allow the United Mine Workers to put all the plaintiff's employees into the union; and deny that they or either of them made the further statement which he caused to be circulated among the plaintiff's employees that it was up to the employees of the plaintiff to join the union or else they would be out of a job at an early day, because only union men would be permitted to work at the mine, and that plaintiff's employees who did not join the union would not be permitted to get a job any place, as alleged in said bill. And it is true that said general manager did complain of the alleged action, and, inasmuch as it had not occurred, said Zelenka, Green and Watkins positively denied making any such statement or circulating any such report. And respondents deny that plaintiff's statement in this respect, as alleged in said bill, is true, and deny that in the action referred to, complained of to said defendants, said defendants were simply carrying out their unlawful purpose, and deny that they had an unlawful purpose, as alleged in said bill, to unionize plaintiff's mine without its consent, and deny that there could be involved, even in unionizing said mine, the doings of any unlawful act, and for any unlawful purpose or purposes, as stated in said bill.

These respondents, for further answer unto said bill, say that it may be true that plaintiff's employees are not union men, and that they entered into employment with plaintiff with the agreement that

plaintiff should continue to run a non-union mine; and it may be true that some of plaintiff's employees, employed under such
134 conditions and with such understanding, have bought property and homes, and expect to have permanent employment with the plaintiff, so running its mine non-union; and with the understanding and expectation on their part that they shall be protected in such employment; but, be this as it may, these respondents aver that they were not aware that plaintiff's employees entered into its employment with the agreement that plaintiff should continue to run a non-union mine. And these respondents here positively aver that said defendants or any of them have done nothing to force or compel by physical violence or other wrongful means the employees of plaintiff or any of them to quit its employment, but have only presented to them in a peaceable and reasonable manner the opportunity and advantage which will accrue to them by becoming members of the union, and thus joining the already large body of men working in and about coal mines in promoting the objects of the United Mine Workers, which are to unite mine employees that produce coal or coke in and around the mines, and thus ameliorate their condition by methods of conciliation, arbitration or strikes, because these respondents deny that in the absence of the proper organization of large bodies of men that are generally employed in and about coal mines of the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, over which territory the methods of the United Mine Workers are largely applied, peace and order can far better be maintained when disagreements arise between employer and employee, as they have often done heretofore and will continue to do, and aver that it is far better for the operator as well as the laborer to be thus under the control of the union than not to belong to any organization, as these differences, difficulties and strikes incident to such employment can be much better adjusted by reason of said organization; and it is to promote the peace and welfare of the operator and miner that the Mine Workers organization originated and is being maintained.

And these respondents, for further answer unto said bill, say that it is true that some time during the middle of the summer of 1907 the defendants Green, Watkins and Zelenka called on plaintiff's general manager at his office, and that said Green then stated that he would like to talk organization. Plaintiff's general manager stated to said parties then that while unionizing the mine was out of the question, yet if they had any business proposition to submit it would be listened to, whereupon said Green urged that under plaintiff's present arrangement or contract with its employees the men felt at liberty to do as they pleased, and did not feel any restraint, while, if plaintiff would make a contract with him
135 as President of the United Mine Workers of America, District 6, he could hold the men in check, and see that all agreements incorporated in the scale were fulfilled and carried out to the letter, and generally that he would see that the men lived up to their contract. And it is true that to this plaintiff's general manager replied from personal experience in the past in dealing with the union he had found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering, whereupon Green then

requested plaintiff's general manager to think the matter over, and said he would see him again about it in a couple of weeks; and that several weeks afterward said Green, Watkins and Zelenka saw plaintiff's general manager while the latter was at the McLure House in Wheeling, and the latter told Green that he could see nothing in the proposition that interested him in any manner; but respondents deny that said Green then asked said general manager if he would not submit the proposition to plaintiff's board of directors, but aver that said general manager himself stated to said Green that he, said general manager, would submit the proposition to plaintiff's directors, and respondents believe that said general manager did submit said proposition to said board and said board refused to accept it; and thereafter said Green telephoned plaintiff's general manager and asked if he had submitted the proposition to plaintiff's directors and was told the proposition had been submitted and that the directors refused to consider the matter in any manner whatever.

These respondents, for further answer unto said bill, say that they deny that said defendants are proceeding to carry out any conspiracy, and deny that they are now endeavoring to unionize plaintiff's mine and deny that said defendants or any of them threaten to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor. These respondents do aver that certain representatives of the United Mine Workers of America have visited some of the employees of the plaintiff, and tried by reason and argument to persuade them to join the union, as of right they might do.

These respondents, for further answer unto said bill, say that it is true that on or about September 7, 1907, said defendant Thomas Hughes was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employees and trying to induce the men by persuasion, but not by threats, coercion and intimidation, or by other unlawful methods and devices, to join the union, and deny that any unlawful efforts are being kept up for the purpose of inducing the
136 employees or any of them, by threats, coercion and intimidation, or any other unlawful methods and devices, to quit working at the plaintiff's mine.

And respondents, for further answer unto said bill, say that they believe it is true that said Hughes did induce about 24 men employed by the Glendale Coal Company to agree to join the union, but deny that said Hughes induced said employees to quit the service of the Glendale Coal Company; and these respondents aver that, after said men joined the union at the peaceable instance and request of said Hughes, they reported the next morning thereafter for service and work in the mine of the Glendale Coal Company, whereupon the agent and representative of the Glendale Coal Company having authority to employ and discharge its men, learning or having learned that said men had joined the union, stated to such men that their services were not needed longer, and thereupon said men were required to quit the services of said company, not upon their own accord but because the Glendale Coal Company declined to retain them longer in its employ because they had joined the union. And these respondents aver that said Hughes, in inducing said men to join the union, did not use or employ any threats, force, violence,

intimidation, or other unlawful means. And respondents say it is true said defendants have been unable to bring about or induce plaintiff's employees to quit its service, and for the very substantial and sufficient reason, as respondents aver, that they have not, nor has any of them, made any effort to bring about or induce plaintiff's employees or any of them to quit its service, and deny that said Hughes had recently stated to one of plaintiff's miners, whom it is alleged but by these respondents denied he was trying to induce to leave plaintiff's service and join the union, that he, Hughes, had succeeded in having 125 men at the Hitchman mine sign their names agreeing to become members of the union, and that just as soon as he could get 25 more names he was going to shut down the Hitchman mine, because said Hughes, had he obtained said signatures, had no power or authority to shut down the mine of plaintiff, nor was it his intention to do so, but only to have said miners join the union.

These respondents, for further answer unto said bill, say that they deny that the said United Mine Workers, said International Union United Mine Workers of America, said District No. 6 United Mine Workers of America, and said Sub-District 5 of District 6 United Mine Workers of America are, under their constitutions, violating the common and statute law of the state of West Virginia as well as the Constitution of said state, and especially, as alleged in said bill, in this, to-wit: in the provision of §§1, 3 and 4 of Art.
137 X., Constitution of International Union United Mine Workers of America; in the provisions of §§ 1 and 2 of Art. VIII., §15 of Art. IX., Constitution of District No. 6 United Mine Workers of America; and in the provision of §§2 and 3 of Art. I., §1 of Art. IV., §6 of Art. VI., and §§2 and 3 of Art. IX., Constitution of Sub-District 5 of District 6 United Mine Workers of America; as well as in said oath that is administered to each member of the United Mine Workers of America on his initiation.

These respondents, for further answer unto said bill, say that they deny that said defendants are combining and forming themselves into a conspiracy under the name of the United Mine Workers of America for any unlawful purpose or design, by enticement, persuasion or coercion in any form to bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, and deny that said defendants will, without the consent and against the will of plaintiff, compel it to recognize said defendants and said association, in the further transaction or any transaction of its legitimate business in mining and shipping coal, and deny that said defendants will compel plaintiff with its employees through the said defendants as officers of said association, under such rules and regulations as will enable the defendants to dictate the person whom the plaintiff shall employ and discharge and the wages it shall pay, and compel plaintiff to agree that each and every employee, as a member of the United Mine Workers of America, shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employee would owe to plaintiff; and deny that they will in any manner take charge of and dictate the management of, and in any manner control, plaintiff's business, and perpetrate acts of oppression and wrong upon plaintiff, and distinctly violate plaintiff's contractual, common-law, statutory and consti-

tutional rights as a citizen of the state of West Virginia, as in said bill is alleged.

And these respondents, for further answer unto said bill, say that they deny that said defendants propose and threaten to indulge in any methods of accomplishing any result or object by the use of threats, intimidation, violent or abusive language, picketing plaintiff's premises, picketing or patroling or guarding the streets and approaches to plaintiff's premises and going to the homes and boarding houses of plaintiff's employees for the purpose of intimidating or coercing them to leave plaintiff's employment, and to picket railroad and street cars passing to and from and over plaintiff's premises, for the purpose of intercepting plaintiff's employees in going to and from plaintiff's premises, or for the purpose of intercepting or preventing persons going to plaintiff's premises for the purpose of seeking or for the purpose of entering plaintiff's employment, as in said bill is alleged.

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And these defendants deny all unlawful combination, conspiracy and confederacy, without that any other matter of thing material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowledge or belief of these defendants, and here deny each and every allegation in said all contained not herein admitted to be true. All which matters and things these defendants are ready to verify, maintain and prove, as this Honorable Court may direct. And they humbly pray that the temporary injunction heretofore granted in this cause may be vacated and dissolved, and that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

T. L. LEWIS,
Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America;
WILLIAM GREEN,
Individually and as President of District 6, United Mine Workers of America;
D. H. SULLIVAN,
Individually and as Vice-President of District No. 6, United Mine Workers of America;
GEORGE W. SAVAGE,
Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America;
A. R. WATKINS,
Individually and as President of Sub-District 5 of District 6, United Mine Workers of America.
JOHN ZELENKA,
Individually and as Vice-President of Sub-District 5 of District 9, United Mine Workers of America;
LEE RANKIN,
Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America.
By CHAS. E. HOGG,
Of Counsel for said Defendants.

B. LITTLEPAGE,
HAS. E. HOGG, *Counsel.*

139 *Separate Answer of William Green.*

(Filed July 13, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of American and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and
140 as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America; and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

The Separate Answer of William Green, Individually and as President of District No. 6, United Mine Workers of America, to the Bill of Complaint of the Hitchman Coal & Coke Company, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of the said State, filed in said Court.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

This defendant, now and at all times hereafter saving to himself all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and other imperfections in said bill contained, for answer thereunto, or so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

That he believes that it is true that the said Hitchman Coal & Coke Company is a corporation, organized under and by virtue of the laws of the state of West Virginia, having its principal office at Wheeling, in Ohio County, in said state; that it may be that it is the owner of about 5,000 acres of coal situated contiguous to its coal mine, which is located at Benwood, in said state; that it may be also true that its coal mine is equipped with the necessary plant for mining coal, and that it has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by rail originate on that road and at its mine; that it may also be true that it has been for some time past and is now engaged in mining coal and shipping the same to the open markets of the United States; that it may be true that the product of its mine is large, amounting to about 1,400 tons per day, and that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months, when coal is carried to the northwest by steamers on the lakes while navigation is not impeded by ice, while another portion of its trade has been for years
141 and now is the supplying of coal for fuel for the engines of the said Baltimore & Ohio Railroad, delivered by a coaling device to the engines at its tipple and likewise from large storage bins which have been erected and are in use by said plaintiff and said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct, located near the round house of said railroad company near Benwood, in the construction of which steel trestle and coal bins the plaintiff has expended and now has invested a large sum of money; that it may also be true that in mining coal the coal as mined is brought to the surface and mouth of the mine, and then for interstate commerce is delivered to the common carrier and by it delivered to its destination within the United States and without the state of West Virginia; that it may also be true the plaintiff has made large contracts for future delivery of coal to points within and without the state of West Virginia and within the United States, especially for "lake trade"; that it may be also true the plaintiff only furnishes daily to said Baltimore & Ohio Railroad Company between five and six hundred tons of engine coal; that it may also be true the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall months of the year, and especially may this be true of this year as to its said contracts not yet fulfilled and which it has the ability, and, unless unlawfully interfered with by the defendants it expects to fill; but this respondent says as to whether or not all these matters so alleged in said bill are true he is not informed, and so can neither deny nor admit the same, but calls for strict proof thereof.

And this defendant, for further answer unto said bill, says that it is true that prior to April 1, 1906, the plaintiff operated its said mine by employing a large number of men who were affiliated with the United Mine Workers of America, and that on April 1, 1906, a strike having been ordered by said association, the employees of plaintiff who were working for it at that time continued to work for it until April 16, 1906, and on that day they ceased to work for the plaintiff by reason of said strike; but this respondent denies that the strike so ordered and declared is still in force so far as plaintiff and its said mine are concerned. This respondent avers that the said employees of plaintiff who ceased to work because of said strike did so in order that said organization might be enabled to restore to the members of the United Mine Workers the scale of prices of 1903, which was a higher and better price than that paid in 1905 and up to April 16, 1906; and that because the said plaintiff did not at once agree to accede to the scale of prices adopted
142 by said Mine Workers organization it became necessary for said employees to remain out of work in order to promote the adoption of the scale of prices which had been proposed by the organization prior to April 1, 1906, and had said employees of plaintiff then working for it acceded to the demands of said plaintiff it would have been impossible to carry out the policy of said United Mine Workers of America with reference to the adoption and promotion of a just and uniform scale of prices for the work of their *numbers*. It may be true that *that* said employees of plaintiff belonging to said organization were ready and willing to accept said plaintiff's proposition as contained in said bill, so far as their personal inclinations were concerned, but as members of the United Mine Workers of America they fully knew that to promote the policy of their organization, which is to ameliorate their condition as mine workers by methods of conciliation, arbitration or strikes, they could not consistently accede to the terms of employment or continuation of employment then proposed to them by plaintiff; and for this reason said employees belonging to said organization did on April 16, 1906, go out on a strike under the continued orders of the United Mine Workers of America, but this respondent denies such going out on a strike was without justification and without excuse. And this respondent avers that the employees engaged by the plaintiff under contract with the United Mine Workers of America on the first day of April, 1906, and who went out on a strike under orders issued by the United Mine Workers would have remained in the employ of the plaintiff and not have quit the employ of plaintiff, had plaintiff been willing to sign the scale which the United Mine Workers had proposed, and which scale was, after April 1, 1906, signed by many of the operators in the states of Ohio, Indiana, Illinois, Pennsylvania and parts of West Virginia; and so by reason of the failure and refusal of the plaintiff to sign the scale submitted to it, the employees of plaintiff who were then members of the United Mine Workers declined to continue to work for said plaintiff; and the reason that the employees of plaintiff declined to continue to work for plaintiff was that said employees

desired a definite and fixed scale, which carried with it a definite and fixed term of employment and this the plaintiff declined to sign, but merely promised to pay whatever advance in price might be paid by other operators in case such other operators agreed to sign the scale and did sign the scale; and therefore to secure the signing of this scale carrying with it a definite term of employment for the period of two years at a fixed and definite price, it became necessary for the employees of plaintiff to go upon a strike in 1906.

143 This respondent, further answering, says it may be true that said mine of plaintiff was shut down and not operated after April 16, 1906, until June 12, 1906, as alleged in said bill. It may be true, and is, as respondent believes, that plaintiff on June 12th did start to run its mine on a nonunion basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the company would not allow any, that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and its orders, and that if any employee of the company joined the union they could not work any longer for plaintiff. It may be also true that thereupon with knowledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff. But this respondent denies any knowledge on his part that the employees of plaintiff were and are required by it at the time of entering its service to agree not to become connected with the union while so employed; and this respondent denies any knowledge on his part that if said employees join the union their employment with plaintiff shall cease; and this respondent denies any knowledge on his part that with such understanding plaintiff's employees entered into its employment; and respondent denies any knowledge that such employees are now working for plaintiff under such contract and with such condition. But this respondent denies that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employees as to the advisability or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union.

It is also true, as respondent is advised, that from time to time since the plaintiff has been operating at said mine on a non-union basis, efforts have been made by the officers and agents representing the United Mine Workers of America, and its subordinate associations and branches, to induce plaintiff to agree to employ union men at its said mine and to sign the scale of the United Mine Workers of America, and that plaintiff has repeatedly refused to have anything to do with the United Mine Workers of America or any of its subordinate associations or branches, or with any of its officers, agents, employees or servants, and has made known to them and

each of them its determination to run its mine with non-
144 union men and of its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employees or servants, with its operation of its mine or with its business.

And this respondent, for further answer unto said bill, denies that said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees or servants, have sought or are now seeking, by any means whatsoever except argument, persuasion and other peaceable and legal methods, to cause the employees of the plaintiff to become members of the United Mine Workers of America, and denies that they have at any time endeavored by any means to cause plaintiff's employees to leave its service, or to cause others who have engaged to enter plaintiff's service to break their engagements of service and not work for plaintiff, or to prevent others from working for plaintiff, with the professed, avowed and actual purpose of compelling plaintiff to recognize the union and to employ only persons who are members thereof, and to compel plaintiff to pay such scale of wages as said union may arbitrarily fix and demand, and denies that said United Mine Workers, or its representatives or agents, have endeavored to cause the plaintiff to submit its business or property to the jurisdiction or control of the union, as in said bill is alleged.

This respondent, for further answer unto said bill, says that he admits that the United Mine Workers of America, including its said subordinate associations and branches, is a voluntary organization having certain expressed objects, as alleged in said bill, but denies that any of said objects are unlawful or that said organization is a secret one, but avers that all its objects are lawful, and denies that said organization or any of its members or officers, including this respondent and the other defendants to this bill, is making any endeavor to carry out any unlawful purpose, as alleged in said bill, but, on the contrary, the only objects of said United Mine Workers, including all its subordinate associations and branches, together with all members thereof, are to unite employees that produce or handle coal or coke in and around coal mines and to ameliorate their condition by methods of conciliation, arbitration or strikes, and to thus advance the welfare of the members of this organization, to better enable them to carry on their vocations in life, to promote their endeavors in a lawful and peaceable manner to secure the blessings of liberty to themselves and their families, to better promote their pursuit of happiness and to secure to themselves more advantageous contracts with their employers.

145 Your respondent, for further answer unto said bill, says that so much of the constitution of the United Mine Workers as is set forth in said bill is correct, but that some parts thereof are omitted.

This respondent, for further answer unto said bill, says that he denies that the defendants to this bill, to-wit, John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas

Hughes, each and all or any of them, as alleged in said bill, have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure plaintiff's miners or mine workers, employed by plaintiff and working for plaintiff in and around plaintiff's mine, to break, violate and disregard their several contracts with plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without its consent, and denies that to such end they have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel, by threats and intimidation or by other unlawful means, said plaintiff's employees to join the union and apply to their own relation with plaintiff in the matter of their employment the rules of the union, to enable said union to apply its rules and regulations to plaintiff under penalty of closing down plaintiff's mine, provided plaintiff still refuses to unionize its plant and recognize the union, as alleged in said bill. But this respondent does aver that some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employees of plaintiff, and have in a peaceable and friendly manner invited said employees so conversed with to join said organization, and have used moderate argument and persuasion at the homes of some of the employees to induce them to become members of the United Mine Workers, endeavoring to show such employees that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization.

And this respondent, for further answer unto said bill, says that it is true that said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine, that its men are non-union men; and it may be true that said employees are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do
146 join the union their said employment shall cease, but of this respondent denies any knowledge on his part; and it may be true that with such understanding plaintiff's employees entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but of which defendant also has no knowledge; but be this as it may, respondent avers that any condition, stipulation, contract or agreement on the part of said plaintiff with its said employees as a condition upon which they shall enter into employment and continue their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and can not be made a condition upon which to base any valid and binding contract or obligation between employer and employee.

This respondent, for further answer unto said bill, says that the allegations therein contained charging the defendants to said bill

with knowledge that said employees of plaintiff are satisfied with their employment, that plaintiff is engaged in mining coal and filling contracts for coal, that it would be impossible to fill these contracts without the labor of its employees, and that it would entail upon plaintiff great financial loss to be deprived of its ability to fulfill its said contracts by failure of its men to work longer for it, and would likewise entail great loss and damage to plaintiff to have its mine shut down and to have a strike declared, can not be considered as important and material for the purpose of said bill, because this respondent says that he denies that said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely, to cause plaintiff's mine to be shut down and its plant to remain idle and its contracts to be broken and unfulfilled until such time as plaintiff shall submit to the demands of the union that it shall unionize its plant, and, having submitted to such demand and having unionized its plant by employing only union men, who shall become subject to the orders of the union, paramount to the orders of the plaintiff, their employer, it will thus surrender control and management of its business to the union and become subject to and acquiesce in the enforcement by the union of the various rules and regulations laid down by the union and accede in advance to every demand said union by its officers, agents, employees and servants may make. And respondent here denies that by soliciting the said employees of plaintiff to join the union it necessarily follows that it is endeavoring to compel plaintiff
147 to operate its mine by union labor, and avers that it is a non sequitur that by the peaceful methods employed by defendants to induce the employees of plaintiff to join the United Mine Workers the said plaintiff will thereby be compelled to conduct its business and carry on the operation of its plant by union men only and be subject to the control and dictation of the United Mine Workers of America; that the United Mine Workers of America do not attempt by force, intimidation, fraud or violence to coerce any employer of men in and about his coal mine to engage union men to do such work and to submit to the dictation and control of the United Mine Workers against his will and consent, but only seek to induce, if possible, by peaceable methods, an employer to employ union men, and thus promote in a reasonable and proper manner the said labor organization.

This respondent, for further answer unto said bill, says that he denies that the effectuating of any purpose on the part of said defendants or said union is imminent or that the damage threatened is great and irreparable, as alleged in said bill, and denies that plaintiff's loss by reason of any acts done by the defendants or any of them with reference to the men now in the employ of said plaintiff, has been in excess of $2,000 exclusive of interest and costs, or to any other sum, by reason of acts of said defendants or any of them, and denies that said defendants or any of them have made any effort to shut down plaintiff's mine, and therefore denies that plaintiff has suffered any damage by reason of any acts of the

defendants or any of them, as alleged and attempted to be shown by argument and inference in said bill.

This respondent, for further answer unto said bill, says that it may be true that the plaintiff pays as much as the union scale of wages to its said employees, but denies that said defendants or any of them are in any manner unlawfully and maliciously agreeing together, confederating, combining or conspiring to effectuate by unlawful means the unionizing of plaintiff's mine, but does say that, for the purpose of giving standing and effectiveness to said United Mine Workers of America with the employers of labor, they used peaceable means by arguments and reasoning with the employees of said plaintiff to become members of said union, but denies that they are endeavoring to create a monopoly to force employers and especially the plaintiff by unlawful means to engage union men, against their will and consent, but avers that they are endeavoring to increase the membership of said organization, to accomplish its purpose of making it desirable and profitable on the part of em-
ployers to engage union men to work in and about their
148 mines, so as thereby to settle all differences between the employer and employee by the peaceful methods of conciliation, arbitration or strikes, as contemplated by the constitution of the United Mine Workers of America.

And this respondent, for further answer unto said bill, says that he admits that the union is not a competitor with the plaintiff in the labor market, and that the union does not employ labor, as in said bill is alleged, but avers that its large membership has been the means of supplying men in and about the mining and shipping of coal to a large number of extensive operators engaged in the mining and shipping of coal in the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, and that in these places where union men have been employed the relations between employer and employee have been agreeable, and the said union has been the means of bringing about a good state of feeling and a healthy condition with reference to the status of capital and labor between each other in said states.

This respondent for further answer unto said bill says that if it was openly stated with reference to the objects of said union at its annual convention, held at Indianapolis from January 15 to January 22, inclusive, 1907, as alleged in said bill, to-wit: "Organized labor contends that, as industry can not exist without labor, labor has the right to say under what conditions it shall be employed," it does not follow that it thereby intends to dictate the management and productive end of the business, and respondent denies that there was any such language used in said convention conveying the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but it should be heard and has the right to say, under peaceable methods and under the forms of law, what the conditions should be to insure health and safety in working in mines in the mining and production of coal.

And this respondent, for further answer unto said bill, avers that the said United Mine Workers of America, by peaceable and law-abiding methods, have the right to canvass for membership and solicit men to become members of said United Mine Workers throughout the United States where coal mines exist and can be properly operated, provided the work of thus promoting membership and acquiring new members is conducted in a peaceable manner and by the use of reason and argument and without resorting to force, fraud, violence, intimidation or other wrong.

This respondent, for further answer unto said bill, says that that part of the same appearing on pages 26 and 27, purporting to give the language of the defendants T. L. Lewis, W. B. Wilson
149 and John Mitchell, in said convention, only related to the then condition of the United Mine Workers of America, and the discussion of the best policy to promote its objects, which objects are expressed in the constitution and have hereinbefore been stated, and said discussion did not involve the use of force, violence, intimidation or other wrongful means to bring about the promotion of the objects of said union, but was simply in furtherance of its purpose of resorting to strikes of a general nature, and did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union men and they are therefore idle allegations, and can only be regarded as surplusage for the purposes of said bill.

And this respondent avers that whatever was said in the deliberations of the United Mine Workers in their convention held at Indianapolis at the time mentioned in said bill was with reference to the policy of the organization in its negotiations with coal operators in all the states of Illinois, Indiana, Ohio, Pennsylvania, and West Virginia, or wherever its members are engaged in the work of mining coal; and whatever was said or done in said convention had no reference to the men employed by plaintiff in the year 1907; nor was the said matter of plaintiff's mine mentioned, nor was anything done or said in said convention having for its object any interference with the employees of plaintiff, either by argument, persuasion or otherwise; but all that was said and done in said convention had reference to the general policy and measures to be inaugurated by the union or to be maintained by the union for the promotion of its growth and development by peaceable means, such as argument and persuasion, and by no other means, to advance its interests as an organization in the territory of the states just mentioned. And this respondent, for further answer unto said bill, avers that if said T. L. Lewis used the language imputed to him in said bill (but which is not admitted), to the effect or in substance that the American continent was not large enough to maintain two organizations of coal miners, and that he favored one organization of the coal miners of the American continent and the complete recognition of the union's right to organize in every mining district of the country, the said Lewis by the use of said language did not intend in any manner to refer to plaintiff's interests in mining or the plaintiff's men in its employ; but what said Lewis did mean was that, inasmuch as there were at that time two organizations of

the laborers in coal mines, one in Canada and one in the United States, there ought to be but one organization for the coal miners of the United States and Canada, so as to harmonize operations in the coal mines of these two territories one with another, and thus better promote the purposes of the organization of the United Mine Workers, instead of having two organizations for this purpose, one in Canada and one in the United States, as then existing, nor was it the intention of said Lewis by the use of said language, if such was by him used, to include therein the Western Federation of Miners, which has for its object the unionizing of those engaged in mining gold, silver, copper and other metals, and not the mining of coal; so that the interests of the United Mine Workers of America and those of the Western Federation of Miners are not the same, and the union with them would be of little, if any, practical advantage to either organization.

This respondent, for further answer unto said bill, with reference to the allegations therein contained, appearing on pages 28, 29, 30 and 31, relating to the general action of the convention of Sub-District 5 of District 6 of the United Mine Workers of America, held in Wheeling, West Virginia, in March, 1907, denies that anything in that part of said bill, appearing on pages 28 to 31, inclusive, has any bearing upon the rights or interests of the plaintiff in this bill, and avers that such allegations are entirely foreign to its purpose, and constitute only surplusage, and are so immaterial that any answer thereto would only raise an issue the determination of which could not affect the rights of either party to this suit.

This respondent, for further answer unto said bill, says that as the allegations contained in the bill filed on behalf of the Glendale Coal Company against said defendants to this bill, this defendant avers that so far as said allegations charge this respondent and said defendants with any intimidation, coercion, fraud, combination, threats, violence or wrongful acts of any kind, the same are hereby positively denied as if the same were denied specifically and consecutively as set forth and alleged in said bill of the Glendale Coal Company.

This respondent, for further answer unto said bill, says that it may be true that plaintiff, in refusing to recognize the union after the declaration of said strike on April 1, 1906, and after its men had left plaintiff's employment pursuant to said strike, and thereafter running its mine non-union, did not seek to reduce the wages of its employees, or cause them to work for less than the scale of wages established by the United Mine Workers of America; and it may be true that plaintiff does not now seek or contemplate any reduction in the wages of its present employees; and respondent also says it may be true that plaintiff's sole purpose in running non-union, and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of the United Mine Workers, is to escape from intolerable oppression and vicious intermeddling by said defendants; but if this is the purpose and object of said plaintiff, as alleged in said bill, this respondent denies said

defendants or any of them has done anything to hamper or interrupt said plaintiff in the running of its mine, and denies that said defendants or any of them have sought to impose intolerable oppression upon said plaintiff, or have been guilty of any vicious intermeddling with the business or employees of the plaintiff, as in said bill is alleged.

This respondent for further answer unto said bill says that said defendants have, it is true, for some years last past been associated together as members of the United Mine Workers of America, and that they are well acquainted with each other, and that they constitute a part of the higher officers of the United Mine Workers of America, and they deny that the management of said union has been centralized in their hands, but that the whole of the United Mine Workers, in convention assembled, manage and control their own affairs, and that the said defendants are only officers entrusted with the executive business of said organization.

This respondent, for further answer unto said bill, says that it is true that after the plaintiff's mine was shut down, which occurred on April 16, 1906, efforts were frequently made by one or more of said defendants to induce the plaintiff to sign the scale and run its mine on a union basis, but that the request so made by the defendants was refused, and that subsequently requests were made of a like character, but this respondent denies that upon the failure of said plaintiff to employ union men at its mine as requested, as alleged in said bill, said defendants or any of them made efforts by threats, intimidation, or any other unlawful device or means, to induce plaintiff's employees to cease working for plaintiff, and denies that by like means, such as intimidation, threats or other unlawful methods, the said defendants or any of them endeavored to induce the employees of said plaintiff not to engage to work, and having engaged to work, not to go to work for plaintiff; and it is true that plaintiff was able to increase the number of its employees and increase its business, which it has been conducting successfully and lawfully from that time to the present, and so far as this respondent is advised said plaintiff is still conducting its business in a peaceful manner and free from any unlawful acts such as fraud, violence, intimidation and threats from said defendants or any of them towards said plaintiff and its employees.

152 And this respondent, for further answer unto said bill, says that it may be true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office of the plaintiff's general manager and had a conversation with him regarding the forming of a miners' union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, and while plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered, it is not true that said Zelenka subsequently reported to plaintiff's employees, and caused that report to be spread among them, that he, Zelenka, Green and Watkins, had a conference with plaintiff's general manager and that said general manager had arranged to allow the United Mine Workers

to put all the plaintiff's employees into the union; and denies that they or either of them made the further statement which he caused to be circulated among the plaintiff's employees that it was up to the employees of the plaintiff to join the union or else they would be cut out of a job at an early day, because only union men would be permitted to work at the mine, and that plaintiff's employees who did not join the union would not be permitted to get a job any place, as alleged in said bill. And it is true that said general manager did complain of the alleged action, and, inasmuch as i. had not occurred, said Zelenka, Green and Watkins positively denied making any such statement or circulating any such report. And respondent denies that plaintiff's statement in this respect as alleged in said bill is true, and denies that in the action referred to, complained of to said defendants, said defendants were simply carrying out their unlawful purpose, and denies that they had any unlawful purpose, as alleged in said bill, to unionize plaintiff's mine without its consent, and denies that there could be involved, even in unionizing said mine, the doing of any unlawful act, and for any unlawfful purpose or purposes as stated in said bill.

This respondent, for further answer unto said bill, says that it may be true that plaintiff's employees are not union men, and that they entered into employment with plaintiff with the agreement that the plaintiff should continue to run a non-u-ion mine; and it may be true that some of plaintiff's employees, employed under such conditions and with such understanding, have bought property and homes, and expect to have permanent employment with the plaintiff, so running its mine non-union; and with the understanding and expectation on their part that they shall be protected in such employment; but, be this as it may, this respondent avers that he was not aware that plaintiff's employees entered into
153 its employment with the agreement that plaintiff should continue to run a non-union mine. And this respondent here positively *avers*, that said defendants or any of them have done anything to force or compel by physical violence or other wrongful means the employees of plaintiff or any of them to quit its employment, but have only presented to them in a peaceable and reasonable manner the opportunity and advantage which will accrue to them by becoming members of the union, and thus joining the already large body of men working in and about coal mines in promoting the objects of the United Mine Workers, which are to unite mine employees that produce coal or coke in and around the mines, and thus ameliorate their condition by methods of conciliation, arbitration or strikes, because this respondent denies that in the absence of the proper organization of large bodies of men that are generally employed in and about coal mines of the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, over which territory the methods of the United Mine Workers are largely applied, peace and order can far better be maintained when disagreements arise between employer and employee, as they have often done heretofore and will continue to do, and avers that it is far better for the operator as well as the laborer that the employees be thus under the control

of the union than not to belong to any organization, as these differences, difficulties and strikes incident to such employment can be much better adjusted by reason of said organization; and it is to promote the peace and welfare of the operator and miner that the Mine Workers' organization originated and is being maintained.

And this respondent for further answer unto said bill says that it is true that some time during the middle of the summer of 1907 the defendants Green, Watkins and Zelenka called on plaintiff's general manager at his office and that said Green then stated that he would like to talk organization. Plaintiff's general manager stated to said parties then that while unionizing the mine was out of the question, yet if they had any business proposition to submit it would be listened to, whereupon said Green urged that under plaintiff's present arrangement or contract with its employees the men felt at liberty to do as they pleased, and did not feel any restraint, while if plaintiff would make a contract with him as President of the United Mine Workers of America, District 6, he could hold the men in check, and see that all agreements incorporated in the scale were fulfilled and carried out to the letter, and generally he would see that the men lived up to their contract. And it is true that to this plaintiff's general manager replied that from personal experience in the past in dealing with the union he had
154 found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering, whereupon Green then requested plaintiff's general manager to think the matter over, and said he would see him again about it in a couple of weeks; and that several weeks afterward said Green, Watkins and Zelenka saw the plaintiff's general manager while the latter was at the McLure House in Wheeling, and the latter told Green that he could see nothing in the proposition that interested him in any manner; but respondent denies that said Green then asked said general manager if he would not submit the proposition to plaintiff's board of directors, but avers that said general manager himself stated to said Green that he, said general manager, would submit the proposition to plaintiff's board of directors, and respondent believes that said general manager did submit said proposition to said board and said board refused to accept it; and thereafter said Green telephoned plaintiff's general manager and asked if he had submitted the proposition to plaintiff's directors, and was told that the proposition had been submitted and that the directors refused to consider the matter in any manner whatever.

This respondent, for further answer unto said bill, says that he denies that said defendants are proceeding to carry out any conspiracy, and denies that they are now endeavoring to unionize plaintiff's mine, and denies that said defendants or any of them threaten to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor. This respondent does aver that certain representatives of the United Mine Workers of America have visited some of the employees of the plaintiff, and tried by reason and argument to persuade them to join the union, as of right they might do.

This respondent, for further answer unto said bill, says that it
s true that on or about September 7, 1907, said defendant Thomas
lughes was about the Glandale mine and the Hitchman mine, see-
ng the miners but not intercepting them, taking lists of the names of
he employees and trying to induce the men by persuasion, but not
y threats, coercion and intimidation, or by other unlawful methods
nd devices, to join the union, and denies that any unlawful efforts
re being kept up for the purpose of inducing the employees or any
f them, by threats, coercion and intimidation, or any other unlaw-
ul methods and devices, to quit working at the plaintiff's mine.

And respondent, for further answer unto said bill, says that he
believes it is true that said Hughes did induce about 24 em-
55 ployees of the Glendale Coal Company to agree to join the
union, but denies that said Hughes induced said employees
quit the service of the Glendale Coal Company; and this re-
ondent avers that, after said men joined the union at the peaceable
istance and request of said Hughes, they reported the next morning
ereafter for service and work in the mines of the Glendale Coal
ompany, whereupon the agent and representative of the Glendale
al Company having authority to employ and discharge its men,
arning or having learned that said men had joined the union,
ated to such men that their services were not needed longer, and
ereupon said men were required to quit the service of the Glenda'e
al Company, not upon their own accord but because the Glendale
al Company declined to retain them longer in its employ because
the fact that they had joined the union. And this respondent
ers that said Hughes, in inducing said men to join the union, did
t use or employ any threats, force, violence, intimidation, or other
lawful means, to induce them to become members of said union.
d respondent says it is true said defendants have been unable to
ng about or induce plaintiff's employees to quit its service, and
the very substantial and sufficient reason, as this respondent
ers, that they have not, nor has any of them, made any efforts to
ng about or induce plaintiff's employees or any of them to quit
service, and denies that said Hughes has recently stated to one
plaintiff's miners, whom it is alleged but by respondent denied
was trying to induce to leave plaintiff's service and join the union,
t he, Hughes, had succeeded in having 125 men at the Hitchman
ne sign their names agreeing to become members of the union,
that just as soon as he could get 25 more names he was going
shut down the Hitchman mine, because said Hughes, had he
ained said signatures, had no power or authority to shut down
mine of plaintiff, nor was it his intention to do so, but only
ave said miners join the union.

This respondent, for further answer unto said bill, says that he
ies that the said United Mine Workers, said International Union
ted Mine Workers of America, said District No. 6 United Mine
rkers of America, and said Sub-District 5 of District 6 United
e Workers of America are, under their constitutions, violating
common and statute law of the state of West Virginia as well
he Constitution of said state, and especially, as alleged in said

bill, in this, to-wit: in the provisions of §§1, 3 and 4 of Art. X., Constitution of International Union United Mine Workers of America; in the provision of §§1 and 2 of Art. VIII. §15 of Art. IX., Constitution of District No. 6 United Mine Workers of Amer-
156 ica; and in the provisions of §§2 and 3 of Art. 1, §1 of Art. IV., §6 of Art. VI., and §§2 and 3 of Art. IX., Constitution of Sub-District 5 of District 6 United Mine Workers of America; as well as in said oath that is administered to each member of the United Mine Workers of America on his initiation.

This respondent, for further answer to said bill, says that he denies that said defendants are combining and forming themselves into a conspiracy under the name of the United Mine Workers of America for any unlawful purpose or design, by enticement, persuasion or coercion in any form to bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, and denies that said defendants will, without the consent and against the will of the plaintiff, compel the plaintiff to recognize said defendants and said associations, in the further transaction or any transaction of its legitimate business in mining and shipping coal, and denies that said defendants will compel plaintiff with its employees through the said defendants as officers of said association, under such rules and regulations as will enable the defendants to dictate the persons whom the plaintiff shall employ and discharge, and the wages it shall pay, and compel plaintiff to agree that each and every employee, as a member of said United Mine Workers of America, shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employee would owe to plaintiff; and denies that they will in any manner take charge of and dictate the management of, and in any manner control, plaintiff's business, and perpetrate acts of oppression and wrong upon plaintiff, and distinctly violate plaintiff's contractual, common-law, statutory and constitutional rights as a citizen of the state of West Virginia, as in said bill is alleged.

And this respondent for further answer unto said bill says that he denies that the said defendants propose and threaten to indulge in any methods of accomplishing any result or object by the use of threats, intimidation, violent or abusive language, picketing plaintiff's premises, picketing or patrolling or guarding the streets and approaches to plaintiff's premises and going to the homes and boarding houses of plaintiff's employees for the purpose of intimidating or coercing them to leave plaintiff's employment and to picket railroad and street cars passing to and from and over plaintiff's premises, for the purpose of intercepting plaintiff's employees in going to and from plaintiff's premises, or for the purpose of intercepting or preventing persons going to plaintiff's premises for the purpose of seeking or for the purpose of entering plaintiff's employment, as in said bill is alleged.

157 And this defendant denies all unlawful combination, conspiracy and confederacy, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered

unto, confessed and avoided, traversed or denied, is true to the knowledge or belief of this defendant, and here denies each and every allegation in said bill contained not herein admitted to be true. All which matters and things this defendant is ready to verify, maintain and prove, as this Honorable Court may direct. And he humbly prays that the temporary injunction heretofore granted in this cause may be vacated and dissolved, and that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM GREEN,
Individually and as President of District No. 6, United Mine Workers of America.
By CHAS. E. HOGG, *Of Counsel.*

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Defendants.

Separate Answer of D. H. Sullivan.

(Filed July 13, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having Its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W.
158 B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President

of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillondale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

The Separate Answer of the Defendant D. H. Sullivan, Individually and as Vice-President of District No. 6, United Mine Workers of America, to the Bill of Complaint of the Hitchman Coal & Coke Company, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of the said State, filed in said Court.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

This defendant, now and at all times hereafter saving to himself all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties
·159 and other imperfections in said bill contained, for answer thereunto, or so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

That he believes that it is true that the said Hitchman Coal & Coke Company is a corporation, organized under and by virtue of the laws of the State of West Virginia, having its principal office at Wheeling, in Ohio County, in said state; that it may be that it is the owner of about 5,000 acres of coal situated contiguous to its coal mine, which is located at Benwood, in said state; that it may be also true that its coal mine is equipped with the necessary plant for mining coal, and that it has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by rail originate on that road and at its mine; that it may also be true that it has been for some time past and is now engaged in mining coal and shipping the same to the open markets of the United States; that it may be true that the product of its mine is large, amounting to about 1,400 tons per day, and that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months, when coal is carried to the northwest by steamers on the lakes while navigation is not impeded by ice, while another portion of its trade has been for years and now is the supplying of coal for fuel for the engines of the said Baltimore & Ohio Railroad, delivered by a coaling device to the engines at its tipple and likewise from large storage bins which have been erected and are in use by said plaintiff and said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct, located near the round house of said railroad company near Benwood, in the construction of which steel

trestle and coal bins the plaintiff has expended and now has invested a large sum of money; that it may also be true that in mining coal the coal as mined is brought to the surface and mouth of the mine, and then for interstate commerce is delivered to the common carrier and by it delivered to its destination within the United States and without the state of West Virginia; that it may also be true the plaintiff has made large contracts for future delivery of coal to points within and without the state of West Virginia and within the United States, especially for "lake trade"; that it may be also true the plaintiff only furnishes daily to said Baltimore & Ohio Railroad Company between five and six hundred tons of engine coal; that it may also be true the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall months of the year, and especially
160 may this be true of this year as to its said contracts not yet fulfilled and which it has the ability, and, unless unlawfully interfered with by the defendants it expects to fill; but this respondent says as to whether or not all these matters so alleged in said bill are true he is not informed, and so can neither deny nor admit the same, but calls for strict proof thereof.

And this defendant, for further answer unto said bill, says that it is true that prior to April 1, 1906, the plaintiff operated its said mine by employing a large number of men who were affiliated with the United Mine Workers of America, and that on April 1, 1906, a strike having been ordered by said association, the employees of plaintiff who were working for it at that time continued to work for it until April 16, 1906, and on that day they ceased to work for the plaintiff by reason of said strike; but this respondent denies that the strike so ordered and declared is still in force so far as plaintiff and its said mine are concerned. This respondent avers that the said employees of plaintiff who ceased to work because of said strike did so in order that said organization might be enabled to restore to the members of the United Mine Workers the scale of prices of 1903, which was a higher and better price than that paid in 1905 and up to April 16, 1906; and that because the said plaintiff did not at once agree to accede to the scale of prices adopted by said Mine Workers' organization it became necessary for said employees to remain out of work in order to promote the adoption of the scale of prices which had been proposed by the organization prior to April 1, 1906, and had said employees of plaintiff then working for it acceded to the demands of said plaintiff it would have been impossible to carry out the policy of said United Mine Workers of America with reference to the adoption and promotion of a just and uniform scale of prices for work of their *numbers*. It may be true that said employees of plaintiff belonging to said organization were ready and willing to accept said plaintiff's proposition as contained in said bill, so far as their personal inclinations were concerned, but as members of the United Mine Workers of America they fully knew that to promote the policy of their organization, which is to ameliorate their condition as mine workers by methods of conciliation, arbitration or strikes, they could not consistently accede to the terms of employment or continuation of employment then proposed to

them by plaintiff; and for this reason said employees belonging to said organization did on April 16, 1906, go out on a strike under the continued orders of the United Mine Workers of America, but this respondent denies such going out on a strike was with-
161 out justification and without excuse. And this respondent avers that the employees engaged by the plaintiff under contract with the United Mine Workers of America on the first day of April, 1906, and who went out on a strike under orders issued by the United Mine Workers would have remained in the employ of the plaintiff and not have quit the employ of plaintiff, had plaintiff been willing to sign the scale which the United Mine Workers had proposed, and which scale was, after April 1, 1906, signed by many of the operators in the states of Ohio, Indiana, Illinois, Pennsylvania and parts of West Virginia; and so by reason of the failure and refusal of the plaintiff to sign the scale submitted to it, the employees of plaintiff who were then members of the United Mine Workers declined to continue to work for said plaintiff; and the reason that the employees of plaintiff declined to continue to work for plaintiff was that said employees desired a definite and fixed scale, which carried with it a definite and fixed term of employment, and this the plaintiff declined to sign, but merely promised to pay whatever advance in price might be paid by other operators in case such other operators agreed to sign the scale and did sign the scale; and therefore to secure the signing of this scale carrying with it a definite term of employment for the period of two years at a fixed and definite price, it became necessary for the employees of plaintiff to go upon a strike in 1906.

This respondent, further answering, says it may be true that said mine of plaintiff was shut down and not operated after April 16, 1906, until June 12, 1906, as alleged in said bill. It may be true, and is, as respondent believes, that plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the company would not allow any, that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and its orders, and that if any employees of the company joined the union they could not work any longer for plaintiff. It may be also true that thereupon, with knowledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff. But this respondent denies any knowledge on his part that the employees of plaintiff were and are required by it at the time of entering its service to agree not to become connected with the
162 union while so employed; and this respondent denies any knowledge on his part that if said employees join the union their employment with plaintiff shall cease; and this respondent denies any knowledge on his part that with such understanding plaintiff's employees entered into its employment; and respondent

denies any knowledge that such employees are now working for plaintiff under such contract and with such condition. But this respondent denies that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employees as to the advisability or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union.

It is also true, as respondent is advised, that from time to time since the plaintiff has been operating at said mine on a non-union basis, efforts have been made by the officers and agents representing the United Mine Workers of America, and its subordinate associations and branches, to induce plaintiff to agree to employ union men at its said mine and to sign the scale of the United Mine Workers of America, and that plaintiff has repeatedly refused to have anything to do with the United Mine Workers of America or any of its subordinate associations or branches, or with any of its officers, agents, employees or servants, and has made known to them and each of them its determination to run its mine with non-union men and of its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employees or servants, with its operation of its mine or with its business.

And this respondent, for further answer unto said bill, denies that said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees or servants, have sought or are now seeking, by any means whatsoever except argument, persuasion and other peaceable and legal methods, to cause the employees of the plaintiff to become members of the United Mine Workers of America, and denies that they have at any time endeavored by any means to cause plaintiff's employees to leave its service, or to cause others who have engaged to enter plaintiff's service to break their engagements of service and not work for plaintiff, or to prevent others from working for plaintiff, with the professed, avowed and actual purpose of compelling plaintiff to recognize the union and to employ only persons who are members thereof, and to compel plaintiff to pay such scale of wages as said union may arbitrarily fix and demand, and denies
163 that said United Mine Workers, or its representatives or agents, have endeavored to cause the plaintiff to submit its business or property to the jurisdiction or control of the union, as in said bill is alleged.

This respondent, for further answer unto said bill, says that he admits that the United Mine Workers of America, including its said subordinate associations and branches, is a voluntary organization having certain expressed objects, as alleged in said bill, but denies that any of said objects are unlawful or that said organization is a secret one, but avers that all its objects are lawful, and denies that said organization or any of its members or officers, including this respondent and the other defendants to this bill, is making any endeavor to carry out any unlawful purpose, as alleged in said bill, but, on the contrary, the only objects of said United

Mine Workers, including all its subordinate associations and branches, together with all members thereof, are to unite employees that produce or handle coal or coke in and around coal mines and to ameliorate their condition by methods of conciliation, arbitration or strikes, and to thus advance the welfare of the members of this organization, to better enable them to carry on their vocations in life, to promote their endeavors in a lawful and peaceable manner to secure the blessings of liberty to themselves and their families, to better promote their pursuit of happiness and to secure to themselves more advantageous contracts with their employers.

Your respondent, for further answer unto said bill, says that so much of the constitution of the United Mine Workers as is set forth in said bill is correct, but that some parts thereof are omitted.

This respondent, for further answer unto said bill, says that he denies that the defendants to this bill, to-wit, John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes, each and all or any of them, as alleged in said bill, have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure plaintiff's miners or mine workers, employed by plaintiff and working for plaintiff in and around plaintiff's mine, to break, violate and disregard their several contracts with plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without its consent, and denies that to such end they have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel, by threats and intimidation or by other unlawful means, said plaintiff's employees to join the union and apply to their own relation with plaintiff in the matter of their employment the
164 rules of the union, to enable said union to apply its rules and regulations to plaintiff under penalty of closing down plaintiff's mine, provided plaintiff still refuses to unionize its plant and recognize the union, as alleged in said bill. But this respondent does aver that some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employees of plaintiff, and have in a peaceable and friendly manner invited said employees so conversed with to join said organization, and have used moderate argument and persuasion at the homes of some of the employees to induce them to become members of the United Mine Workers, endeavoring to show such employees that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization.

And this respondent, for further answer unto said bill, says that it is true that said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine, that its men are non-union men; and it may be true that said employees are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they

do join the union their said employment shall cease, but of this respondent denies any knowledge on his part; and it may be true that with such understanding plaintiff's employees entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but of which defendant also has no knowledge; but be this as it may, respondent avers that any condition, stipulation, contract or agreement on the part of said plaintiff with its said employees as a condition upon which they shall enter into employment and continue their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and can not be made a condition upon which to base any valid and binding contract or obligation between employer and employee.

This respondent, for further answer unto said bill, says that the allegations therein contained charging the defendants to said bill with knowledge that said employees of plaintiff are satisfied with their employment, that plaintiff is engaged in mining coal and filling contracts for coal, that it would be impossible to fill these contracts without the labor of its employees, and that it
165 would entail upon plaintiff great financial loss to be deprived of its ability to fulfill its said contracts by failure of its men to work longer for it, and would likewise entail great loss and damage to plaintiff to have its mine shut down and to have a strike declared, can not be considered as important and material for the purpose of said bill, because this respondent says that he denies that said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely, to cause plaintiff's mine to be shut down and its plant to remain idle and its contracts to be broken and unfulfilled until such time as plaintiff shall submit to the demands of the union that it shall unionize its plant, and, having submitted to such demand and having unionized its plant by employing only union men, who shall become subject to the orders of the union, paramount to the orders of the plaintiff, their employer, it will thus surrender control and management of its business to the union and become subject to and acquiesce in the enforcement by the union of the various rules and regulations laid down by the union and accede in advance to every demand said union by its officers, agents, employees and servants may make. And respondent here denies that by soliciting the said employees of plaintiff to join the union it necessarily follows that it is endeavoring to compel plaintiff to operate its mine by union labor, and avers that it is a non sequitur that by the peaceful methods employed by defendants to induce the employees of plaintiff to join the United Mine Workers the said plaintiff will thereby be compelled to conduct its business and carry on the operation of its plant by union men only and be subject to the control and dictation of the United Mine Workers of America; that the United Mine Workers of America do not attempt by force, intimidation, fraud or violence to coerce any em-

ployer of men in and about his coal mine to engage union men to do such work and to submit to the dictation and control of the United Mine Workers against his will and consent, but only seek to induce, if possible, by peaceable methods, an employer to employ union men, and thus promote in a reasonable and proper manner the said labor organization.

This respondent, for further answer unto said bill, says that he denies that the effectuating of any purpose on the part of said defendants or said union is imminent or that the damage threatened is great and irreparable, as alleged in said bill, and denies that plaintiff's loss by reason of any acts done by the defendants or any of them with reference to the men now in the employ of said
166 plaintiff, has been in excess of $2,000 exclusive of interest and costs, or to any other sum, by reason of acts of said defendants or any of them, and denies that said defendants or any of them have made any effort to shut down plaintiff's mine, and therefore denies that plaintiff has suffered any damage by reason of any acts of the defendants or any of them, as alleged and attempted to be shown by argument and inference in said bill.

This respondent, for further answer unto said bill, says that it may be true that the plaintiff pays as much as the union scale of wages to its said employees, but denies that said defendants or any of them are in any manner unlawfully and maliciously agreeing together, confederating, combining or conspiring to effectuate by unlawful means the unionizing of plaintiff's mine, but does say that, for the purpose of giving standing and effectiveness to said United Mine Workers of America with the employers of labor, they used peaceable means by arguments and reasoning with the employees of said plaintiff to become members of said union, but denies that they are endeavoring to create a monopoly to force employers and especially the plaintiff by unlawful means to engage union men, against their will and consent, but avers that they are endeavoring to increase the membership of said organization, to accomplish its purpose of making it desirable and profitable on the part of employers to engage union men to work in and about their mines, so as thereby to settle all differences between the employer and employee by the peaceful methods of conciliation, arbitration or strikes, as contemplated by the constitution of the United Mine Workers of America.

And this respondent, for further answer unto said bill, says that he admits that the union is not a competitor with the plaintiff in the labor market, and that the union does not employ labor, as in said bill is alleged, but avers that its large membership has been the means of supplying men in and about the mining and shipping of coal to a large number of extensive operators engaged in the mining and shipping of coal in the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, and that in these places where union men have been employed the relations between employer and employee have been agreeable, and the said union has been the means of bringing about a good state of feeling and a healthy condition with reference to the status of capital and labor between each other in said states.

This respondent for further answer unto said bill says that if it was openly stated with reference to the objects of said union at its annual convention, held at Indianapolis from January 15 to January 22, inclusive, 1907, as alleged in said bill, to-wit: "Or-
167 ganized labor contends that as industry can not exist without labor, labor has the right to say under what conditions it shall be employed," it does not follow that it thereby intends to dictate the management and productive end of the business, and respondent denies that there was any such language used in said convention conveying the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but it should be heard and has the right to say, under peaceable methods and under the forms of law, what the conditions should be to insure health and safety in working in mines in the mining and production of coal.

And this respondent, for further answer unto said bill, avers that the said United Mine Workers of America, by peaceable and law-abiding methods, have the right to canvass for membership and solicit men to become members of said United Mine Workers throughout the United States where coal mines exist and can be properly operated, provided the work of thus promoting membership and acquiring new members is conducted in a peaceable manner and by the use of reason and argument and without resorting to force, fraud, violence, intimidation or other wrong.

This respondent, for further answer unto said bill, says that that part of the same appearing on pages 26 and 27, purporting to give the language of the defendants T. L. Lewis, W. B. Wilson and John Mitchell, in said convention, only related to the then condition of the United Mine Workers of America, and the discussion of the best policy to promote its objects, which objects are expressed in the constitution and have hereinbefore been stated, and said discussion did not involve the use of force, violence, intimidation or other wrongful means to bring about the promotion of the objects of said union, but was simply in furtherance of its purpose of resorting to strikes of a general nature, and did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union men and they are therefore idle allegations, and can only be regarded as surplusage for the purposes of said bill.

And this respondent avers that whatever was said in the deliberations of the United Mine Workers in their convention held at Indianapolis at the time mentioned in said bill was with reference to the policy of the organization in its negotiations with coal operators in all the states of Illinois, Indiana, Ohio, Pennsylvania, and West Virginia, or wherever its members are engaged in the work of mining coal; and whatever was said or done in said convention had
no reference to the men employed by plaintiff in the year
168 1907; nor was the said matter of plaintiff's mine mentioned, nor was anything done or said in said convention having for its object any interference with the employees of plaintiff, either by argument, persuasion or otherwise; but all that was said and done in said convention had reference to the general policy and measures to

be inaugurated by the union or to be maintained by the union for the promotion of its growth and development by peaceable means, such as argument and persuasion, and by no other means, to advance its interests as an organization in the territory of the states just mentioned. And this respondent, for further answer unto said bill, avers that if said T. L. Lewis used the language imputed to him in said bill (but which is not admitted), to the effect or in substance that the American continent was not large enough to maintain two organizations of coal miners, and that he favored one organization of the coal miners of the American continent and the complete recognition of the union's right to organize in every mining district of the country, the said Lewis by the use of said language did not intend in any manner to refer to plaintiff's interests in mining or the plaintiff's men in its employ; but what said Lewis did mean was that, inasmuch as there were at that time two organizations of the laborers in coal mines, one in Canada and one in the United States, there ought to be but one organization for the coal miners of the United States and Canada, so as to harmonize operations in the coal mines of these two territories one with another, and thus better promote the purposes of the organization of the United Mine Workers, instead of having two organizations for this purpose, one in Canada and one in the United States, as then existing, nor was it the intention of said Lewis by the use of said language, if such was by him used, to include therein the Western Federation of Miners, which has for its object the unionizing of those engaged in mining gold, silver, copper and other metals, and not the mining of coal; so that the interests of the United Mine Workers of America and those of the Western Federation of Miners are not the same, and the union with them would be of little, if any, practical advantage to either organization.

This respondent, for further answer unto said bill, with reference to the allegations therein contained, appearing on pages 28, 29, 30 and 31, relating to the general action of the convention of Sub-District 5 of District 6 of the United Mine Workers of America, held in Wheeling, West Virginia, in March, 1907, denies that anything in that part of said bill, appearing on pages 28 to 31, inclusive, has any bearing upon the rights or interests of the plaintiff in this bill,

169 and avers that such allegations are entirely foreign to its purpose, and constitute only surplusage, and are so immaterial that any answer thereto would only raise an issue the determination of which could not affect the rights of either party to this suit.

This respondent, for further answer unto said bill, says that as to the allegations contained in the bill filed on behalf of the Glendale Coal Company against said defendants to this bill, this defendant avers that so far as said allegations charge this respondent and said defendants with any intimidation, coercion, fraud, combination, threats, violence or wrongful acts of any kind, the same are hereby positively denied as if the same were denied specifically and consecutively as set forth and alleged in said bill of the Glendale Coal Company.

This respondent, for further answer unto said bill, says that it may be true that plaintiff, in refusing to recognize the union after the declaration of said strike on April 1, 1906, and after its men had left plaintiff's employment pursuant to said strike, and thereafter running its mine non-union, did not seek to reduce the wages of its employees, or cause them to work for less than the scale of wages established by the United Mine Workers of America; and it may be true that plaintiff does not now seek or contemplate any reduction in the wages of its present employees; and respondent also says it may be true that plaintiff's sole purpose in running non-union, and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of the United Mine Workers, is to escape from intolerable oppression and vicious intermeddling by said defendants; but if this is the purpose and object of said plaintiff, as alleged in said bill, this respondent denies said defendants or any of them has done anything to hamper or interrupt said plaintiff in the running of its mine, and denies that said defendants or any of them have sought to impose intolerable oppression upon said plaintiff, or have been guilty of any vicious intermeddling with the business or employees of the plaintiff as in said bill is alleged.

This respondent for further answer unto said bill says that said defendants have, it is true, for some years last past been associated together as members of the United Mine Workers of America, and that they are well acquainted with each other, and that they constitute a part of the higher officers of the United Mine Workers of America, and they deny that the management of said union has been centralized in their hands, but that the whole of the United Mine Workers, in convention assembled, manage and control their own affairs, and that the said defendants are only officers entrusted with the executive business of said organization.

170 This respondent, for further answer unto said bill, says that it is true that after the plaintiff's mine was shut down, which occurred on April 16, 1906, efforts were frequently made by one or more of said defendants to induce the plaintiff to sign the scale and run its mine on a union basis, but that the request so made by the defendants was refused, and that subsequently requests were made of a like character, but this respondent denies that upon the failure of said plaintiff to employ union men at its mine as requested, as alleged in said bill, said defendants or any of them made efforts by threats, intimidation, or any other unlawful device or means, to induce plaintiff's employees to cease working for plaintiff, and denies that by like means, such as intimidation, threats or other unlawful methods, the said defendants or any of them endeavored to induce the employees of said plaintiff not to engage to work, and having engaged to work, not to go to work for plaintiff; and it is true that plaintiff was able to increase the number of its employees and increase its business, which it has been conducting successfully and lawfully from that time to the present, and so far as this respondent is advised said plaintiff is still conducting its business in a peaceful manner and free from any unlawful acts such as fraud,

violence, intimidation and threats from said defendants or any of them towards said plaintiff and its employees.

And this respondent, for further answer unto said bill, says that it may be true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office of the plaintiff's general manager and had a conversation with him regarding the forming of a miners' union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, and while plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered, is it not true that said Zelenka subsequently reported to plaintiff's employees, and caused that report to be spread among them, that he, Zelenka, Green and Watkins, had a conference with plaintiff's general manager and that said general manager had arranged to allow the United Mine Workers to put all the plaintiff's employees into the union; and denies that they or either of them made the further statement which he caused to be circulated among the plaintiff's employees that it was up to the employees of the plaintiff to join the union or else they would be out of a job at an early day, because only union men would be permitted to work at the mine, and that plaintiff's employees who did not join the union would not be permitted to get a job any place, as alleged in said bill. And it is true that said general man-
171 ager did complain of the alleged action, and, inasmuch as it had not occurred, said Zelenka, Green and Watkins positively denied making any such statement or circulating any such report. And respondent denies that plaintiff's statement in this respect as alleged in said bill is true, and denies that in the action referred to, complained of to said defendants, said defendants were simply carrying out their unlawful purpose, and denies that they had any unlawful purpose, as alleged in said bill, to unionize plaintiff's mine without its consent, and denies that there could be involved, even in unionizing said mine, the doing of any unlawful act, and for any unlawful purpose or purposes as stated in said bill.

This respondent, for further answer unto said bill, says that it may be true that plaintiff's employees are not union men, and that they entered into employment with plaintiff with the agreement that the plaintiff should continue to run a non-union mine; and it may be true that some of plaintiff's employees, employed under such conditions and with such understanding, have bought property and homes, and expect to have permanent employment with the plaintiff, so running its mine non-union; and with the understanding and expectation on their part that they shall be protected in such employment; but, be this as it may, this respondent avers that he was not aware that plaintiff's employees entered into its employment with the agreement that plaintiff should continue to run a non-union mine. And this respondent here positively avers, that said defendants or any of them have done nothing to force or compel by physical violence or other wrongful means the employees of plaintiff or any of them to quit its employment, but have only presented to them in a peaceable and reasonable manner the oppor-

tunity and advantage which will accrue to them by becoming members of the union, and thus joining the already large body of men working in and about coal mines in promoting the objects of the United Mine Workers, which are to unite mine employees that produce coal or coke in and around the mines, and thus ameliorate their condition by methods of conciliation, arbitration or strikes, because this respondent denies that in the absence of the proper organization of large bodies of men that are generally employed in and about coal mines of the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, over which territory the methods of the United Mine Workers are largely applied, peace and order can far better be maintained when disagreements arise between employer and employee, as they have often done heretofore and will continue to do, and avers that it is far better for the operator as well as the laborer
172 that the employees be thus under the control of the union than not to belong to any organization, as these differences, difficulties and strikes incident to such employment can be much better adjusted by reason of said organization; and it is to promote the peace and welfare of the operator and miner that the Mine Workers organization originated and is being maintained.

And this respondent for further answer unto said bill says that it is true that some time during the middle of the summer of 1907 the defendants Green, Watkins and Zelenka called on plaintiff's general manager at his office and that said Green then stated that he would like to talk organization. Plaintiff's general manager stated to said parties then that while unionizing the mine was out of the question, yet if they had any business proposition to submit it would be listened to, whereupon said Green urged that under plaintiff's present arrangement or contract with its employees the men felt at liberty to do as they pleased, and did not feel any restraint, while if plaintiff would make a contract with him as President of the United Mine Workers of America, District 6, he could hold the men in check, and see that all agreements incorporated in the scale were fulfilled and carried out to the letter, and generally he would see that the men lived up to their contract. And it is true that to this plaintiff's general manager replied that from personal experience in the past in dealing with the union he had found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering, whereupon Green then requested plaintiff's general manager to think the matter over, and said he would see him again about it in a couple of weeks; and that several weeks afterward said Green, Watkins and Zelenka saw the plaintiff's general manager while the latter was at the McLure House in Wheeling, and the latter told Green that he could see nothing in the proposition that interested him in any manner; but respondent denies that said Green then asked said general manager if he would not submit the proposition to plaintiff's board of directors, but avers that said general manager himself stated to said Green that he, said general manager, would submit the proposition to plaintiff's board of directors, and respondent believes that said general manager did submit said proposition

to said board and said board refused to accept it; and thereafter said Green telephoned plaintiff's general manager and asked if he had submitted the proposition to plaintiff's directors, and was told that the proposition had been submitted and that the directors refused to consider the matter in any manner whatever.

This respondent, for further answer unto said bill, says that he denies that said defendants are proceeding to carry out
173 any conspiracy, and denies that they are now endeavoring to unionize plaintiff's mine, and denies that said defendants or any of them threaten to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor. This respondent does aver that certain representatives of the United Mine Workers of America have visited some of the employees of the plaintiff, and tried by reason and argument to persuade them to join the union, as of right they might do.

This respondent, for further answer unto said bill, says that it is true that on or about September 7, 1907, said defendant Thomas Hughes was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employees and trying to induce the men by persuasion, but not by threats, coercion and intimidation, or by other unlawful methods and devices, to join the union, and denies that any unlawful efforts are being kept up for the purpose of inducing the employees or any of them, by threats, coercion and intimidation, or any other unlawful methods and devices, to quit working at the plaintiff's mine.

And respondent, for further answer unto said bill, says that he believes it is true that said Hughes did induce about 24 employees of the Glendale Coal Company to agree to join the union, but denies that said Hughes induced said employees to quit the service of the Glendale Coal Company; and this respondent avers that, after said men joined the union at the peaceable instance and request of said Hughes, they reported the next morning thereafter for service and work in the mines of the Glendale Coal Company, whereupon the agent and representative of the Glendale Coal Company having authority to employ and discharge its men, learning or having learned that said men had joined the union, stated to such men that their services were not needed longer, and thereupon said men were required to quit the service of the Glendale Coal Company, not upon their own accord but because the Glendale Coal Company declined to retain them longer in its employ because of the fact that they had joined the union. And this respondent avers that said Hughes, in inducing said men to join the union, did not use or employ any threats, force, violence, intimidation, or other unlawful means, to induce them to become members of said union. And respondent says it is true said defendants have been unable to bring about or induce plaintiff's employees to quit its service, and for the very substantial and sufficient reason, as this respondent avers, that they have not, nor has any of them, made any effort to bring about or induce plaintiff's employees or any of them

to quit its service, and denies that said Hughes has recently
174 stated to one of plaintiff's miners, whom it is alleged but
by respondent denied he was trying to induce to leave plain-
tiff's service and join the union, that he, Hughes, had succeeded
in having 125 men at the Hitchman mine sign their names agree-
ing to become members of the union, and that just as soon as he
could get 25 more names he was going to shut down the Hitchman
mine, because said Hughes, had he obtained said signatures, had no
power or authority to shut down the mine of plaintiff, nor was it
his intention to do so, but only to have said miners join the union.

This respondent, for further answer unto said bill, says that he
denies that the said United Mine Workers, said International Union
United Mine Workers of America, said District No. 6 United Mine
Workers of America, and said Sub-District 5 of District 6 United
Mine Workers of America are, under their constitutions, violating
the common and statute law of the state of West Virginia as well
as the Constitution of said state, and especially, as alleged in said
bill, in this, to-wit: in the provisions of §§1, 3 and 4 of Art. X.,
Constitution of International Union United Mines Workers of Amer-
ica; in the provisions of §§1 and 2 of Art. VIII. §15 of Art. IX.,
Constitution of District 6, United Mine Workers of America; and in
the provisions of §§2 and 3 of Art. I., §1 of Art. IV., §6 of Art.
VI., and §§2 and 3 of Art. IX., Constitution of Sub-District 5 of
District 6 United Mine Workers of America; as well as in said oath
that is administered to each member of the United Mine Workers
of America on his initiation.

This respondent, for further answer to said bill, says that he de-
nies that said defendants are combining and forming themselves
into a conspiracy under the name of the United Mine Workers of
America for any unlawful purpose or design, by enticement, per-
suasion or coercion in any form to bring about the shutting down
of plaintiff's mine and the ultimate destruction of its business, and
denies that said defendants will, without the consent and against
the will of the plaintiff, compel the plaintiff to recognize said de-
fendants and said associations, in the further transaction or any
transaction of its legitimate business in mining and shipping coal,
and denies that said defendants will compel plaintiff with its em-
ployees through the said defendants as officers of said association,
under such rules and regulations as will enable the defendants to
dictate the persons whom the plaintiff shall employ and discharge,
and the wages it shall pay, and compel plaintiff to agree that each
and every employee, as a member of said United Mine Workers of
America, shall owe and yield to said union an allegiance which
shall in all things be paramount to that which said employee
175 would owe to plaintiff; and denies that they will in any
manner take charge of and dictate the management of, and
any manner control, plaintiff's business and perpetrate acts of
oppression and wrong upon plaintiff, and distinctly violate plain-
tiff's contractual, common-law, statutory and constitutional rights
as a citizen of the state of West Virginia, as in said bill is alleged.
And this respondent for further answer unto said bill says that

he denies that the said defendants propose and threaten to indulge in any methods of accomplishing any result or object by the use of threats, intimidation, violent or abusive language, picketing plaintiff's premises, picketing or patrolling or guarding the streets and approaches to plaintiff's premises and going to the homes and boarding houses of plaintiff's employees for the purpose of intimidating or coercing them to leave plaintiff's employment and to picket railroad and street cars passing to and from and over plaintiff's premises, for the purpose of intercepting plaintiff's employees in going to and from plaintiff's premises, or for the purpose of intercepting or preventing persons going to plaintiff's premises for the purpose of seeking or for the purpose of entering plaintiff's employment, as in said bill is alleged.

And this defendant denies all unlawful combination, conspiracy and confederacy, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowledge or belief of this defendant, and here denies each and every allegation in said bill contained not herein admitted to be true. All which matters and things this defendant is ready to verify, maintain and prove, as this Honorable Court may direct. And he humbly prays that the temporary injunction heretofore granted in this cause may be vacated and dissolved, and that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

D. H. SULLIVAN,
Individually and as Vice-President of District No. 6, United Mine Workers of America,
By CHAS. E. HOGG, *Of Counsel.*

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Defendants.

176 *Decree Filing Answers.*

And at another day, to-wit: On the 13th day of July, 1908, the following order was made and entered of record to-wit:

In Equity.

HITCHMAN COAL AND COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at *Glendale*, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President

of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and
177 as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

On this the 13th day of July, 1908, came T. L. Lewis, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually, and as President of District No. 6 United Mine Workers of America; D. H. Sullivan, individually, and as Vice-President of District No. 6 United Mine Workers of America; George W. Savage, individually, and as Secretary-Treasurer of District No. 6 United Mine Workers of America; A. R. Watkins, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America; John Zelenka, individually, and as Vice-President of Sub-District 5 of District 6 United Mine Workers of America; and Lee Rankin, individually, and as Secretary-Treasurer of Sub-District 5 of District 6 United Mine Workers of America, defendants in the above named cause, by Charles E. Hogg and Adam B. Littlepage, their counsel, and filed their joint and several answer to the plaintiff's bill; and, at the same time, also the said defendants William Green, individually, and as President of District No. 6 United Mine Workers of America, D. H. Sullivan, individually, and as Vice-President of District No. 6 United Mine Workers of America, and A. R. Watkins, individually and as President of Sub-District 5 of District 6 United Mine Workers of America, by the said Charles E. Hogg and Adam B. Littlepage, their counsel, and filed each his separate answer to the said bill, and moved that the temporary injunction heretofore awarded in said cause be vacated and dissolved.

178 *Amended Answer of A. R. Watkins.*

(Filed August 20, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and
179 as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

The Separate Answer as Amended of the Defendant A. R. Watkins, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America, to the Bill of Complaint of the Hitchman Coal & Coke Company, a Corporation Organized under and by virtue of the Laws of the State of West Virginia and a Citizen of the said State, filed in said Court.

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern District of West Virginia:

This defendant, now and at all times hereafter saving to himself

all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and other imperfections in said bill contained, for answer thereunto, or so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

That he believes that it is true that the said Hitchman Coal & Coke Company is a corporation, organized under and by virtue of the laws of the state of West Virginia, having its principal office at Wheeling, in Ohio County, in said state; that it may be that it is the owner of about 5,000 acres of coal situated contiguous to its coal mine, which is located at Benwood, in said state; that it may be also true that its coal mine is equipped with the necessary plant for mining coal, and that it has shipping facilities on the main line of the Baltimore & Ohio Railroad, and that its various shipments by rail originate on that road and at its mine; that it may also be true that it has been for some time past and is now engaged in mining coal and shipping the same to the open markets of the United States; that it may be true that the product of its mine is large, amounting to about 1,400 tons per day, and that it has customers residing in all parts of the United States, and that a large portion of its trade is during the summer and fall months, when coal is carried to the northwest by steamers on the lakes while navigation is not
180 impeded by ice, while another portion of its trade has been for years and now is the supplying of coal for fuel for the engines of the said Baltimore & Ohio Railroad, delivered by a coaling device to the engines at its tipple and likewise from large storage bins which have been erected and are in use by said plaintiff and said railroad company wherefrom to coal their engines, said storage bins being located at the end of a considerable steel structure, trestle or viaduct, located near the round house of said railroad company near Benwood, in the construction of which steel trestle and coal bins the plaintiff has expended and now has invested a large sum of money; that it may also be true that in mining coal the coal as mined is brought to the surface and mouth of the mine, and then for interstate commerce is delivered to the common carrier and by it delivered to its destination within the United States and without the state of West Virginia; that it may also be true the plaintiff has made large contracts for future delivery of coal to points within and without the state of West Virginia and within the United States, especially for "lake trade"; that it may be also true the plaintiff only furnishes daily to said Baltimore & Ohio Railroad Company between five and six hundred tons of engine coal; that it may also be true the profits and earnings of the plaintiff depend largely upon its mining and producing coal during the summer and fall months of the year, and especially may this be true of this year as to its said contracts not yet fulfilled and which it has the ability, and, unless unlawfully interfered with by the defendants it expects to fill; but this respondent says as to whether or not all these matters so alleged in said bill are true he is not informed, and so can neither deny nor admit the same, but calls for strict proof thereof.

And this defendant, for further answer unto said bill, says that it is true that prior to April 1, 1906, the plaintiff operated its said mine by employing a large number of men who were affiliated with the United Mine Workers of America, and that on April 1, 1906, a strike having been ordered by said association, the employees of plaintiff who were working for it at that time continued to work for it until April 16, 1906, and on that day they ceased to work for the plaintiff by reason of said strike; but this respondent denies that the strike so ordered and declared is still in force so far as plaintiff and its said mine are concerned. This respondent avers that the said employees of plaintiff who ceased to work because of said strike did so in order that said organization might be enabled to restore to the members of the United Mine Workers the scale of prices of 1903, which was a higher and better price than that paid in 1905 and up to April 16, 1906; and that because the said
181 plaintiff did not at once agree to accede to the scale of prices adopted by said Mine Workers' organization it became necessary for said employees to remain out of work in order to promote the adoption of the scale of prices which had been proposed by the organization prior to April 1, 1906, and had said employees of plaintiff then working for it acceded to the demands of said plaintiff it would have been impossible to carry out the policy of said United Mine Workers of America with reference to the adoption and promotion of a just and uniform scale of prices for the work of their *nu*mbers. It may be true that said employees of plaintiff belonging to said organization were ready and willing to accept said plaintiff's proposition as contained in said bill, so far as their personal inclinations were concerned, but as members of the United Mine Workers of America they fully knew that to promote the policy of their organization, which is to ameliorate their condition as mine workers by methods of conciliation, arbitration or strikes, they could not consistently accede to the terms of employment or continuation of employment then proposed to them by plaintiff; and for this reason said employees belonging to said organization did on April 16, 1906, go out on a strike under the continued orders of the United Mine Workers of America, but this respondent denies such going out on a strike was without justification and without excuse. And this respondent avers that the employees engaged by the plaintiff under contract with the United Mine Workers of America on the first day of April, 1906, and who went out on a strike under orders issued by the United Mine Workers would have remained in the employ of the plaintiff and not have quit the employ of plaintiff, had plaintiff been willing to sign the scale which the United Mine Workers had proposed, and which scale was, after April 1, 1906, signed by many of the operators in the states of Ohio, Indiana, Illinois, Pennsylvania and parts of West Virginia; and so by reason of the failure and refusal of the plaintiff to sign the scale submitted to it, the employees of plaintiff who were then members of the United Mine Workers declined to continue to work for said plaintiff; and the reason that the employees of plaintiff declined to continue to work for plaintiff was that said employees desired a definite and fixed

scale, which carries with it a definite and fixed term of employment, and this the plaintiff declined to sign, but merely promised to pay whatever advance in price might be paid by other operators in case such other operators agreed to sign the scale and did sign the scale; and therefore to secure the signing of this scale carrying with it a definite term of employment for the period of two years at
182 a fixed and definite price, it became necessary for the employees of plaintiff to go upon a strike in 1906.

This respondent, further answering, says it may be true that said mine of plaintiff was shut down and not operated after April 16, 1906, until June 12, 1906, as alleged in said bill. It may be true, and is, as respondent believes, that plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the company would not allow any, that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and its orders, and that if any employees of the company joined the union they could not work any longer for plaintiff. It may be also true that thereupon, with knowledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff. But this respondent denies any knowledge on his part that the employees of plaintiff were and are required by it at the time of entering its service to agree not to become connected with the union while so employed; and this respondent denies any knowledge on his part that if said employees join the union their employment with plaintiff shall cease; and this respondent denies any knowledge on his part that with such understanding plaintiff's employees entered into its employment; and respondent denies any knowledge that such employees are now working for plaintiff under such contract and with such condition. But this respondent denies that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employees as to the advisability or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union.

It is also true, as respondent is advised, that from time to time since the plaintiff has been operating at said mine on a non-union basis, efforts have been made by the officers and agents representing the United Mine Workers of America, and its subordinate associations and branches, to induce plaintiff to agree to employ union men at its said mine and to sign the scale of the United Mine Workers of America, and that plaintiff has repeatedly refused to have anything to do with the United Mine Workers of America or any of its subordinate associations or branches, or with any of its
183 officers, agents, employees or servants, and has made known to them and each of them its determination to run its mine

with non-union men and of its purpose not to permit any interference by said United Mine Workers of America, its subordinate associations or branches, its officers, agents, employees or servants, with its operation of its mine or with its business.

And this respondent, for further answer unto said bill, denies that said United Mine Workers of America, its subordinate associations or branches, by its officers, agents, employees or servants, have sought or are now seeking, by any means whatsoever except argument, persuasion and other peaceable and legal methods, to cause the employees of the plaintiff to become members of the United Mine Workers of America, and denies that they have at any time endeavored by any means to cause plaintiff's employees to leave its service, or to cause others who have engaged to enter plaintiff's service to break their engagements of service and not work for plaintiff, or to prevent others from working for plaintiff, with the professed, avowed and actual purpose of compelling plaintiff to recognize the union and to employ only persons who are members thereof, and to compel plaintiff to pay such scale of wages as said union may arbitrarily fix and demand, and denies that said United Mine Workers, or its representatives or agents, have endeavored to cause the plaintiff to submit its business or property to the jurisdiction or control of the union, as in said bill is alleged.

This respondent, for further answer unto said bill, says that he admits that the United Mine Workers of America, including its said subordinate associations and branches, is a voluntary organization having certain expressed objects, as alleged in said bill, but denies that any of said objects are unlawful or that said organization is a secret one, but avers that all its objects are lawful, and denies that said organization or any of its members or officers, including this respondent and the other defendants to this bill, is making any endeavor to carry out any unlawful purpose, as alleged in said bill, but, on the contrary, the only objects of said United Mine Workers, including all its subordinate associations and branches, together with all members thereof, are to unite employees that produce or handle coal or coke in and around coal mines and to ameliorate their condition by methods of conciliation, arbitration or strikes, and to thus advance the welfare of the members of this organization, to better enable them to carry on their vocations in life, to promote their endeavors in a lawful and peaceable manner to secure the blessings of liberty to themselves and their fam-
184 ilies, to better promote their pursuit of happiness and to secure to themselves more advantageous contracts with their employers.

Your respondent, for further answer unto said bill, says that so much of the constitution of the United Mine Workers as is set forth in said bill is correct, but that some parts thereof are omitted.

This respondent, for further answer unto said bill, says that he denies that the defendants to this bill, to-wit, John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas

Hughes, each and all or any of them, as alleged in said bill, have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure plaintiff's miners or mine workers, employed by plaintiff and working for plaintiff in and around plaintiff's mine, to break, violate and disregard their several contracts with plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without its consent, and denies that to such end they have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel, by threats and intimidation or by other unlawful means, said plaintiff's employees to join the union and apply to their own relation with plaintiff in the matter of their employment the rules of the union, to enable said union to apply its rules and regulations to plaintiff under penalty of closing down plaintiff's mine, provided plaintiff still refuses to unionize its plant and recognize the union, as alleged in said bill. But this respondent does aver that some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employees of plaintiff, and have in a peaceable and friendly manner invited said employees so conversed with to join said organization, and have used moderate argument and persuasion at the homes of some of the employees to induce them to become members of the United Mine Workers, endeavoring to show such employees that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization.

And this respondent, for further answer unto said bill, says that it is true that said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine, that its men are non-union men; and it may be true that said employees are re-
185 quired by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do join the union their said employment shall cease, but of this respondent denies any knowledge on his part; and it may be true that with such understanding plaintiff's employees entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but of which defendant also has no knowledge; but be this as it may, respondent avers that any condition, stipulation, contract or agreement on the part of said plaintiff with its said employees as a condition upon which they shall enter into employment and continue their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and can not be made a condition upon which to base any valid and binding contract or obligation between employer and employee.

This respondent, for further answer unto said bill, says that the allegations therein contained charging the defendants to said bill with knowledge that said employees of plaintiff are satisfied with their employment, that plaintiff is engaged in mining coal and filling contracts for coal, that it would be impossible to fill these contracts without the labor of its employees, and that it would entail upon plaintiff great financial loss to be deprived of its ability to fulfill its said contracts by failure of its men to work longer for it, and would likewise entail great loss and damage to plaintiff to have its mine shut down and to have a strike declared, can not be considered as important and material for the purpose of said bill, because this respondent says that he denies that said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely, to cause plaintiff's mine to be shut down and its plant to remain idle and its contracts to be broken and unfulfilled until such time as plaintiff shall submit to the demands of the union that it shall unionize its plant, and, having submitted to such demand and having unionized its plant by employing only union men, who shall become subject to the orders of the union, paramount to the orders of the plaintiff, their employer, it will thus surrender control and management of its business to the union and become subject to and acquiesce in the enforcement by the union of the various rules and regulations laid down by the union and accede in advance to every demand said union by its officers, agents, employees and servants may make. And respondent here
186 denies that by soliciting the said employees of plaintiff to join the union it necessarily follows that it is endeavoring to compel plaintiff to operate its mine by union labor, and avers that it is a non sequitur that by the peaceful methods employed by defendants to induce the employees of plaintiff to join the United Mine Workers the said plaintiff will thereby be compelled to conduct its business and carry on the operation of its plant by union men only and be subject to the control and dictation of the United Mine Workers of America; that the United Mine Workers of America do not attempt by force, intimidation, fraud or violence to coerce any employer of men in and about his coal mine to engage union men to do such work and to submit to the dictation and control of the United Mine Workers against his will and consent, but only seek to induce, if possible, by peaceable methods, an employer to employ union men, and thus promote in a reasonable and proper manner the said labor organization.

This respondent, for further answer unto said bill, says that he denies that the effecutating of any purpose on the part of said defendants or said union is imminent or that the damage threatened is great and irreparable, as alleged in said bill, and denies that plaintiff's loss by reason of any acts done by the defendants or any of them with reference to the men now in the employ of said plaintiff, has been in excess of $2,000 exclusive of interest and costs, or to any other sum, by reason of acts of said defendants or any of

them, and denies that said defendants or any of them have made any effort to shut down plaintiff's mine, and therefore denies that plaintiff has suffered any damage by reason of any acts of the defendants or any of them, as alleged and attempted to be shown by argument and inference in said bill.

This respondent, for further answer unto said bill, says that it may be true that the plaintiff pays as much as the union scale of wages to its said employees, but denies that said defendants or any of them are in any manner unlawfully and maliciously agreeing together, confederating, combining or conspiring to effectuate by unlawful means the unionizing of plaintiff's mine, but does say that, for the purpose of giving standing and effectiveness to said United Mine Workers of America with the employers of labor, they used peaceable means by arguments and reasoning with the employees of said plaintiff to become members of said union, but denies that they are endeavoring to create a monopoly to force employers and especially the plaintiff by unlawful means to engage union men, against their will and consent, but avers that they are endeavoring to increase the membership of said organization, to accom-
187 plish its purpose of making it desirable and profitable on the part of employers to engage union men to work in and about their mines, so as thereby to settle all differences between the employer and employee by the peaceful methods of conciliation, arbitration or strikes, as contemplated by the constitution of the United Mine Workers of America.

And this respondent, for further answer unto said bill, says that he admits that the union is not a competitor with the plaintiff in the labor market, and that the union does not employ labor, as in said bill is alleged, but avers that its large membership has been the means of supplying men in and about the mining and shipping of coal to a large number of extensive operators engaged in the mining and shipping of coal in the States of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, and that in these places where union men have been employed the relations between employer and employee have been agreeable, and the said union has been the means of bringing about a good state of feeling and a healthy condition with reference to the status of capital and labor between each other in said states.

This respondent for further answer unto said bill says that if it was openly stated with reference to the objects of said union at its annual convention, held at Indianapolis from January 15 to January 22, inclusive, 1907, as alleged in said bill, to-wit: "Organized labor contends that, as industry can not exist without labor, labor has the right to say under what conditions it shall be employed," it does not follow that it thereby intends to dictate the management and productive end of the business, and respondent denies that there was any such language used in said convention conveying the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but it should be heard and has the right to say; under peaceable methods and under the forms of law, what the conditions should be to insure health and safety in working in mines in the mining and production of coal.

And this respondent, for further answer unto said bill, avers that the said United Mine Workers of America, by peaceable and law-abiding methods, have the right to canvass for membership and solicit men to become members of said United Mine Workers throughout the United States where coal mines exist and can be properly operated, provided the work of thus promoting membership and acquiring new members is conducted in a peaceable manner and by the use of reason and argument and without resorting to force, fraud, violence, intimidation or other wrong.

This respondent, for further answer unto said bill, says that that part of the same appearing on pages 26 and 27, purporting
188 to give the language of the defendants T. L. Lewis, W. B. Wilson and John Mitchell, in said convention, only related to the then condition of the United Mine Workers of America, and the discussion of the best policy to promote its objects, which objects are expressed in the constitution and have hereinbefore been stated, and said discussion did not involve the use of force, violence, intimidation or other wrongful means to bring about the promotion of the objects of said union, but was simply in furtherance of its purpose of resorting to strikes of a general nature, and did not contemplate any interference with the employees of the plaintiff, because they were not then union men, nor are they now union men and they are therefore idle allegations, and can only be regarded as surplusage for the purposes of said bill.

And this respondent avers that whatever was said in the deliberations of the United Mine Workers in their convention held at Indianapolis at the time mentioned in said bill was with reference to the policy of the organization in its negotiations with coal operators in all the states of Illinois, Indiana, Ohio, Pennsylvania, and West Virginia, or wherever its members are engaged in the work of mining coal; and what ever was said or done in said convention had no reference to the men employed by plaintiff in the year 1907; nod was the said matter of plaintiff's mine mentioned, nor was anything done or said in said convention having for its object any interference with the employees of plaintiff, either by argument, persuasion or otherwise; but all that was said and done in said convention had reference to the general policy and measures to be inaugurated by the union or to be maintained by the union for the promotion of its growth and development by peaceable means, such as argument and persuasion, and by no other means, to advance its interests as an organization in the territory of the states just mentioned. And this respondent, for further answer unto said bill, avers that if said T. L. Lewis used the language imputed to him in said bill (but which is not admitted), to the effect or in substance that the American continent was not large enough to maintain two organizations of coal miners, and that he favored one organization of the coal miners of the American continent and the complete recognition of the union's right to organize in every mining district of the country, the said Lewis by the use of said language did not intend in any manner to refer to plaintiff's interests in mining or the plaintiff's men in its employ; but what said Lewis did mean was that, inasmuch as there were at that time two organ-

izations of the laborers in coal mines, one in Canada and one in the United States, there ought to be but one organization for the
189 coal miners of the United States and Canada, so as to harmonize operations in the coal mines of these two territories one with another, and thus better promote the purposes of the organization of the United Mine Workers, instead of having two organizations, for this purpose, one in Canada and one in the United States, as then existing, nor was it the intention of said Lewis by the use of said language, if such was by him used, to include therein the Western Federation of Miners, which has for its object the unionizing of those engaged in mining gold, silver, copper and other metals, and not the mining of coal; so that the interests of the United Mine Workers of America and those of the Western Federation of Miners are not the same, and the union with them would be of little, if any, practical advantage to either organization.

This respondent, for further answer unto said bill, with reference to the allegations therein contained, appearing on pages 28, 29, 30 and 31, relating to the general action of the convention of Sub-District 5 of District 6, of the United Mine Workers of America, held in Wheeling, West Virginia, in March, 1907, denies that anything in that part of said bill, appearing on pages 28 to 31, inclusive, has any bearing upon the rights or interests of the plaintiff in this bill, and avers that such allegations are entirely foreign to its purpose, and constitute only surplusage, and are so immaterial that any answer thereto would only raise an issue the determination of which could not affect the rights of either party to this suit.

This respondent, for further answer unto said bill, says that as to the allegations contained in the bill filed on behalf of the Glendale Coal Company against said defendants to this bill, this defendant avers that so far as said allegations charge this respondent and said defendants with any intimidation, coercion, fraud, combination, threats, violence or wrongful acts of any kind, the same are hereby positively denied as if the same were denied specifically and consecutively as set forth and alleged in said bill of the Glendale Coal Company.

This respondent, for further answer unto said bill, says that it may be true that plaintiff, in refusing to recognize the union after the declaration of said strike on April 1, 1906, and after its men had left plaintiff's employment pursuant to said strike, and thereafter running its mine non-union, did not seek to reduce the wages of its employees, or cause them to work for less than the scale of wages established by the United Mine Workers of America; and it may be true that plaintiff does not now seek or contemplate any reduction in the wages of its present employees; and respondent also says it may be true that plaintiff's sole purpose in run-
190 ning non-union, and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of the United Mine Workers, is to escape from intolerable oppression and vicious intermeddling by said defendants; but if this is the purpose and object of said plaintiff, as alleged in said bill, this respondent denies said

defendants or any of them has done anything to hamper or interrupt said plaintiff in the running of its mine, and denies that said defendants or any of them have sought to impose intolerable oppression upon said plaintiff, or have been guilty of any vicious intermeddling with the business or employees of the plaintiff, as in said bill is alleged.

This respondent for further answer unto said bill says that said defendants have, it is true, for some years last past been associated together as members of the United Mine Workers of America, and that they are well acquainted with each other, and that they constitute a part of the higher officers of the United Mine Workers of America, and they deny that the management of said union has been centralized in their hands, but that the whole of the United Mine Workers, in convention assembled, manage and control their own affairs, and that the said defendants are only officers entrusted with the executive business of said organization.

This respondent, for further answer unto said bill, says that it is true that after the plaintiff's mine was shut down, which occurred on April 16, 1906, efforts were frequently made by one or more of said defendants to induce the plaintiff to sign the scale and run its mine on a union basis, but that the request so made by the defendants was refused, and that subsequently requests were made of a like character, but this respondent denies that upon the failure of said plaintiff to employ union men at its mine as requested, as alleged in said bill, said defendants or any of them made efforts by threats, intimidation, or any other unlawful device or means, to induce plaintiff's employees to cease working for plaintiff, and denies that by like means, such as intimidation, threats or other unlawful methods, the said defendants or any of them endeavored to induce the employees of said plaintiff not to engage to work, and having engaged to work, not to go to work for plaintiff; and it is true that plaintiff was able to increase the number of its employees and increase its business, which it has been conducting successfully and lawfully from that time to the present, and so far as this respondent is advised said plaintiff is still conducting its business in a peaceful manner and free from any unlawful acts such as fraud, violence, intimidation and threats from said defendants or any of them towards said plaintiff and its employees.

191 And this respondent, for further answer unto said bill, says that it may be true that about July 1, 1907, the defendants William Green, John Zelenka and A. R. Watkins came to the office of the plaintiff's general manager and had a conversation with him regarding the forming of a miners' union, or rather the putting of plaintiff's employees under the jurisdiction of the United Mine Workers of America, and while plaintiff on that occasion through its general manager distinctly stated that the proposition of said defendants would not be considered, it is not true that said Zelenka subsequently reported to plaintiff's employees, and caused that report to be spread among them, that he, Zelenka, Green and Watkins, had a conference with plaintiff's general manager and that said general manager had arranged to allow the United Mine Workers to put all the plaintiff's employees into the

union; and denies that they or either of them made the further statement which he caused to be circulated among the plaintiff's employees that it was up to the employees of the plaintiff to join the union or else they would be cut out of a job at an early day, because only union men would be permitted to work at the mine, and that plaintiff's employees who did not join the union would not be permitted to get a job any place, as alleged in said bill. And it is true that said general manager did complain of the alleged action, and, inasmuch as it had not occurred, said Zelenka, Green and Watkins positively denied making any such statement or circulating any such report. And respondent denies that plaintiff's statement in this respect as alleged in said bill is true, and denies that in the action referred to, complained of to said defendants, said defendants were simply carrying out their unlawful purpose, and denies that they had any unlawful purpose, as alleged in said bill, to unionize plaintiff's mine without its consent, and denies that there could be involved, even in unionizing said mine, the doing of any unlawful act, and for any unlawful purpose or purposes as stated in said bill.

This respondent, for further answer unto said bill, says that it may be true that plaintiff's employees are not union men, and that they entered into employment with plaintiff with the agreement that the plaintiff should continue to run a non-union mine; and it may be true that some of the plaintiff's employees, employed under such conditions and with such understanding, have bought property and homes, and expect to have permanent employment with the plaintiff, so running its mine non-union; and with the understanding and expectation on their part that they shall be protected in such employment; but, be this as it may, this respondent avers that he was not aware that plaintiff's employees entered
192 into its employment with the agreement that plaintiff should continue to run a non-union mine. And this respondent here positively avers, that said defendants or any of them have done nothing to force or compel by physical violence or other wrongful means the employees of plaintiff or any of them to quit its employment, but have only presented to them in a peaceable and reasonable manner the opportunity and advantage which will accrue to them by becoming members of the union, and thus joining the already large body of men working in and about coal mines in promoting the objects of the United Mine Workers, which are to unite mine employees that produce coal or coke in and around mines, and thus ameliorate their condition by methods of conciliation, arbitration or strikes, because this respondent denies that in the absence of the proper organization of large bodies of men that are generally employed in and about coal mines of the states of West Virginia, Pennsylvania, Ohio, Indiana and Illinois, over which territory the methods of the United Mine Workers are largely applied, peace and order can far better be maintained when disagreements arise between employer and employee, as they have often done heretofore and will continue to do, and avers that it is far better for the operator as well as the laborer that the employees be thus under the control of the union than not to belong to any or-

ganization, as these differences, difficulties and strikes incident to such employment can be much better adjusted by reason of said organization; and it is to promote the peace and welfare of the operator and miner that the Mine Workers organization originated and is being maintained.

And this respondent for further answer unto said bill says that it is true that some time during the middle of the summer of 1907 the defendants Green, Watkins and Zelenka called on plaintiff's general manager at his office and that said Green then stated that he would like to talk organization. Plaintiff's general manager stated to said parties then that while unionizing the mine was out of the question, yet if they had any business proposition to submit it would be listened to, whereupon said Green urged that under plaintiff's present arrangement or contract with its employees the men felt at liberty to do as they pleased, and did not feel any restraint, while if plaintiff would make a contract with him as President of the United Mine Workers of America, District 6, he could hold the men in check, and see that all agreements incorporated in the scale were fulfilled and carried out to the letter, and generally he would see that the men lived up to their contract. And it is true that to this plaintiff's general manager replied that from personal experience in the past in dealing with the union he
193 had found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering, whereupon Green then requested plaintiff's general manager to think the matter over, and said he would see him again about it in a couple of weeks; and that several weeks afterward said Green, Watkins and Zelenka saw the plaintiff's general manager while the latter was at the McLure House in Wheeling, and the latter told Green that he could see nothing in the proposition that interested him in any manner; but respondent denies that said Green then asked said general manager if he would not submit the proposition to plaintiff's board of directors, but avers that said general manager, himself stated to said Green that he, said general manager, would submit the proposition to plaintiff's board of directors, and respondent believes that said general manager did submit said proposition to said board and said board refused to accept it; and thereafter said Green telephoned plaintiff's general manager and asked if he had submitted the proposition to plaintiff's directors, and was told that the proposition had been submitted and that the directors refused to consider the matter in any manner whatever.

This respondent, for further answer unto said bill, says that he denies that said defendants are proceeding to carry out any conspiracy, and denies that they are now endeavoring to unionize plaintiff's mine, and denies that said defendants or any of them threaten to close down plaintiff's mine and keep it closed until plaintiff will agree to sign the scale and employ none but union labor. This respondent does aver that certain representatives of the United Mine Workers of America have visited some of the employees of the plaintiff, and tried by reason and argument to persuade them to join the union, as of right they might do.

This respondent, for further answer unto said bill, says that it is true that on or about September 7, 1907, said defendant Thomas Hughes was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employees and trying to induce the men by persuasion, but not by threats, coercion and intimidation, or by other unlawful methods and devices, to join the union, and denies that any unlawful efforts are being kept up for the purpose of inducing the employees or any of them, by threats, coercion and intimidation, or any other unlawful methods and devices, to quit working at the plaintiff's mine.

And respondent, for further answer unto said bill, says that he believes it is true that said Hughes did induce about 24 em-
194 ployees of the Glendale Coal Company to agree to join the union, but denies that said Hughes induced said employees to quit the service of the Glendale Coal Company; and this respondent avers that, after said men joined the union at the peaceable instance and request of said Hughes, they reported the next morning thereafter for service and work in the mine of the Glendale Coal Company, whereupon the agent and representative of the Glendale Coal Company having authority to employ and discharge its men, learning or having learned that said men had joined the union, stated to such men that their services were not needed longer, and thereupon said men were required to quit the servic of the Glendale Coal Company, not upon their own accord but because the Glendale Coal Company declined to retain them longer in its employ because of the fact that they had joined the union. And this respondent avers that said Hughes, in inducing said men to join the union, did not use or employ any threats, force, violence, intimidation, or other unlawful means, to induce them to become members of said union. And respondent says it is true said defendants have been unable to bring about or induce plaintiff's employees to quit its service, and for the very substantial and sufficient reason, as this respondent avers, that they have not, nor has any of them, made any effort to bring about or induce plaintiff's employees or any of them to quit its service, and denies that said Hughes has recently stated to one of plaintiff's miners, whom it is alleged but by respondent denied he was trying to induce to leave plaintiff's service and join the union, that he, Hughes, had succeeded in having 125 men at the Hitchman mine sign their names agreeing to become members of the union, and that just as soon as he could get 25 more names he was going to shut down the Hitchman mine, because said Hughes, had he obtained said signatures, had no power or authority to shut down the mine of plaintiff, nor was it his intention to do so, but only to have said miners join the union.

This respondent, for further answer unto said bill, says that he denies that the said United Mine Workers, said International Union United Mine Workers of America, said District No. 6 United Mine Workers of America, and said Sub-District 5 of District 6 United Mine Workers of America are, under their constitutions, violating the common and statute law of the state of West Virginia as well as

the Constitution of said state, and especially, as alleged in said bill, in this, to-wit: in the provisions of §§1, 3 and 4 of Art. X., Constitution of International Union United Mine Workers of America; in the provisions of §§1 and 2 of Art. VIII, §15 of Art. IX., Constitution of District 6 United Mine Workers of America; and in
195 the provisions of §§2 and 3 of Art. I., §1 of Art. IV., §6 of Art. VI., and §§2 and 3 of Art. IX., Constitution of Sub-District 5 of District 6 United Mine Workers of America; as well as in said oath that is administered to each member of the United Mine Workers of America on his initiation.

This respondent, for further answer to said bill, says that he denies that said defendants are combining and forming themselves into a conspiracy under the name of the United Mine Workers of America for any unlawful purpose or design, by enticement, persuasion or coercion in any form to bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, and denies that said defendants will, without the consent and against the will of the plaintiff, compel the plaintiff to recognize said defendants and said associations, in the further transaction or any transaction of its legitimate business in mining and shipping coal, and denies that said defendants will compel plaintiff with its employees through the said defendants as officers of said association, under such rules and regulations as will enable the defendants to dictate the persons whom the plaintiff shall employ and discharge, and the wages it shall pay, and compel plaintiff to agree that each and every employee, as a member of said United Mine Workers of America, shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employee would owe to plaintiff; and denies that they will in any manner take charge of and dictate the management of, and in any manner control, plaintiff's business, and perpetrate acts of oppression and wrong upon plaintiff, and distinctly violate plaintiff's contractual, common-law, statutory and constitutional rights as a citizen of the state of West Virginia, as in said bill is alleged.

And this respondent for further answer unto said bill says that he denies that the said defendants propose and threaten to indulge in any methods of accomplishing any result or object by the use of threats, intimidation, violent or abusive language, picketing plaintiff's premises, picketing or patrolling or guarding the streets and approaches to plaintiff's premises and going to the homes and boarding houses of plaintiff's employees for the purpose of intimidating or coercing them to leave plaintiff's employment and to picket railroad and street cars passing to and from and over plaintiff's premises, for the purpose of intercepting plaintiff's employees in going to and from plaintiff's premises, or for the purpose of intercepting or preventing persons going to plaintiff's premises for the purpose of seeking or for the purpose of entering plaintiff's employment, as in said bill is alleged.

196 And this defendant denies all unlawful combination, conspiracy and confederacy, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto,

confessed and avoided, traversed or denied, is true to the knowledge or belief of this defendant, and here denies each and every allegation in said bill contained not herein admitted to be true. All which matters and things this defendant is ready to verify, maintain and prove, as this Honorable Court may direct. And he humbly prays that the temporary injunction heretofore granted in this cause may be vacated and dissolved, and that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. R. WATKINS,
Individually and as President of Sub-District 5 of District 6, United Mine Workers of America,
By CHAS. E. HOGG, *Of Counsel.*

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Defendants.

STATE OF WEST VIRGINIA,
County of Monongalia, To-wit:

Before the undersigned, a notary public within and for the county and state aforesaid, this day personally came A. R. Watkins, who, after being by me first duly sworn, says that he is the defendant in the foregoing seperate answer as amended, and further says that the allegations therein contained, so far as they are made upon information and belief, he believes to be true, and that, so far as they are therein stated upon his own knowledge, the same are true; and he furthermore says that said foregoing answer is not interposed for delay, but in the furtherance of justice.

A. R. WATKINS.

Taken, sworn to and subscribed before me this 13th day of August, 1908.

[SEAL.] VAN A. BARRICKMAN,
Notary Public within and for Monongalia County, West Va.

197 *Affidavit of A. R. Watkins.*

(Filed August 20, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrentown, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America;
198 Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

STATE OF WEST VIRGINIA,
County of Monongalia, To-wit:

Before the undersigned, a notary public in and for the County of Monongalia, and State of West Virginia, this day personally came A. R. Watkins, who, after being by me duly sworn, deposes and says as follows:

That at the May term of the said Circuit Court of the United States in and for the district aforesaid, he filed his separate answer in the

above entitled cause, first being by him duly verified before a notary public within and for the said county of Monongalia and State of West Virginia.

This affiant further says that the day preceding the verification of said separate answer by him filed as aforesaid, he came to Morgantown, in said County of Monongalia, and state of West Virginia, to meet Charles E. Hogg, one of the counsel for the defendants in the above styled cause; that he first met Charles E. Hogg about five o'clock on the evening of that day at the residence of said Hogg, and upon meeting the said Hogg this affiant ascertained that he had already prepared this affiant's answer in said cause, which answer the said Hogg read over to this affiant; that affiant discussed very hurriedly the facts connected with said case, and directed certain changes to be made in the said answer; that thereupon Uriah Barnes, the stenographer engaged by said Hogg, was handed said answer to copy and to be made *off* in accordance with the consultation had with said Hogg, that, after spending about two hours in consulting about said case and hearing said answer read, said answer was then given, as affiant observed, to said Barnes for the purpose of copying and correcting and preparing it for the affidavit of affiant; that thereupon affiant left the residence of said Hogg and went to the hotel; that the next morning said Hogg came to the hotel, in company with his stenographer, and stated to affiant that the answer was ready, which was just a few minutes before train time; that affiant desired to take the train for his home, and not having time to read it, and believing from the statements of his counsel that the answer was in all respects accurate and sufficient, this affiant made oath to the same, and
199 immediately started on a fast run to the train, which had just pulled into the depot, and affiant had barely time to reach the depot and get his train; that said answer was therefore prepared very hurriedly, and without that consideration and care required.

Affiant further says that, at the instance of said Hogg, he returned to Morgantown in the early part of July, 1908, in company with William Green and Geo. W. Savage, and spent an entire day in going over the said suit and conferring with reference to the bill in said suit, as well as the bill in the Glendale Coal Company case pending in said court, and also read carefully a copy of the answer which this affiant had already filed in the said Hitchman Coal & Coke Company case, and found that in the hurry of the preparation of said answer there were certain errors therein contained, which affiant has corrected in the amended answer which affiant has prepared to be filed in this cause.

Affiant further says that the amendments made to his said answer appear on pages 4, 7, 10, 13, 14 and 15 of the original answer filed by this affiant in May 1908, in this cause; that the material amendments to his original answer on page 4 are inserted at the end of the eighth line from the tope of said page, and are filed herewith, marked for identification "Amendment A"; that the other amendment appearing on said fourth page is inserted at the end of the twenty-second line from the top thereof, and is filed herewith, marked for

identification "Amendment B"; that the amendment on page seven is inserted in the second line from the top, after the word "bill," and consists of the following clause—"but of which defendant also had no -nowledge"; that the amendment appearing on page ten is inserted after the first paragraph thereon, immediately after the end of the twelfth line on said tenth page, and is filed herewith, marked for identification "Amendment C", which amendment begins on page ten, as stated above, and continues to the beginning of the next paragraph, on the tenth page of said original answer in the thirteenth line thereof; that the amendment on page thirteen is inserted immediately after the word "employment" in the eighth line from the top of said original answer, and is herewith filed, marked for identification "Amendment D"; that the amendment contained on page fourteen of said original answer begins immediately after the word "manner" in the thirteenth line from the top, and is substituted in lieu of the residue of that paragraph, being in lieu of the allegation beginning with the word "that" in the thirteenth line from the top and ending with the word "whatever" in the twenty-first line from the top,
200 and is filed herewith, marked for identification "Amendment E"; that the first amendment on page fifteen of said original answer begins immediately after the close of the first paragraph on said page, after the word "mine" in the second line from the top thereof, and is substituted in lieu of the beginning of the second paragraph commencing with the word "and" in the third line from the top of said page and ending with the word "bill" in the tenth line from the top thereof, which amendment is filed herewith marked for identification "Amendment F"; that the other amendment on page fifteen of said original answer begins after the word "service" in the eleventh line from the top of said page fifteen, and is filed herewith, marked for identification "Amendment G."

This affiant further says that said amendment A simply sets forth the reasons why the employees of plaintiff entered upon a strike in 1906, and such amendment is made in said amended answer because this affiant, upon consultation with his said attorney in July, 1908, was advised that it should go in to show that said strike in 1906 was not made arbitrarily but for the purpose simply of advancing the interests of the organization of the United Mine Workers of America, and not to wantonly injure or wrong said plaintiff; and this matter did not occur to affiant when he had his conference with his counsel for the short time heretofore mentioned in May 1908.

This affiant further says that said amendment B negatives knowledge on the part of this defendant as to the conditions of the contract of employment between the plaintiff and its employees; that if said original answer can be construed to impute to affiant knowledge of the conditions of this contract, it was not so intended, as affiant did not know said conditions, if embodied in such contract, at the time said original answer was prepared, nor does he have such knowledge now, but he has been informed of such fact, if it exists, only through the allegations of the bill filed in this cause; that said answer as drafted by said Hogg and read over to him was by the said Hogg read very hurriedly, and this affiant did not intend to make oath,

to any answer that he should file in said cause, that he had knowlendge that the employees of plaintiff or any of them were required at the time of entering into its employment to agree not to become connected with the union while so employed; in fact this affiant had no personal knowledge whatever of any conditions of the contract of employment or its terms, and therefore could not make oath to any such fact.

This affiant further says that amendment C is inserted in said amended answer in order to present to the court the true interpretation of what was said and done by the United Mine Workers
201 of America in their deliberations in their convention held at Indianapolis, as alleged in the plaintiff's bill, and to exhibit to the court the object and purposes of the statements attributed to certain officers of said organization in their speeches and discussions, and to further show to the court that these speeches and discussions contemplated no wrong or injury to any operator, and especially no wrong and injury to the plaintiff, and does not contain anything inconsistent with his said original answer.

This affiant further says that amendment D is inserted in his amended answer for the purpose of making it consistent with the other portions of said amended answer negativing knowledge as to the terms and conditions of the agreement contained in the contract of employment between plaintiff and its employees, and negatives knowledge on the part of this affiant as to the terms and conditions of said contract.

Affiant further says that he misunderstood that part of the allegation of the draft of affiant's original answer as made by said Hogg when the same was read over to him at the time and under the circumstances hereinbefore stated, and said amendment E is inserted to show the true facts—in relation to that part of the bill to which the original answer in which said amendment E is inserted relates. And affiant says that on having his attention directed to that part of his original answer on page 14 he observed the error and called the attention of his counsel to it. Therefore, in order to state the facts as they truly are and as affiant knows them to be, he makes said correction by the insertion of said amendment.

This affiant further says that amendment F is inserted because the original answer of affiant, as more carefully examined and considered by him in July, 1908, does not truly set forth affiant's knowledge of the facts as to the reason why the 24 employees of the Glendale Coal Company ceased to work for said company, in that the said original answer states the information, belief and averment of this affiant that said men upon their own accord quit the service of said company, and therefore the amendment was necessary in order to show that, while they in effect did leave the employment of said company, it was not because said Hughes had induced them to join the union but because the Glendale Coal Company did not longer want them; and this fact was not set out in said original answer, as affiant did not pay sufficient attention to the said original answer while it was being so hurriedly read to him as to this particular matter. Affiant says that the only knowledge on this subject he has is

not of a personal character, but it is what some of the 24 men told him after they had gone out of the service of the Glendale Coal
202 Company; and affiant says that he believes that said men told him the truth in regard to the matter, and was advised by said counsel in July, 1908, that said amendment ought to be made. Therefore this affiant by reason of the allegation inserted in said original answer by inadvertence, says that this amendment ought to be inserted in the interest of justice, and has been inserted for that reason.

Affiant further says that amendment G contains the reason for the denial of the allegation to which that part of the original answer relates, and there is also inserted in connection with said amendment, to make it consistent and intelligible, after the word "whom" in the twelfth line from the top of page fifteen of the original answer, the following: "It is alleged but by respondent denied." This affiant says that said amendment G can only serve the purpose of making the said amend*m*ed answer consistent in all its parts, which will appear to the court from an examination of said amendments.

This affiant further says that he makes this affidavit to accompany his application for the filing of his amended answer in said cause, and asks that it be read in connection with his said amended answer in *an* support thereof, and in the light of the original answer and the circumstances under which said original answer was prepared and verified, as hereinbefore stated. Affiant says that he is informed and so avers that at this time the plaintiff has not replied to said original answer, nor has the cause been set down for hearing upon the bill and his said original answer filed thereto. Affiant further says that he is advised and so states in this affidavit that the plaintiff has taken no testimony in support of its said bill, so far as the material allegations thereof have been denied by the said original answer, and that therefore, as affiant is advised, the amendments made to his said original answer cannot operate to prejudice the substantial rights of the plaintiff, if any it has.

A. R. WATKINS.

Subscribed and sworn to before me this 13th day of August, 1908.

VAN A. BARRICKMAN,

[SEAL.] *Notary Public in and for Monongalia County, W. Va.*

Amendment A.

But this respondent avers that the employees engaged by the plaintiff under contract with the United Mine Workers of America on the first day of April, 1906, and who went out on a strike
203 under orders issued by the United Mine Workers of America, would have remained in the employ of the plaintiff and would not have quit the employ of the plaintiff, had the plaintiff been willing to sign the scale which the United Mine Workers of America had proposed, and which scale was, after April 1, 1906, signed by many of the operators in the states of Ohio, Indiana, Illinois, Penn-

sylvania, and parts of West Virginia; and so by reason of the failure and refusal of the plaintiff to sign the scale submitted to it, the employees of said plaintiff who were then members of the United Mine Workers declined to continue to work for said plaintiff; and the reason that the employees of the plaintiff declined to continue to work for plaintiff was that the said employees desired a definite and fixed scale, which carried with it a definite and fixed term of employment, and this the plaintiff declined to sign, but merely promised to pay whatever advance in price might be paid by other operators in case such other operators agreed to sign the scale and did sign the scale; and therefore, to secure the signing of this scale carrying with it a definite term of employment for the period of two years at a fixed and definite price, it became necessary for the employees of said plaintiff to go upon a strike in 1906.

Amendment B.

But this respondent denies any knowledge on his part that the employees of plaintiff were and are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed by plaintiff; and this respondent denies any knowledge on his part that if the employees of plaintiff do join the union their employment with the plaintiff shall cease; and this respondent denies any knowledge on his part that with such understanding plaintiff's employees entered into its employment; and respondent denies any knowledge that such employees are now working for plaintiff under such contract and with such condition. But this respondent denies that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employees as to the advisability or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union.

Amendment C.

And this respondent avers that whatever was said in the deliberations of the United Mine Workers in their convention
204 held at Indianapolis at the time mentioned in said bill was with reference to the policy of the organization in its negotiations with coal operators in all the states of Illinois, Indiana, Ohio, Pennsylvania and West Virginia, or wherever its members are engaged in the work of mining coal; and whatever was said or done in said convention had no reference to the men employed by the plaintiff in the year 1907; nor was said matter of plaintiff's mine mentioned, nor was anything done or said in said convention having for its object any interference with the employees of plaintiff either by argument, persuasion or otherwise; but all that was said and done in said convention had reference to the general policy and measures to be inaugurated by the union or to be maintained by it in the promotion of its growth and development by peaceable means, such as argument and persuasion, and by no other means, to advance its

interests as an organization in the territory of the states just mentioned. And this respondent, for further answer unto said bill, avers that if said T. L. Lewis used the language imputed to him in said bill (but which is not admitted) to the effect or in substance that the American continent was not large enough to maintain two organizations of coal miners and that he favored one organization of the coal miners of the American continent and the complete recognition of the union's right to organize in every mining district of the country, said Lewis by the use of said language did not intend in any manner to refer to plaintiff's interest in mining or to the plaintiff's men in its employ; but what said Lewis did mean was that, inasmuch as there were at that time two organizations of the laborers in coal mines, one in Canada and one in the United States, there ought to be but one organization for the coal miners of the United States and Canada, so as to harmonize operations in the coal mines of these two territories one with another, and better promote the purposes of the organization of the United Mine Workers, instead of having two organizations for this purpose, one in Canada and one in the United States, as then existing; nor was it the intention of said Lewis by the use of said language, if such language was by him used, to include therein the Western Federation of Miners, which has for its object the unionizing of those engaged in mining gold, silver, copper and other metals and not the mining of coal; so that the interests of the United Mine Workers of America and those of the Western Federation of Miners are not the same, and union with them would be of little, if any, practical advantage to either organization.

205 *Amendment D.*

This respondent, for further answer unto said bill, says it may be true that plaintiff's employees are not union men, and it may be true that the plaintiff's employees entered into its employment with the agreement that plaintiff should continue to run a non-union mine; but, be this as it may, this respondent avers that he is not aware that plaintiff's employees entered into its employment with the agreement that plaintiff should continue to run a non-union mine.

Amendment E.

But respondent denies that said Green then asked said general manager if he would not submit the proposition to plaintiff's board of directors, but avers that the said general manager himself stated to said Green that he, said general manager, would submit the proposition to plaintiff's board of directors, and respondent believes that said general manager did submit said proposition to said board and that said board refused to accept the same; and thereafter said defendant Green telephoned plaintiff's general manager and asked if he had submitted the proposition to plaintiff's directors, and was told that the proposition had been submitted and that the directors refused to consider the matter in any manner whatever.

Amendment F.

And respondent, for further answer unto said bill, says that he believes that it is true that said Hughes did induce about 24 employees of the Glendale Coal Company to agree to join the union, but denies that said Hughes induced said employees to quit the service of the Glendale Coal Company; and this respondent avers that, after the said men joined the union at the peaceable instance and request of said Hughes, they reported the next morning thereafter for service and work in the mine of the Glendale Coal Company, whereupon the agent and representative of the Glendale Coal Company having authority to employ and discharge its men, learning or having learned that said men had joined the union, stated to such men that their services were not needed longer, and thereupon said men were required to quit the service of the Glendale Coal Company, not upon their own accord but because said company declined to retain them longer in its employ because of the fact that they had joined the union. And this respondent avers that said Hughes, in inducing said men to join the union, did not use or employ
206 any threats, force, violence, intimidation, or other unlawful means, to induce them to become members of said union.

Amendment G.

And for the very substantial and sufficient reason, as this respondent avers, that they have not, nor has any of them, made any effort to bring about or induce plaintiff's employees or any of them to quit its service, and

Affidavit of Charles E. Hogg.

(Filed Aug. 20, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

THE HITCHMAN COAL AND COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of West Virginia, and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the

International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President
207 of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

STATE OF WEST VIRGINIA,
County of Monongalia, To wit:

Before the undersigned authority, a notary public within and for the county and state aforesaid, this day personally came Chas. E. Hogg, who, after being by me duly sworn, deposes and says: That he is one of the counsel for the defendants in the above entitled cause; that the other counsel for the defendants is Adam B. Littlepage, who resides in Charleston, in the County of Kanawha and State of West Virginia; that the affiant resides in Morgantown, in the said county of Monongalia; that affiant met for the first time the defendant A. R. Watkins on the evening of the 22nd of May, 1908, at affiant's residence in Morgantown aforesaid; that prior to that time this affiant had no opportunity to confer personally or otherwise with the said A. R. Watkins in order to prepare his answer in this cause, and that the only information he obtained was from his associate counsel, Adam B. Littlepage; that from the information thus obtained affiant some time prior to said 22nd day of May, 1908, prepared the answer for said Watkins as well as he could; that upon the arrival of said Watkins in Morgantown aforesaid on the 22nd day of May, 1908, this affiant, as counsel for the said Watkins, conferred with him very hurriedly; that affiant read over the answer he had already prepared to the said Watkins, and the said Watkins directed certain changes to be made therein, and that affiant
208 hurriedly made said changes, the whole consultation during the said evening not occupying more than two hours, if that length of time.

Affiant says that when the said answer had been read over to the said Watkins, and corrected as affiant has stated, it was handed to Mr. Uriah Barnes to be copied so as to be signed and verified by the said Watkins; that affiant obtained from said Barnes said answer on the morning of the 23rd of May, 1908, after it had been so copied, and the said Watkins then signed the same and made

oath thereto, without reading said answer or having it read to him after being so copied, there not being sufficieot time to read over said answer and enable said Watkins to reach his train to return to his home, and said answer as so hurriedly prepared was filed in May, 1908, in the said suit.

Affiant further says that in the month of July, 1908, he again met the said Watkins, in company with William Green and George W. Savage, in Morgantown, aforesaid, and then had a full consultation with said Watkins, and was fully advised with reference to the facts constituting the defense of the said Watkins and the other defendants in said suit, whereupon this affiant discovered that he had not embodied all of the facts in connection with said case relating to the defense of said defendants in the original answer filed, and that said answer would have to be amended; that, in the light of the information thus obtained by this affiant at the conference held by him with said Watkins, Green and Savage in July aforesaid, he prepared the answers which he has filed for the other defendants, and was enabled by such conference to put in a full, true and perfect answer for the said defendants who have answered the said bill other than said Watkins; that affiant at that time informed said Watkins that it would be necessary for him to amend his answer filed in said case, and affiant arranged to have the said Watkins meet this affiant in Morgantown, West Virginia, on the 13th day of August, 1908, in order to prepare an amended answer for him, said Watkins; that his amended answer was accordingly prepared by this affiant, who also prepared for said Watkins the affidavit accompanying the said amended answer, which affidavit was sworn to by said Watkins on the evening of the 13th of August, 1908.

Affiant further says that the said Watkins was not called upon to go into full detail as to his defense when affiant met him in May, 1908, and that he did not have such opportunity to go into full conference until July, 1908, as already stated; that the failure to make in the original answer of said Watkins the allegations made in his said amended answer is not due to any fault or neglect
209 of the said Watkins, but is attributable more to this affiant, as affiant was in a great hurry to get through with the said Watkins at affiant's first conference with him, and that affiant prepared the said amended answer so as to give the said plaintiff ample time to meet the allegations therein by proof if necessary, and that the amendments to said answer can not occasion the said plaintiff any delay or inequitable hardship.

Affiant further says that he is informed and believes, and so states, that the original answer of said Watkins has not yet been replied to by the said plaintiff, nor has the cause been submitted for hearing on the said original answer, but that the whole matter is still open, nothing having been done except to file the said original answer.

Affiant further says that the said Adam B. Littlepage took no part in the preparation of said answer, as the matter of preparing it was deferred by him to this affiant, and that this affiant had no opportunity of consulting with the said Littlepage after meeting

him in Parkersburg, West Virginia, in January, 1908, and that the merits of the case were hurriedly discussed with the said Littlepage on the occasion of affiant's conference with him at Parkersburg.

CHAS. E. HOGG.

Taken, sworn to and subscribed before me this 18th day of August, 1908.

VAN A. BARRICKMAN,

[SEAL.] *Notary Public within and for Monongalia County, West Virginia.*

Affidavit of Uriah Barnes.

(Filed Aug. 20, 1908.)

In the Circuit Court of the United States in and for the Northern District of West Virginia.

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually, and as President of the United
210 Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

STATE OF WEST VIRGINIA,
County of Monongalia, To wit:

Before the undersigned authority, a notary public in and for the county and state aforesaid, this day personally came Uriah Barnes, who after being by me duly sworn, deposes and says as follows: That in the month of May, 1908, to-wit, on the even-
211 ing of the 22nd day of that month, he was called to the home of Chas. E. Hogg, one of the counsel for the defendants in the above entitled cause, to receive instructions with reference to the preparation of an answer for A. R. Watkins to be filed in said suit; that he was not at the residence of said Hogg very long on said evening; that he was handed what purported to be a draft of an answer with certain interlineations therein made, and that the answer was quite long; that during the night he copied the same, and on the next morning handed it to said Hogg as copied; that he knows that same was not read over to the said Watkins but that said Watkins signed and swore to the same without reading it, the said Hogg stating that it was substantially if not exactly as understood by him the evening before when he was at the residence of said Hogg; that said answer was prepared with a great rush; that the train upon which said Watkins left for home on the morning of the 23rd of May, 1908, whistled for the station just about the time said Watkins had signed and sworn to the said answer, and that the said Watkins left the office of the notary public in a great hurry in order to catch the train.

URIAH BARNES.

Taken, sworn to and subscribed before me this 18th day of August, 1908.

VAN A. BARRICKMAN,
[SEAL.] *Notary Public in and for Monongalia Co., W. Va.*

Decree Tendering Amended Answer of A. R. Watkins.

And at another day, to-wit: On the 20th day of August, 1908, the following order was made and entered of record, to-wit:

In Equity.

THE HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union
212 United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America

and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

On this the 20th day of August, 1908, and before any replication had been filed by the plaintiff to the original answer of the said A. R. Watkins filed herein, and before any proof taken and filed herein by either party, and before the submission of said cause to be heard on bill and answers, came the defendant A. R. Watkins, of Yorkville, Ohio, and a citizen of the state of Ohio, individually, and as President of Sub-District 5 of District 6 United Mine Workers of America, by Chas. E. Hogg, his counsel, and tendered his
213 amended answer duly verified by him, accompanied by his own affidavit and the affidavits of said Chas. E. Hogg and of Uriah Barnes, and asked leave to file said amended answer together with the affidavits accompanying the same, to the filing of which the plaintiff, by its counsel, Geo. R. E. Gilchrist, objected, and asked leave to submit argument in support of said objections.

Decree Withdrawing Answers.

And at another day, to-wit: On the 22d of July, 1910, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE CO.
vs.
JOHN MITCHELL et al.

On this 22d day of July, 1910, came again the plaintiff, by Geo. R. E. Gilchrist, its attorney, and the served defendants, by Chas.

E. Hogg, their attorney, and thereupon said defendants for the purpose of speeding a hearing of this cause upon its merits, asked leave to withdraw the separate answers of William Green and D. H. Sullivan and the original and amended answers of A. R. Watkins, and the joint and several answer of all the served defendants, conceding for the purpose of withdrawal and to speed the hearing of said cause, the plaintiff's exceptions filed in writing to said answers, which leave is hereby given, and said answers are permitted to be withdrawn, which is accordingly done, but they are not to be removed from the file.

And upon motion of the said served defendants leave is hereby granted them to file other answers in this cause, either a joint and several answer as they may be advised, or joint and several answer and also such separate answers as they may elect to file; and to such answers, when filed, the plaintiff reserves and is given the right to file exceptions, or make other objections, if it elects to do so.

The said other answers are to be filed on or before September 5, 1910.

214 *Decree Introducing Documents in Evidence.*

And at the same day, to-wit: On the 5th day of November, 1910, the following order was made and entered of record, to-wit:

No. 7. In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America: A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton,

Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine
215 Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

On this fifth day of November, 1910, came the plaintiff, by George R. E. Gilchrist, its counsel, and filed its motion in writing that the clerk of this court do produce certain papers from the file in this cause, specifically described in said written motion, and that upon production and inspection by the court an order be entered filing said papers as documentary evidence to be read on behalf of plaintiff at the hearing of this cause, saving all just exceptions.

And the clerk of this court having now produced in open court the said papers from the said file in this court in this cause, and the court having inspected them, and being satisfied with their authentication, doth grant plaintiff's said motion, and it is here ordered that the following papers from the file in this court in this cause be and they are hereby filed to be read on behalf of the plaintiff upon the issue joined, at the hearing, saving all just exceptions—

1. Plaintiff's written motion filed January 14, 1908, in open court, at Parkersburg, the time originally set for the hearing of plaintiff's motion for an injunction, wherein plaintiff, as a preliminary to contempt proceedings, and laying the foundation therefor, set forth in the motion and in the affidavits, filed in support thereof, that the served defendants, some or all of them, were in defiance of the restraining order entered October 24, 1907, still endeavoring to unionize plaintiff's mine and endeavoring to have plaintiff's employees join the union while still in plaintiff's employ in breach of plaintiff's contractual right with its said employees.

2. Affidavit of E. T. Hitchman, dated January 11, 1908, including therewith accompanying exhibits numbered 1 to 29, inclusive.

3. Affidavit of Wayne Archer, dated January 11, 1908.

4. Affidavit of B. F. Marling, dated January 11, 1908. And the court reserves the right to hereafter fix the time within which exceptions are to be made.

216 *Motion to Continue Restraining Order, Etc.*

(Filed Jan. 14, 1908.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

Comes now the Hitchman Coal & Coke Company, the above named plaintiff, and shows to the court:

First. That on the twenty-fourth day of October, 1907, said complainant filed its bill in open court, at Philippi, against said defendants, praying for an injunction, and thereupon a restraining order was issued, conforming to the prayer of the bill; the motion for an injunction as prayed for was set down for hearing in the United States Court room at Parkersburg on the fourteenth day of January, 1908, at 10 o'clock A. M.; plaintiff required to enter into bond in the penal sum of two thousand dollars ($2,000.00) with surety satisfactory to the clerk of this court, and that a copy of the order was ordered to be served upon said defendants, giving them notice of the time for hearing the motion for injunction and further giving to them full notice of the terms of said restraining order.

Second. That plaintiff on said twenty-fourth day of October, 1907, entered into the bond required, and on Saturday, October 26, 1907, caused to be inserted in the Wheeling Daily Register, the Wheeling Daily Intelligencer and the Wheeling Daily News a true copy of said restraining order, certified to be such by the clerk of this court, the said Wheeling Register, the said Wheeling Intelligencer and the said Wheeling News being each newspapers of general circulation, published in the City of Wheeling, West Virginia.

Third. That promptly upon the filing of said bill, plaintiff caused proper subpœna to issue from the clerk's office of this court to each of said defendants, requiring them and each of them to be and appear in this court at rules to be held in the clerk's office at Philippi, on the first Monday in December, 1907, to answer said bill, and to the original and to each copy there was attached a duly certified and sealed copy of said restraining order; that no service was had of any of said subpœnæs, return being made by the marshal that
217 said subpœna was not served, and that said defendants were not found within his District; that thereupon plaintiff caused an alias subpœna to issue, returnable to the first Monday in January, 1908, to the original of which alias subpœna and to each copy there was likewise attached a duly certified and sealed copy of said restraining order; that on the twenty-seventh day of December, 1907, service of said alias subpœna and service of said re-

straining order was had upon the defendant, T. L. Lewis, individually, and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; that on the thirty-first day of December, 1907, service of said alias subpœna and service of said restraining order was had upon the defendant, William Green, individually, and as President of District No. 6, United Mine Workers of America, and upon the defendant, D. H. Sullivan, individually, and as Vice-President of District No. 6, United Mine Workers of America, and upon the defendant, Lee Rankin, individually, and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and service was not had upon any other of the defendants; that thereupon plaintiff caused a pluries subpœna to issue, returnable to the first Monday of February, 1908, for the unserved defendants, to the original and to each copy of which pluries subpœna there was likewise attached a duly certified and sealed copy of said restraining order; that on the ninth day of January, 1908, service of said pluries subpœna and service of said restraining order was had upon the defendant, A. R. Watkins, individually, and as President of Sub-District 5 of District 6, United Mine Workers of America, and upon the defendant, John Zelenka, individually, and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America and service has not been had upon any others of the defendants.

Fourth. That after the granting of said restraining order and the publication thereof in said daily papers in Wheeling, the said defendants who have finally been served with the alias subpœna and the defendants who have finally been served with the pluries subpœna repeatedly visited Wheeling and interviews with one or more of them from time to time appeared in said daily papers, and there likewise appeared in said papers notices of their presence in the City, yet up until the time stated no service was had, although the requisite papers, during all of that time and on all of those occasions, were for the purpose of service in the hands of a Deputy Marshal for this District; that while the alias subpœna was still in said Deputy Marshal's hands for service the defendant,
218 Thomas Hughes, on the evening of December 3, 1907, was seen and known to be at the St. Charles Hotel on Water Street, in the City of Wheeling, and information to that effect was at once given by plaintiff to said Deputy Marshal, and said Deputy Marshal was by plaintiff requested to at once go and serve said alias subpœna and said restraining order upon said Hughes, yet said officer stated that he did not want to get Hughes then, that Hughes was the smallest one of the bunch, and that he would rather wait and get the rest of the defendants as he was afraid that Hughes would notify the rest of them, if he got him served first, whereupon plaintiff making protest and again requesting the officer to serve Hughes, the officer stated he did not have with him the copy which was in his hands for service on Hughes, but that he had with him the papers for all of the other defendants, and eventually said officer left plaintiff's representatives, who had been urging him to make service on Hughes, and stated that he would have to go to his

office, and for them to remain until he came back, which turned out to be ten or fifteen minutes later, whereupon said officer and representatives of plaintiff together went to the St. Charles Hotel, by which time Hughes had gone, and plaintiff could not later locate him again; that after said restraining order was entered articles from time to time appeared in said public press in Wheeling, commenting upon the fact that no service was had and questioning the effect of the restraining order owing to lack of service; that on December 16, 1907, in the Wheeling Intelligencer an article appeared professing to be an interview with the defendant, A. R. Watkins, headed—"To Organize Miners Despite Injunction—Work in W. Va. Begins Today. President Watkins and Others Inaugurate Campaign. Hitchman and Other Pan Handle Mines Included," in which it is stated that defendant Watkins said he and said defendant Green would on that day start the work of organizing the miners at plaintiff's mine; that in the Bridgeport items, taken from the Wheeling Daily News of December 16, 1907, an article appeared which stated that while it had been announced that the United Mine Workers would start to organize the men in spite of the injunction, yet it was not likely that any of the officials named in the injunction would take part in the work; and that an article appeared in the Wheeling Daily News of December 18, 1907, stating that the officials of the Fifth Ohio Sub-District miners' organization began on December 17, 1907, a campaign to organize the hundreds of men employed in the Pan Handle District, and this significant statement followed: "The officials will continue their efforts until stopped by the courts or until they have accomplished their purpose."

219 Fifth. Plaintiff further shows that on the twenty-fourth day of December, 1907, John Morosco, who by plaintiff is known on information to have been and on such information is believed and is alleged to be an organizer for the United Mine Workers of America was detected upon the premises of plaintiff at its mine in Benwood, near the houses in which plaintiff's miners live, but finding himself watched left, and again on the twenty-seventh day of December, 1907, three other persons who professed themselves to be organizers for the United Mine Workers of America and who said they had come there for the purpose of organizing plaintiff's mine appeared near plaintiff's mine and talked on that subject with one or more employees of plaintiff.

Sixth. Plaintiff further shows that while service of said subpœna and service of said restraining order, including notice to the defendants that a hearing upon the motion for an injunction would be had at Parkersburg on January 14, 1908, at 10 o'clock A. M. as aforesaid, has been made upon certain of the defendants named in said bill, yet all of said defendants have not been served, and plaintiff further shows on information and belief that several if not all of the remaining defendants, now unserved, are expected yet to come within the jurisdiction of the court, upon the happening of which plaintiff could get service.

Therefore, plaintiff moves the court that the restraining order heretofore entered on October 24, 1907, be continued until the eighteenth day of March, 1908, during which time intervening between now and then plaintiff may cause proper pluries subpœna to issue from the clerk's office for said unserved defendants; and

Plaintiff, therefore, further moves that the hearing upon said motion for injunction, which was set down for January 14, 1908, be continued until said eighteenth day of March, 1908, at Philippi, at two o'clock P. M.; and that the court will please to make such other order in the premises as to the court shall seem meet.

GEORGE R. E. GILCHRIST,
Attorney for Plaintiff.

220 *Affidavit of E. T. Hitchman.*

(Filed Jan. 14, 1908.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

In Equity.

GLENDALE COAL COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

Affidavit of E. T. Hitchman.

I, E. T. Hitchman, the undersigned affiant, being first duly sworn upon my oath, in the city of Wheeling, West Virginia, say:

On the evening of December 3d, 1907, I learned from an employee of the Hitchman Company, who had been sent to Wheeling to try to locate some of the defendants who had not been served, that the defendant, Hughes, was at the St. Charles Hotel, on Water Street, in Wheeling, information to that effect being given to me by Clyde Round, our assistant pit boss, who said that he had just come from that hotel and that he had just seen Hughes there sitting in the public room or office of the hotel. I at once directed him to get the deputy marshal, C. E. Williams, and have the deputy go with him to the St. Charles Hotel and serve Hughes. Round at once left me at the hallway leading to the Bijou Theater and went up the stairs and directly came back down stairs accompanied by Williams. The officer said in my hearing then that he did not want to get Hughes; that Hughes was the smallest one of the bunch, and that he would rather wait and get the rest of the defendants as he was afraid that

Hughes would notify the rest of them if he got him served first. I protested to the officer against his failing to make the service, and finally the officer and Round left me, and instead of going to the St. Charles Hotel as I directed them to, which was just down Fourteenth Street two blocks away, the officer walked a few feet from where we were standing on Fourteenth street, down as far as Market street, and turned up Market street. I followed at a little distance myself, and when I got to the McLure House, I saw Round
221 standing outside of the McLure House by himself, and the officer was not with him. I asked Round where the officer was, and he said the officer had told him to remain there until he came back, that he didn't have the Hughes papers in his pocket, and said that he would have to go to his office to get them. I waited in front of the McLure House on Market street with Round for some minutes and then left to go to the St. Charles Hotel myself, telling Round to wait on Williams and to get along as fast as they could. I stopped at the Stamm Hotel to see if Hughes or any of the other defendants were there, and while in there Round and Williams came in and overtook me. I took Williams to task then for not having gone direct to the St. Charles Hotel when Hughes was there and for not having served Hughes; and he said in reply that the reason he hadn't gone to the St. Charles Hotel was because he hadn't had Hughes' papers with him; that he had all the other papers except Hughes, and that he had to go to his office to get Hughes' papers.

We then went from the Stamm Hotel along Water street to the St. Charles Hotel, a half block away, but when we got there Hughes was not in sight. At least fifteen to twenty minutes must have elapsed from the time I urged Williams to go down to the St. Charles Hotel the first time when Round first reported Hughes' presence at the St. Charles Hotel until we finally reached the St. Charles Hotel, at which time we found that Hughes was gone. It wasn't over a two minutes' walk from the Bijou Theater to the St. Charles Hotel.

Since the restraining order was issued in these two cases mentioned in the caption of this affidavit, I have made continuous and earnest efforts to locate the defendants while in Wheeling, and have had repeated dealings with C. E. Williams, who, for the purpose of service, had the papers in his hands in each case. I have kept a careful watch on the newspaper reports of interviews and statements showing the presence of the defendants, or one or more of them, in Wheeling, and wherever possible I have followed up this information for the purpose of verifying the correctness of the statements I found in the papers. In the main, the statements that I have read, and which I attach as exhibits to my affidavit, marked Exhibit No. 1 to 29, inclusive, and identified by the signature of the notary, I have found to be correct, and I have in addition from time to time learned of the presence of one or more of the defendants in Wheeling at times when their names would not appear in the papers as having been in Wheeling. The exhibits referred to are slips cut from the different issues of the papers and are marked so as to show from what issue of what paper the clipping is made.

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222 When I learned that it was likely T. L. Lewis would be in Wheeling on the night of December 26th, 1907, and that he would likely take the B. & O. train from Wheeling leaving about half past twelve the next morning, I went to the Bijou Theater, where Williams is ticket taker, and told him I wanted him to be on hand at that train, that I believed Lewis would be there and would try to get out on that train. The officer objected to staying in town over night, but upon my insisting upon his remaining, he finally agreed to do so. I had one of our men watch the train for Lewis and for the purpose of identifying him so that Williams would know him, as Williams said that he did not know Lewis. The officer came to that train, our man pointed out Lewis to him, and the officer then served the papers. When, on the night of December 31st, 1907, I learned that one or more of the defendants would likely be at the Stamm Hotel, I personally went after the officer, found him at the Bijou Theater, and got him to go with me down to the Stamm Hotel. There he served Green, Sullivan and Rankin. When, on the morning of January 9th, 1908, I learned that Wakins and Zelenka were in town and were to be at the office of Patrick McBryde, in the Schmulbach Building, Wheeling, I personally notified the officer and had him meet me at the McLure House. From there we went to McBryde's office, and there the officer served Watkins and Zelenka.

From information received by me from different sources, and from some of the newspaper clippings which I have made exhibits to this affidavit, I have reason to believe, and do believe, that the United Mine Workers of America have not ceased their efforts to unionize the Hitchman and the Glendale mines. I have the statement of Wayne Archer, who is employed by both companies as pay roll clerk and assistant bookkeeper, which I believe to be true, that on December 24th, 1907, in the afternoon, while W. H. Koch and I were in Wheeling, we having left the mine about noon of that day for Wheeling, John Morosco was seen by him, Archer, on the premises of the Hitchman Company and circulating amongst some of the men employed by the Hitchman Company, and was near the entrance to the row of houses in which the men live. I have further statement from Archer that when the man noticed that he had been seen he left the premises and went out on the street. I have further Archer's statement that this man he saw was a United Mine Worker organizer who had been discharged by the Carnegie Company's Bellaire mine for having tried to unionize the miners at that mine, which is run non-union.

223 I have the further information, based on the statement of Mike Popage, an employee of the Hitchman Company, and whose statement I believe to be true, that on Friday, December 27th, 1907, three men were at the Hitchman mine, and that they said they were there for the purpose of organizing the Hitchman miners.

I have the further statement of Frank Wilhelm, of Benwood, who runs a saloon just across the road and nearly opposite our property, that the defendant, Watkins, had been down to the mine a few days before Christmas, and had been in his saloon and over on

the company's premises and circulating about among the men for the purpose of finding out how things were going on.

The visit of Watkins, taken in connection with the presence of John Morosco, organizer for the United Mine Worker, and the presence of the three men who told Poppage they were organizers and that they had come to the mine to organize the Hitchman men, leads me to think that the United Mine Workers are still endeavoring to organize our men in spite of the injunction, just as Watkins is reported to have said as set forth in some of the newspaper clippings I have filed.

I believe we can get service on some of the others of the defendants also if proper effort is made.

I further state that copies of the restraining order were printed in full on October 26th, 1907, in the Wheeling Register, Wheeling Intelligencer and Wheeling Evening News.

I make this affidavit for use in support of any motion or of any pleading in which its subject matter is properly usable in either or both of the cases mentioned in the caption.

E. T. HITCHMAN.

(Two originals executed.)

Taken, sworn to and subscribed before me this 11th day of January, 1908.

HERMAN A. HUNDT.

[SEAL.] *Notary Public in, for, and of Ohio County, West Virginia.*

EXHIBIT No. 1 TO AFFIDAVIT OF E. T. HITCHMAN.

(Copy of restraining order clipped from Wheeling Register of Saturday, October 26, 1907.—CLERK.)

EXHIBIT No. 2 TO AFFIDAVIT OF E. T. HITCHMAN.

(Copy of restraining order clipped from Wheeling Intelligencer of Saturday, October 26, 1907.—CLERK.)

224 EXHIBIT No. 3 TO AFFIDAVIT OF E. T. HITCHMAN.

(Copy of restraining order clipped from Wheeling Daily News, of Saturday, October 26, 1907.—CLERK.)

EXHIBIT No. 4 TO AFFIDAVIT OF E. T. HITCHMAN.

(Copy of restraining order in re Glendale Coal Company v. John Mitchell, et al., clipped from the Wheeling Intelligencer of Saturday, October 26, 1907.—CLERK.)

EXHIBIT No. 5 TO AFFIDAVIT OF E. T. HITCHMAN.

(Copy of restraining order in re Glendale Coal Company v. John Mitchell, et al., clipped from the Wheeling Register of Saturday, October 26, 1907.—CLERK.)

EXHIBIT NO. 6 TO AFFIDAVIT OF E. T. HITCHMAN.

(Copy of restraining order in re Glendale Coal Company v. John Mitchell, et al., clipped from the Wheeling Daily News of Saturday, October 26, 1907.—CLERK.)

EXHIBIT NO. 7 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Tuesday, November 12, 1907.

Officials of the Mine Workers Explain More Fully Their Position in Regard to Checks.

Officials of the Ohio miners organization who came to Wheeling Monday night object to the statement in a morning paper today that they came here principally to aid the operators in inducing the miners to accept the clearing house checks. Vice-President Sullivan said to a News reporter Tuesday morning at the Stamm House that that was not the object of their visit at all, but the check matter was a mere incidental to their trip.

He denied also that the board of the Ohio miners had taken action in which they ordered the men to accept the checks. The board discussed the matter but the only action they took was that in preference to letting the men strike or lay idle they would advise them to accept the checks on condition that the store keepers and business men generally would accept them for their face value.

225 The statement that President Green and President Watkins were with Vice-President Sullivan, Vice-President Zalenka and Secretary Pat McBryde at Barton yesterday to insist on the men taking the checks was also incorrect. Messrs. Sullivan and Zalenka were there with Mr. McBryde to settle some local trouble and the check question came up with the result that Mr. Sullivan advised the men just as the state board had decided.

President Green of the Ohio miners, who arrived last night went to Glencoe this morning with President A. R. Watkins and P. McBryde to look into some local matter and from there President Green will go to Cambridge.

While in Wheeling, Vice-President Sullivan received word from National Secretary Wilson that he as an alternate to President Mitchell would be expected to attend the National convention of the Federation of Labor at Norfolk as Mr. Mitchell would not be able to go before the end of the session. Mr. Sullivan will not be able to get away before Friday or Saturday.

Business Affairs of the Mine Workers' Local Being Looked Into by Officials.

All the officials of the Ohio miners' organization, except Secretary-Treasurer W. G. Savage, and all the Fifth Ohio sub-district officials were in Wheeling for a short time this morning. The two Presidents went out the B. & O. this morning, Vice-President D. H. Sullivan

will be in town a good part of the day before going over the river to see miners of the sub-district regarding local troubles, and Lee Rankin, sub-district secretary-treasurer, has been kept pretty busy all day looking into the financial condition of several locals.

A committee from the Moore's run local at Bridgeport visited Secretary Rankin at the Stamm House this morning and settled up their business affairs, as did a committee from local 1271, composed of the mill miners at Martins Ferry. The latter was in arrears to the state organization, not having made their payment of dues.

Secretary Rankin said that the refusal of some of the miners to accept the clearing house checks was due to a misunderstanding of conditions and he believes they now have a knowledge of the business that will prevent further trouble as long as the checks are accepted by business men. The trouble at the Russell mine at Tiltonsville and the Y. & O. Florence mine near Martins Ferry has been settled.

226 EXHIBIT NO. 8 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Thursday, November 21, 1907.

Question as to whether serving injunction notices is absolutely necessary—Law holds good if defendants are aware that order is granted—A difficult matter, however, to prove that they have such knowledge.

So far the United States Deputy Marshals who have the papers in the temporary injunction matter recently granted by Judge Dayton against the United Mine Workers' officials restraining them from attempting to organize the men in the Panhandle district have not succeeded in getting service upon any of the defendants.

The reason is due to the fact that all of the officials who are the defendants in the cases are residents of other states, most of them living in Ohio, and since the granting of the order they have not had occasion to come to West Virginia for any period of time.

However, some of the state and district officials were in the city several days ago on business but the deputy marshals did not succeed in locating them, not learning of their presence in the city. According to a statement made by one of the officials none of them are making any attempt to evade the service of the notices.

A question has arisen and has been given to much discussion as to whether it is necessary that the defendants be served with notices and copies of the restraining order, that it may be effective in preventing them from going among the men with the intent of organizing them.

This is the result of opinions being expressed that as a copy of the injunction was published in each of the daily papers that the officials should be aware *that* of the injunction without having copies officially served upon them.

When asked about this matter yesterday one of the federal court officials stated that it would be a matter for the judge to decide. He said that in many cases where the defendants had knowledge of the

granting of the injunction the court has held that it is not necessary that they be officially served with the notices.

But he said the trouble would come when it is attempted to show that these defendants had knowledge of the restraining order. It would be necessary to furnish proof that they were aware of the fact and this would be a very difficult matter in a majority of
227 cases. The fact that a copy of an injunction was printed in the papers would not be sufficient to show that the defendants had gained knowledge of the court's action.

However, there need be no fear of any of the provisions of the court's order being violated as the miners do not intend to pursue any violent course. As stated they are making no attempt to evade the service of the notices and they expect to abide by the law until the matter is settled and also will observe the law afterward whether the injunction is made perpetual or dissolved.

EXHIBIT No. 9 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Wednesday, November 27, 1907.

Watkins in Town.

President of Sub-District Mines in City.

Hotel Arrivals.

A. R. Watkins, president of 5th Ohio sub-district of the United Mine Workers of America, was in the city Wednesday, having come to see Secretary P. McBryde of the Pittsburg Vein Operators of Ohio. He reported that things were going well throughout the sub-district, no trouble being experienced anywhere.

EXHIBIT No. 10 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Saturday, November 30, 1907.

Lee Rankin, of Dillonvale, secretary of the Fifth Ohio sub-district of the United Mine Workers, was at the Grand Central Friday night, and left Saturday morning for Bridgeport.

EXHIBIT No. 11 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Register, Tuesday, November 12, 1907.

Stamm—C. R. Starr, Columbus; P. M. Smith, Warren; J. M. Keering, Pittsburg; C. G. Ogden, Salem; W. W. Davis, S. T. Green, Baltimore; P. Corbley, Fordyce; and wife; Waynesburg; C. Barkley, Toronto; L. Rankin, Dillonvale; Oliver Gorrell, Algeria,
228 W. Va.; Charles O. Bricknide, Marietta; A. Frederick, Baltimore; George A. Brown, P. W. Little, J. L. Wells, John R. Denler, Pittsburg; J. Key Ursyley, Alliance; F. S. Kiklens, Franklin, Pa.; H. W. Roberts, Sistersville; Wm. Green, Coshocton; J. W. Murphy, Pittsburg; C. M. Patterson, Newark.

EXHIBIT NO. 12 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Register, Wednesday, November 13, 1907.

Stamm—S. S. Gump, Pittsburg; P. H. Anderson, Friendly; Wesley Kelley, Pittsburg; S. J. Elliott, New Martinsville; John D. Elliott, Belle Center, O.; Elmer Miles Patterson, U. S. M. C.; John Culp, U. S. M. C.; M. A. Foster, Oil City; C. E. Burer, Chillicothe, O.; C. Y. Moore, Beaver; William Green, Coshocton; E. J. Kuderly, New Philadelphia; W. O. Lamesden, Toledo, W. J. Burns and wife, Walter Burns, Pittsburg; H. Ray Nisley, Florine, Pa.; Erward Bichoff, U. S. A.; Dr. R. E. Jones, A. H. Jones, Bethany; C. Barkley, Toronto; T. M. Moore, D. J. Franel, Columbus, P. H. Anderson, Friendly; Mrs. Albert Deitrich and sons, Ravenna, O.; J. W. Martin, Bethseda.

EXHIBIT NO. 13 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Register, Sunday, November 24, 1907.

Summons Not Yet Served on Them.

Deputy Marshals Have Not Succeeded in Getting Service on Mine Workers Officials.

The United States Deputy Marshals to whom was assigned the duty of serving the summons on the defendant union officials of the Fifth Ohio Sub-District, and of the United Mine Workers of America, have not as yet succeeded in serving the papers in the injunction suits instituted by the Richland Coal Company, the Glendale Coal Company, and the Hitchman Coal & Coke Company in the United States Circuit Court.

There is considerable diversity of opinion among lawyers as to whether service of notice by publication is valid in a case where one or more of the defendants reside outside of the jurisdiction of the court where the suit is pending. John Mitchell, president of the United Mine Workers of America, resides at Spring Valley, Buren county, Illinois. Mr. Mitchell, President Watkins, of the
229 Fifth Ohio sub-district and Secretary Lee Rankin are among those who have not been personally served with the restraining order issued by Judge Dayton. If the case against Mrs. Beymer, who was not a party to the telephone companies injunction can be regarded as a precedent, personal notice is not necessary in order to enforce an injunction order against a person who has not been personally served with the notice of its issuance, if the person comes within the jurisdiction of the court and violates any of the provisions of the order.

EXHIBIT NO. 14 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Telegraph, Tuesday, November 12, 1907.

Sullivan Picks Lewis to Win in Contest for the Presidency.

Vice-President of Ohio Mine Workers Confident that Bridgeport man Will Be Successful. Officials Left Today for the Highland Plant.

"The mine workers of Ohio are solid for Lewis and indications are that he will win in the fight for the presidency."

This statement was made to a Telegraph reporter this morning by Dennis H. Sullivan, of Coshocton, O., vice-president of the United Mine Workers of Ohio, who has been in the city since Sunday evening looking after conditions and consulting the officials of the Fifth Ohio sub-district. Mr. Sullivan is a warm friend of Mr. Lewis, and says his fight will be on conservative methods. His advancement in the organization has so far been rapid, and his ability is recognized by the miners throughout the country.

Mr. Sullivan is a candidate for re-election to the office of vice-president and William H. Green is also an aspirant to succeed himself as president. It is believed that both have good chances of victory. The locals throughout the state are already voting and placing candidates in the field. So far both gentlemen have the lead, and there is but little doubt of their re-election.

Causing Some Trouble.

Owing to the fact that a number of the coal companies in the Eastern Ohio field have paid in checks during the past few days,
230 resulting from the stringency in the money market, many of the miners became dissatisfied and threatened to quit work. Believing that conditions would become more alarming, President Green and Vice-President Sullivan came here and have been directing their work from headquarters temporarily established at the Stamm House. President Green advised *to* miners to continue work, assuring them that in his opinion the payment in checks would soon be discontinued. The merchants at the various towns throughout the sub-district have been accepting the checks and the miners are becoming better satisfied, although they will remain discontented to a considerable extent, until the companies resume their payments in currency as formerly.

The main trouble the officials have experienced has been in inducing the foreign speaking miners to believe that the checks are good as gold, and will be redeemed in currency in a short time.

Leave for Donora.

This morning President Green, sub-district President Watkins, Vice-President John Zelenka, and Patrick McBryde, secretary of the

operators' association, left for the Donora mine, of the Highland Coal Company, where some trouble exists. The exact nature of the grievances was not learned, but from reports, the trouble is not serious and will be satisfactorily settled at a conference to be held this afternoon. The men did not quit work, but were stirred up over some local grievances, and threatened to strike.

Vice-President Sullivan left at noon today for New Philadelphia, O., where he will take up some local grievances and make a general survey of conditions. He will remain in that section for several days. Secretary Lee Rankin, who has also been here for the past day or two, left for points on the Wheeling and Lake Erie railroad, and after looking after some matters in the interests of the union, he will return to his home at Dillonvale, O.

Miners Resume Work.

At the Red Mud mine of the Pittsburg coal company at Rayland, the men have returned to work, after being out for several days on account of the discharge of a blacksmith. Yesterday Secretary Rankin of the miners, and Secretary McBryde of the operators visited the mine, and after a conference the men agreed to re-enter
231 the mine. The discharged employe was reinstated, and the men were satisfied to return to work. About 100 men are employed there.

Conditions in other sections of the district are normal. The output continues large and there are no grievances to speak of aside from those mentioned.

In a casual way, Vice-President Green this morning took occasion to remark that a morning paper gave a wrong impression when the statement was made that the miners' officials had come here to aid the Eastern Ohio operators.

EXHIBIT NO. 15 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Telegraph, Thursday, November 14, 1907.

United States Marshals Are Outwitted by Miners' Officials.

Luckily Escaped Service of Copies of Injunction Granted by Judge Dayton.

Although two or three deputy United States marshals were chasing around town with copies of the injunction granted by Judge A. G. Dayton, in the United States court, at Philippi, in search of Vice-President Dennis H. Sullivan, of the Ohio Mine Workers, Lee Rankin, secretary of the sub-district, and other offcials of the union, the officials easily gave them the slip and got back into Ohio without service.

For two days the hotel- where the officers had been making their headquarters were carefully watched, and the fact that the marshals

didn't know the officials by sight made it easy for them to elude service, although neither Mr. Sullivan nor Mr. Rankin made any great effort to keep out of the way. Mr. Sullivan has been on West Virginia soil half a dozen times since the injunction was issued. President Watkins has been here frequently, but states that he has not even seen a deputy marshal.

It is a question of law whether or not it will be absolutely necessary for the papers to be served, as they have been published in the newspapers, but "as a matter of form," the deputy marshals have been very anxious to get their optics on the officials named as defendants in the injunction.

232 EXHIBIT NO. 16 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Intelligencer, Tuesday, November 12, 1907.

Officials Come to Aid East Ohio Operators.

Both Green and Sullivan Here—Only Foreign Miners Are Objecting to the Temporary Use of Checks—Outlook for the Industry Declared to Be Good.

President William Green of Columbus, the head of the United Mine Workers of Ohio, was an arrival in the city last evening, and is a guest at the Stamm. President Green, in discussing mining affairs last evening, stated that throughout the state the conditions were very satisfactory as to work.

"My advice to the miners has been to stay at work too, as long as possible, and when it became evident that many of them would have to be paid in checks we at once advised that they see their local merchants and arrange with them to accept the checks without discount. We anticipate very little trouble."

The object of Mr. Green's visit here is to look over the situation and where necessary explain to the men the necessity for the issuance of checks.

Sullivan Also Here.

D. H. Sullivan, of the United Mine Workers of Ohio, was in Bridgeport Monday afternoon for a short time, on business connected with the miners' organization. Mr. Sullivan stated that his visit at this time to the Fifth sub-district of Ohio was on account of the paying of the miners with clearing house checks, and his object was to advise and encourage the miners to accept the checks as pay. The trouble, he stated, in convincing the miners that the checks were good, was only with the foreigners who could not speak or read English, and he was of the opinion that the mine officials would be able to influence the men to accept the checks and continue at work. Only a few places in the district are giving the officials trouble and these cases part of the men are willing to work.

Vice-President Sullivan stated that it was not their work but that the officials were glad to help out the operators and do all they could to keep the mines in operation. At a meeting of the state executive committee of the miners it was decided to advise all the
233 miners to accept the checks for pay and to continue at work. Since the meeting both President Green and Vice-President Sullivan and District President Watkins and Vice-President Zelenka went to Barton, where some of the foreigners were finding fault with the checks and held a meeting with them inducing them to accept the checks and continue to work. In the evening Mr. Sullivan left for New Philadelphia to visit the locals in the northern part of the district.

Industrial Peace.

"The miners in Ohio are enjoying industrial peace at the present time," was the answer Vice-President Sullivan gave when asked about the mines in the state. He said the miners were having steady work and difficulty had been the shortage of cars which was effecting all the mining districts in the state. No serious strikes are on and, in fact, he said, there was no strikes in the state at the present time, but at all times there were grievances that had to be adjusted.

The outlook for an interstate agreement between the miners and operators of Ohio, Pennsylvania and Illinois, Mr. Sullivan said, was very encouraging and that another meeting would be held in Indianapolis, December 19th. The operators, he said, had shown a spirit of fairness and the miners the same, which had done much to pave the way for an agreement that would be both profitable to the miners and operators, and that at the coming meeting he expected the agreement to be almost ratified.

Old Officials Re-elected.

When asked about the coming Ohio convention of the miners, which will be held in January, in Columbus, Vice-President Sullivan said all the old state officials would be re-elected. He is a candidate and already over 250 locals have nominated him for another term, and the same number have paid President William Green the same compliment. Both are capable and efficient officials and the miners are wise in re-electing them for another term.

Lewis Logical Candidate.

When asked about the candidacy of National Vice-President Lewis for president of the United Mine Workers, Mr. Sullivan said "Lewis is the logical candidate and will be elected." He praised Lewis and said that the organization would do well to pro-
234 mote him to the presidency of the organization, and that he was satisfied he would be elected.

EXHIBIT NO 17 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from the Wheeling Register, Thursday, November 28, 1907.

A. R. Watkins, president of the Fifth Ohio sub-district of the United Mine Workers of America was a business visitor in the city yesterday.

EXHIBIT NO. 18 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Intelligencer, Monday, December 23, 1907.

Was It Served?

Question as to Whether Injunction Against Miners Is in Force—Officers Have Not Been Served With Notices and Are Organizing the Miners.

There has been some question raised as to whether the injunction, recently granted against the officials of the coal miners of this district and of the State of Ohio, has been served. The injunction was issued at the request of a number of the Pan Handle operators to prevent the officials from organizing the men employed at their mines. In the past week the officers have been busily engaged in the preliminaries for an organization. They have been mingling among the men at the mines and within the next few days definite steps in the reformation of the unions will be taken.

The miners, so 'tis claimed, take the stand that they are not in contempt of court as the injunction has not been served upon them. In this view they are proceeding with the work. Court officials, on the other hand, it is said, have not received copies of the final papers in the case to serve, but allege that the notice through the newspapers that an injunction had been granted is sufficient notice and that the injunction is in full force.

The positions are unique and in fact are the first of the kind in local injunction cases and any test will be watched with interest.

235 EXHIBIT NO. 19 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Friday, December 27, 1907.

Lewis Enjoined.

Vice-President of Mine Workers Served With Injunction Notice Issued at Philippi by Judge Dayton Two Months Ago—This Is the First Service Obtained Against Mine Officials.

National Vice-President T. L. Lewis of the United Mine Workers of America was served with papers in the injunction issued by Judge A. G. Dayton at Philippi, two months or more ago, at the

Wheeling station of the Baltimore & Ohio Railroad about one o'clock Friday morning while he was waiting for a train to take him down in the state. The papers were served by United States Marshal Elzie Williams.

When Marshal Williams handed Mr. Lewis the papers the latter remarked: "Well, you have caught me at last, haven't you?"

"Yes," responded Marshal Williams, "but you have led me a merry chase."

While the injunction was granted months ago the United States officials have never been able to obtain personal service against any officials of the national, Ohio or Fifth Ohio sub-district named in the restraining order until Vice-President Lewis was captured at the B. & O. depot this morning. It is likely service will be secured on the other officials as soon as they come to town.

The injunction it will be remembered was secured by J. C. McKinley and others and restrains President Mitchell, Vice-President Lewis and all the Ohio and Fifth Ohio sub-district officials from interfering with the operation of mines in the Pan-Handle counties of this state or from talking to or attempting to organize the men here employed. It is one of the most sweeping injunctions ever issued.

236 EXHIBIT NO. 20 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Intelligencer, Saturday, December 28, 1907.

Serve Papers.

Federal Authorities Serving Injunction Papers On Mine Workers' Officials.

Federal officers are busy in this city just at present serving the papers in the injunction recently procured by the coal operators against the mine workers' officials of this district and of the state of Ohio, preventing them from further organizing the men at the various mines in the Pan Handle district. The first copies of the paper were served yesterday upon T. L. Lewis and up to last evening that was the extent of the progress made. The papers had not been served upon Organizer Hughes, of near Bellaire, who was the organizer of the district at the time the injunction was procured. He had at that time practically completed arrangements for the reorganization of the miners at Glendale and at the two Richland mines.

The remainder of the papers will in all probability be served in the next couple of days.

EXHIBIT No. 21 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Intelligencer, Wednesday, January 1, 1908.

Serve Injunction on Mine Workers.

Ohio Officers of Organization Are Restrained—Came Here for Night and Marshal Met Them—Papers Returnable on the Sixth.

The officials of the Ohio State Mine Workers against whom Judge Dayton some time ago issued an injunction, were served last night at the Stamm Hotel by U. S. Deputy Marshal Elza Williams. The officials came here in order that they might start this morning for Lansing, Ohio, where local No. 1609 of the organization, are to dedicate a new hall to-day. In the party served were President of the Ohio Mine Workers, William Green, of Coshocton, Vice-President Dennis Sulivan, of Columbus, and Secretary of Sub-District No. 5, Lee Rankin, of Dillonvale.

237 The papers restrain the officials from in any wise attempting to organize the miners employed at the Hitchman, Richland and Glendale mines in the Pan Handle District, which is under the jurisdiction of those officials. President Andrew Watkins, who is to act as chairman at Lansing, escaped being served through not coming to the West Virginia side last night. The papers are returnable the first Monday in January.

EXHIBIT No. 22 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Register, Friday, December 20, 1907.

Secretary Rankin Will Issue Call.

Nominations for Sub-District Officers of Miners' Organization Open Monday—All of the Present Officers Will Be Candidates Again.

Secretary Lee Rankin of the miners will issue a call for the nomination of the officers in sub-district 5, Monday, December 23rd. The nominations will not close until January the 1st, that all who desire will have an opportunity to enter.

The convention at which the officers will be elected will be held in New Philadelphia, March 12th and 14th, inclusive. Much business will come up for transaction during the three days' session.

The present officers, President A. R. Watkins, of Yorkville; Vice-President John Zelenka, of Bridgeport, and Secretary-Treasurer Lee Rankin of Dillonvale, all will be candidates for re-election, and in addition the board members and auditors. Just how many candidates in addition to those named above and who they will be remains to be seen.

It is conceded that all of the present officers will be formidable candidates for the position and that additional candidates will have hard sailing. President Watkins has served two terms at the head of the organization, and according to reports from various parts of the district he will be a hard man to defeat.

Vice-President Zelenka, who until his election last spring, officiated in the capacity of interpreter, has made many friends and he is sure of getting a large vote when the ballots are counted.

Lee Rankin, the popular treasurer and secretary, who has held the position for a half dozen years, undoubtedly will top the list for the position. There is not a more popular and proficient official in the organization and his friends predict that he again will be elected without opposition.

238 EXHIBIT NO. 23 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Register, Friday, December 20, 1907.

Call Issued.

Miners of This Sub-District to Meet in New Philadelphia—President Watkins and All the Present Officers Are Candidates for Re-election.

The call for the convention of the Fifth Ohio sub-division of United Mine Workers of America, to be held in New Philadelphia, March 12, has been issued by the Secretary-Treasurer Lee Rankin of Dillonvale.

The time and place for holding the convention was set some time ago, and was exclusively published in the Intelligencer. The district includes the Panhandle district of this state and the locals on this side of the river will be represented.

The convention will be the largest in the history of the district, and will be the largest sub-district convention in the state, and will represent over 14,000 miners, who have made the district the largest coal-producing section in Ohio.

The date for the nominations for district officers will close January 3, and it is understood that President Watkins, Vice-President John Zelenka and all the other officials will be candidates for re-election.

EXHIBIT NO. 24 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Thursday, December 26, 1907.

Call Is Out

For National Mine Workers Convention at Indianapolis Next Month—Will Be One of the Most Important Meetings They Have Held—President John Mitchell May Not Be Able to Attend the Convention.

The miners' local unions over the river in the last few days have received the official call for the national convention which is to

start at Indianapolis on the 21st of January and it is to be the most important in the history of the organization because of the change in the administration due to the refusal of John Mitchell to run for president again. While new officers are to be elected they
239 will not take charge till the first of April.

The interstate joint conference not having been definitely arranged that will be one of the most important questions for consideration at the convention, but it will be handled in an able manner by the delegates as the mine workers are anxious to see it again established.

The uncertainty as to whether President Mitchell will be physically able to take part in the deliberations will leave the responsibility to a large extent on the vice-president. There is no doubt about his ability to handle the weighty affairs as his knowledge of details in regard to the basis upon which the inter-state movements were founded, not only at Chicago in 1898 but in 1885 when the first joint movement was organized, will put him in a position to entangle any complications arising and re-establish the inter-state joint movement.

It is well known that Vice-President Lewis is in favor of an interstate joint agreement with some permanent feature connected with it that will prevent a few operators, who may have special advantages, as parties to the movement from breaking up the plan when it is to their interests to do so.

It is conceded by all that the joint method of arranging wage scale is the best plan yet devised to remove the possibility of industrial conflicts. The system has some defects but if all parties interested are sincere there is no doubt that some method can be devised that will give the movement that permanent feature so essential to making a success and placing the mine industry on a permanent and solid foundation by giving to the miner a full share of the results of his labor, to the operator his reasonable profit, and to the consuming public, fuel at such rate as they can well afford to pay.

EXHIBIT NO. 25 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Friday, December 27, 1907.

Lewis Leads for Mine Presidency.

Incomplete Returns Indicate Election of the Bridgeport Man—In 24 Locals of Illinois He Has a Lead of Two to One Over Wilson—Also Shows Up Surprisingly Strong in Pennsylvania.

The voting on National officers for the United Mine Workers will close the last day of this month and the work of counting will start the first day of the National convention which opens at Indianapolis January 21st. While the result in almost every
240 local has been given out locally there has been no effort to tabulate but it is now assured that T. L. Lewis the Bridge-

port candidate for president has been elected and the official count will only decide his majority over Mr. Wilson.

In 42 out of a total of 320 locals in Illinois the home of John Mitchell, the detailed vote is known and it shows that out of something over 9,000 votes polled, Mr. Lewis has six thousand to Mr. Wilson's 3,000 or about two to one. This ratio may not continue over all of Illinois, but there is every reason to believe Mr. Lewis will carry the state by several thousand votes. In the 42 locals reported are some of the largest in the state.

In Indiana the ratio established in Illinois has been kept up according to reports that have been received in detail from one-fourth of the locals. In Michigan, Alabama, Kentucky, Tennessee, Missouri, Iowa, and in fact every district outside of the Central or competitive districts Mr. Lewis has run far ahead of his opponent. He carries every district with possibly the anthracite field show- a large Lewis vote and he may carry all of the district there.

In West Virginia out of 1,200 vote cast in a total of over 3,000 Mr. Lewis will have about 1,000 to 2,000 for Wilson. The light vote cast in West Virginia district is indicative of the vote in most of the other districts of the organization.

Ohio as had been stated in the News from time to time is almost solid for Lewis and there will not be 500 votes against him out of a total of 20,000 or more. In the Fifth sub-district over the river the miners voted almost solid for him. In locals casting anywhere from 200 to 500 votes there are many instances where Lewis got every vote. In only a very few locals where there was a personal grievance against the Bridgeport man was he cut more than two or three votes.

EXHIBIT NO. 26 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Pittsburgh Dispatch, Saturday, December 28, 1907.

Electing Lewis to Succeed Mitchell.

(Photographic Cut.)

T. L. Lewis.

Wheeling, W. Va., Dec. 27.—Officials of the Fifth Ohio sub-
district of United Mine Workers of America have received
241 returns from a majority of districts in the United States, and with the exception of a few districts in the anthracite region of Pennsylvania, Vice-President T. L. Lewis has received a majority of votes for national president of the United Mine Workers to succeed John Mitchell, Lewis is a resident of Bridgeport, Ohio.

EXHIBIT NO. 27 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from The Wheeling Intelligencer, Monday, December 16, 1907.

To Organize Miners Despite Injunction.

Work in W. Va. Begins Today—President Watkins and Others Inaugurate Campaign—Hitchman and Other Pan Handle Mines Included—President Green.

Despite the fact that Judge Dayton issued an injunction restraining the officials of the United Mine Workers of America from organizing the miners in the Pan Handle district of this state, the miners' officials will today start to organize the miners into the union.

A. R. Watkins, of Yorkville, Ohio, president of the Fifth Ohio sub-district of the miners' organization, which includes the Pan Handle counties of West Virginia, will today start to organize the miners at the Hitchman mines and the miners just north of the city. To a representative of the Intelligencer President Watkins stated last evening that he would start the work today, and that he thought it was the opportune time for getting the men into the union. He also said that he had received much encouragement of late from the miners on the West Virginia side of the river, and that he would be assisted in the work by President W. H. Green, of the Ohio miners. He is satisfied that a number of the miners wish to become members of the union, and does not anticipate that he will have much trouble in organizing the men.

President Watkins was asked regarding the injunction restraining the officials from organizing the miners. He said that no injunction papers had been served on him, or any other officials, and that he did not see where the injunction could restrain him from doing his duty and organizing the men, and further he would pay no attention to the order as he had not been served with the papers.

President Watkins is a man with years of experience in his work and means just what he says. At no time has he refrained from visiting the West Virginia side of the river, and after the
242 injunction came here and paid the striking miners their benefits until they secured places in union mines. He is a splendid organizer and will take up the work in a way that is sure to secure a number of men back into the union.

EXHIBIT NO. 28 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Monday, December 16, 1907, Bridgeport.

Will Start to Organizing.

It was told here Sunday that the United Mine Workers would start to organize the men of the Fifth Ohio Sub-District organiza-

tion in spite of the injunction. It is not likely any of the officials named in the injunction will take part in the work.

EXHIBIT NO. 29 TO AFFIDAVIT OF E. T. HITCHMAN.

Taken from Wheeling Daily News, Wednesday, December 18, 1907.

Will Organize

Miners On This Side of River In Spite of Injunction—Fifth Sub-District Miners' Officials Are At Work Now—And They Hope To Get Most of the Men in Line.

In spite of the restraining order issued by Judge Dayton at Philippi a few months ago, the officials of the Fifth Ohio Sub-District miners' organization yesterday began a campaign to organize the hundreds of men employed in the Panhandle district, a territory which is included in the Ohio sub-district. The officials will continue their efforts until stopped by the courts or until they have accomplished their purpose.

Two of the officials Tuesday met a good many of the men working in one of the largest mines and obtained from them assurances that they would gladly go in the organization if it was possible to get all the men in. The work is being continued today and will go on the remainder of the week.

Mine Trouble Not Settled.

The trouble at the Dillies Bottom mine, in Belmont county, over sticky bottoms, reported in the News last week has not been settled and the miners are still out. It is a question for the arbi-
243 tration board of operators and miners to settle and it is not expected there will be any great difficulty in reaching an agreement.

The voting for national officers of the United Mine Workers must end twenty days before the convention, and as that opens this year January 21, the voting will not cease till New Years. However, practically all the locals have already voted. All in Ohio are through. John Mitchell in an interview given out at New York Monday, said his successor had already been elected, and, while he did not give the name, it is known he meant T. L. Lewis.

Affidavit of Wayne Archer.

(Filed Jan. 14, 1908.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

In Equity.

GLENDALE COAL COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

Affidavit of Wayne Archer.

I, Wayne Archer, the undersigned affiant, being first duly sworn upon my oath in the city of Wheeling, West Virginia, say:

I am pay roll clerk and assistant bookkeeper at the Hitchman mine and the Glendale mine, with my office at the Hitchman mine. I have been at the Hitchman for nearly three years. I am twenty-six years old and live in Bellaire and have lived in Bellaire twenty-three years. I am well acquainted in Bellaire and in the surrounding country on both sides of the river. On the afternoon of December 24th, 1907, I was at Frank Wilhelm's restaurant and saloon nearly opposite the Hitchman mine and was in company with Mr. R. J. Cotts, the bookkeeper for the same two companies that I work for. We had gone there for our lunch. It was between twelve and one o'clock in the afternoon. I was standing near the window looking across the street and was just in line of the row of the Hitchman houses where the miners live. The row of houses runs away from the street on which the street car line runs and there is
244 a side street or passageway along the entire front of the row of houses which leads from the county road where the street car line runs westward towards the Ohio river. There is a small cinder walk leading from the county road mentioned down towards the river some little distance, probably a hundred and twenty feet or so, until the row of houses is encountered, and from there on down westward in front of the row of houses, twelve double houses in number, and each house being a two-story house, there is a small board walk four or five feet walk right in front of the doors of each of the houses. There is a little porch in front of each house. As I was looking down this row of houses I saw John Morosco coming towards the street car line. Morosco at that time was just at the end of the board walk and apparently had just left the row of houses.

I do not know whether he saw that he was being watched or not because I did not have any talk with him, but he continued coming on up the cinder path and finally came on out off the company's property into the public road which I have mentioned as the county road on which the street car line runs. When he got on to the county road he was about ninety or a hundred feet away from where I was standing. I recognized Morosco as a man I have seen and known of in Bellaire as an organizer and interpreter for the United Mine Workers of America. Practically all the foreign speaking element of miners employed by the Hitchman Company at its mine in Benwood live in that row of houses. I did not see Morosco come out of any one particular house, nor did I see h-m in conversation with any of our men at that time. Morosco was already on his way from the houses when I saw him, and while I kept him in sight he did not return to the houses, nor did he talk to any of our men in my sight. At that hour of day a great many of our men are in the mine, but we always have a greater or less number of men in our employ who are on duty off and on and there is nearly always a lot of the men still in the row of houses. Out of the large number of men we employ there are always some of them to be found in the houses at all times. I continued watching Morosco from the time I first saw him until he took a car northward toward the Benwood ferry. He took the first car going north after I saw him coming from the houses. In natural course he would take a north bound street car and get off at Sixth street, Benwood, and take the ferry in order to get back to where he lives in Bellaire. I did not follow Morosco and therefore do not know just where he went. John Morosco, according to information which I have obtained from B. F. Marling, who is the superintendent of the Carnegie Steel Company's mine at Bellaire, has been at different times employed
245 by the United Mine Workers as an organizer of non-union mines and I myself have known of Morosco in that capacity for the last ten or twelve years. I known Morosco well by sight and have talked to him many times. My father up until about four years ago was one of the owners and operators of a coal mine at Bellaire right near where Morosco lived. My father's mine was non-union. I have seen Morosco about the Hitchman mine since that mine started up non-union after the last strike, and I remember on one occasion he acted as interpreter for some of the men there.

I make the present affidavit for use in support of any motion or of any pleading in which its subject matter is properly usable in either or both of the cases mentioned in the caption.

WAYNE ARCHER.

(Two originals executed.)

Taken, sworn to and subscribed before me this 11th day of January, 1908.

HERMAN A. HUNDT,

[SEAL.] *Notary Public in, for, and of Ohio County, West Virginia.*

Affidavit of B. F. Marling.

(Filed Jan. 14, 1908.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

In Equity.

GLENDALE COAL COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

Affidavit of B. F. Marling.

I, B. F. Marling, the undersigned affiant, being first duly sworn upon my oath, in the city of Wheeling, West Virginia, say:

I am thirty-five years of age, or will be the last of this month; was born in Bellaire and lived there all my life. I am at present the manager of the Carnegie Steel Company's mine at Bellaire. I have held that position for about three years last past. I was assistant superintendent for about four years before I became superintendent or manager. Prior to that I worked in the mine for seven or eight years. I have worked in coal mines ever since I was about eleven years of age, but not all of the time, however, in that same mine. I know John Morosco, who lives in Bellaire, and have known him for twelve or thirteen years. He used to work in the same coal mine with me. I mean the Carnegie Company's mine that I am now superintendent of. He worked there last when I was assistant superintendent. I believe the last place I can now recall where Morosco worked in a mine was at the Empire mine. That mine is just below Bellaire and is on the Ohio side of the river just opposite the Hitchman mine. When Morosco worked at the Empire, De Armit was operating the mine and was attempting to run it non-union. Morosco got employment there at the Empire mine at that time as a non-union man and at the same time was really the secret representative of the United Mine Workers and was paid by the United Mine Workers to go into that mine, work non-union, and then try to unionize the mine while in the bank. He was found out and discharged. This was about 1902, I think; at any rate it was during the time that De Armitt was trying to run that mine non-union. I know this part of Morosco's history to be true, because he told me so himself. He laughed about the matter, especially about getting double wages for the time he worked there.

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I had an experience with Morosco myself last fall, I think it was

in August, or early in September. The Steel Company's mine is run non-union and was being run so at that time. Along during that summer, John Zelenka, who I know personally and know to be the vice-president of the sub-district 5 of District 6 United Mine Workers, came about our mine trying to organize the men and unionize the mine. Zelenka came to me as superintendent and wanted to deal for the men and have the union recognized. I told him that I wouldn't deal with him, but would only deal with the men themselves. Zelenka finally got some of the English speaking people that worked in the mine to agree to join the union and he got them to have a meeting and declare a strike. Mr. Zelenka called me up the same night by telephone and informed me that they had declared a strike. We operate our mine up Indian run and all the foreign element lives up the run, and that night between eleven and twelve Morosco called the foreign element out of bed, told them the strike had been declared, and that if they went back to work the next day that they were liable to be hung. There were a lot of other fellows with Morosco. I know this because a number of the men who lived in those houses and who were awakened, talked to and threatened by Morosco told me this
247 the next day. This happened the same night and after Zelenka telephoned to me that the men had declared a strike that night. Zelenka did not tell me that he was going to get Morosco to visit our foreign speaking people that night, but I know that the men that went up there did not know Morosco before that time, and I am reasonably certain that Morosco went up there under instructions from Zelenka. These men that went up there that night were English speaking people and could not talk the language of these other men in the houses. Morosco went along to do the talking and did it. The next morning the men that Zelenka had gotten to join the union failed to show up, but the foreign speaking element that Morosco threatened the night before showed up and were ready to go to work. Zelenka had gotten the mine crippled by getting the drivers to strike, who were English speaking people, so I sent the foreign element home again, and it wasn't a week until the majority of the drivers seceded from the union they had just joined and came back to work non-union and are working so for us today.

I therefore know John Morosco and his business from his own statements to me of what he did and from an actual experience with him at our own mine.

I make this affidavit for use in support of any motion or of any pleading in which its subject matter is properly usable in either or both of the cases mentioned in the caption.

(Two originals executed.)

B. F. MARLING.

Taken, sworn to and subscribed before me this 11th day of January, 1908.

HERMAN A. HUNDT,
Notary Public in, for, and of Ohio County,
[SEAL.] *West Virginia.*

Decree Overruling Motion to Dismiss.

And at the same day, to-wit: On the 5th day of November, 1910, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE COMPANY
v.
JOHN MITCHELL et al.

Heretofore in this cause came John Mitchell, W. B. Wilson and Thomas Hughes by Charles E. Hogg, and filed their plea
248 and motion for the special purpose only of asking a dismissal of this cause as to them, because process had not been served upon them; and the complainant, by George R. E. Gilchrist, counsel, asked a dismissal of said motion, and a ruling of the court that said parties, by such appearance, had waived the service of process and should be held to be before the court and be required to answer.

And the matter involved in said motions having been heretofore fully argued orally and by briefs filed by counsel, and now having been fully considered by the court, it is adjudged that said plea and motion in effect constituted a special appearance for the sole purpose of asking a dismission of said cause on the ground of the non-service of process, but that said bill, by its allegations charging a conspiracy between these non-served defendants and those served in the cause, and seeking an injunction restraining all parties involved in the conspiracy charged from alleged contemplated unlawful acts and conduct, for which, if said allegations be true, the court is of opinion that suit could be brought against said Mitchell Hughes and Wilson independently if found in this district at any time, and that they are proper parties before the court by representation through service upon their co-defendants, it is therefore ordered that both of said motions be overruled and that said complainant has right, if it desires so to do, to sue out and serve process upon said defendants, Mitchell, Hughes and Wilson, but until said process shall be served said three defendants shall not be required to answer.

Motion and Plea of John Mitchell.

In the Circuit Court of the United States in and for the Northern District of West Virginia.

No.—.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-
249 President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

Comes now John Mitchell, named as one of the defendants in the above entitled cause, and appears specially for the purpose hereinafter set forth and for no other purpose, hereby disclaiming for and on behalf of himself any appearance to the merits of said cause, and hereby moves the court to set aside any return of the Marshal on the summons issued in said cause and to disregard such return; because this defendant avers that on the 24th day of October, A. D., 1907, he was not within the State of West Virginia, nor

has he been within the said State at any time since the 24th day of October, A. D. 1907, nor is he in said State at this time; but this defendant avers that he has been a resident during all that
250 time and a citizen of the State of Indiana, and that during all that time this defendant has had no agent or other person within the State of West Virginia, nor has he now within the State of West Virginia any agent or representative upon whom process may be legally served; and this defendant further avers that process to answer said suit has not been served upon him at any time within the State of West Virginia; and this defendant further avers that the above named suit was not brought to enforce any legal or equitable lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the Northern District of West Virginia, being the district wherein said suit was brought and is now pending.

And so this defendant prays the judgment of this Honorable Court whether he should be compelled to appear herein, or plead to the bill filed in said suit, for the reason that he has not been served with process to answer the said suit, and is not compellable or required to appear or plead to the said bill, and has not accepted and does not accept service of process to answer said bill, nor does he waive a due service of process upon him to answer said bill; and for the further reason that this defendant may be properly served with process in a suit originally instituted in the State of this defendant's residence and citizenship; and, further, because this defendant is a non-resident of the State of West Virginia and also a non-resident of the Northern District of West Virginia, and can not be lawfully proceeded against in said suit; and, because, further, the court may not lawfully make an order directing this defendant to appear, plead, answer or demur to said bill by a day to be by the court designated, nor can such order be lawfully served upon this defendant in said suit, nor can such order be lawfully published under any act of Congress now in force and applicable to said suit.

And this defendant further avers that there is no business or engagement requiring this defendant to make his personal appearance in the State of West Virginia, either in the Northern or Southern District thereof, nor is it the intention of this defendant to make his personal appearance in the State of West Virginia, either in the Northern or Southern District thereof, within any future definite period of time, so far as this defendant knows and so far as he is now advised.

And this defendant asks that the temporary restraining order issued in the above cause by this Honorable Court on the 24th day of October, A. D., 1907, be set aside, and that the bill, so far as it affects this defendant, being instituted for injunctive relief, be dismissed; for the reason and because, as this defendant has here shown to the court, he has at no time been lawfully served
251 with process to answer the said bill, and inasmuch as he does not reside, as hereinbefore shown, in the State of West Virginia, and can not and does not intend to appear within the

said State of West Virginia, he can not be lawfully served with process to answer the said bill and required to appear thereto in the Northern District of West Virginia.

And now this defendant, having brought to the attention of the court its want of jurisdiction over this defendant because of its inability to lawfully serve this defendant with its process to answer the said bill, asks that the said court take no further cognizance of the said suit, and that the same be dismissed, so far as the same affects this defendant; this defendant hereby in nowise waiving or hereby intending to waive the lawful service of process upon him, and hereby declaring that he does not appear to the merits of the said bill, nor does he by this statement hereinbefore contained intend to appear to the merits of the said bill, but only bringing to the attention of this Honorable Court its want of jurisdiction over this defendant.

JOHN MITCHELL,
By CHAS. E. HOGG,
Of Counsel for Defendants.

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Def'ts.

Motion and Plea of W. B. Wilson.

In the Circuit Court of the United States in and for the Northern District of West Virginia.

No.—.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-
252 President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio,

Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

Comes now W. B. Wilson, named as one of the defendants in the above entitled cause, and appears specially for the purpose hereinafter set forth and for no other purpose, hereby disclaiming for and on behalf of himself any appearance to the merits of said cause, and hereby moves the court to set aside any return of the Marshal on the summons issued in said cause and to disregard such return; because this defendant avers that on the 24th day of October, 1907, he was not within the State of West Virginia, nor has he been

within the said State at any time since the 24th day of October, 1907, nor is he in said State at this time; but this defendant avers that he has been a resident during all that time and a citizen
253 of the State of Pennsylvania, and that during all that time this defendant has had no agent or other person within the State of West Virginia, nor has he now within the State of West Virginia any agent or representative upon whom process may be legally served; and this defendant further avers that process to answer said suit has not been served upon him at any time within the State of West Virginia; and this defendant further avers that the above named suit was not brought to enforce any legal or equitable lien upon or claim to, or to remove any encumberance or lien or cloud upon the title to real or personal property within the Northern District of West Virginia, being the district wherein said suit was brought and is now pending.

And so this defendant prays the judgment of this Honorable Court whether he should be compelled to appear herein, or plead to the bill filed in said suit, for the reason that he has not been served with process to answer the said suit, and is not compellable or required to appear or plead to the said bill, and has not accepted and does not accept service of process to answer said bill, nor does he waive a due service of process upon him to answer said bill; and for the further reason that this defendant may be properly served with process in a suit originally instituted in the State of this defendant's residence and citizenship; and, further, because this defendant is a non-resident of the State of West Virginia and also a non-resident of the Northern District of West Virginia, and can not be lawfully proceeded against in said suit; and because, further, the court may not lawfully make an order directing this defendant to appear, plead, answer or demur to said bill by a day to be by the court designated, nor can such order be lawfully served upon this defendant in said suit, nor can such order be lawfully published under any act of Congress now in force and applicable to said suit.

And this defendant further avers that there is no business or engagement requiring this defendant to make his personal appearance in the State of West Virginia, either in the Northern or Southern District thereof, nor is it the intention of this defendant to make his personal appearance in the State of West Virginia, either in the Nothern or Southern District thereof, within any future definite period of time, so far as this defendant knows and so far as he is now advised.

And this defendant asks that the temporary restraining order issued in the above cause by this Honorable Court on the 24th day of October, 1907, be set aside, and that the bill, so far as it affects this defendant, being instituted for injunctive relief, be dismissed;
for the reason and because, as this defendant has here shown to
254 the court, he has at no time been lawfully served with process to answer the said bill, and inasmuch as he does not reside, as hereinbefore shown, in the State of West Virginia, and cannot and does not intend to appear within the said State of West Virginia, he cannot be lawfully served with process to answer the said bill and required to appear thereto in the Northern District of West Virginia.

And now this defendant, having brought to the attention of the court its want of jurisdiction over this defendant because of its inability to lawfully serve this defendant with its process to answer the said bill, asks that the said court take no further cognizance of the said suit, and that the same be dismissed, so far as the same affects this defendant; this defendant hereby in nowise waiving or hereby intending to waive the lawful service of process upon him, and hereby declaring that he does not appear to the merits of the said bill, nor does he by this statement hereinbefore contained intend to appear to the merits of the said bill, but only bringing to the attention of this Honorable Court its want of jurisdiction over this defendant.

W. B. WILSON,
By CHAS E. HOGG,
Of Counsel for Defendants.

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Def'ts.

Motion and Plea of Thomas Hughes.

In the Circuit Court of the United States in and for the Northern District of West Virginia.

No. —.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually, and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually, and as Vice-
255 President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually, and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton,

Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

Comes now Thomas Hughes named as one of the defendants in the above entitled cause, and appears specially for the purpose hereinafter set forth and for no other purpose, hereby disclaiming for and on behalf of himself any appearance to the merits of said cause, and hereby moves the court to set aside any return of the marshal on the summons issued in said cause and to disregard such return; because this defendant avers that on the 24th day of October, 1907, he was not within the State of West Virginia, nor has he been within the said State at any time since the 24th day of October, 1907, nor is he in said State at this time; but this defendant avers that he has been a resident during all that time and a citizen of the
256 State of Ohio, and that during all that time this defendant has had no agent or other person within the State of West Virginia, nor has he now within the State of West Virginia any agent or representative, upon whom process may be legally served; and this defendant further avers that process to answer said suit has not been served upon him at any time within the State of West Virginia; and this defendant further avers that the above named suit was not brought to enforce any legal or equitable lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the Northern District of West Virginia, being the district wherein said suit was brought and is now pending.

And so this defendant prays the judgment of this Honorable Court whether he should be compelled to appear herein, or plead to the bill filed in said suit, for the reason that he has not been served with process to answer the said suit, and is not compellable or required to appear or plead to the said bill, and has not accepted and does not accept service of process to answer said bill, nor does he waive a due service of process upon him to answer said bill; and for the further reason that this defendant may be properly served with process in a suit originally instituted in the State of this defendant's residence and citizenship; and, further, because this defendant is a non-resident of the Northern District of West Virginia and also a non-resident of the State of West Virginia, and cannot be lawfully proceeded against in said suit; and because, further, the court may not law*fully* make an order directing this defendant to appear, plead, answer or demur to said bill by a day to be by the court designated, nor can such order be lawfully served upon this defendant in said suit, nor can such order be lawfully published under any act of Congress now in force and applicable to said suit.

And this defendant further avers that there is no business or engagement requiring this defendant to make his personal appearance in the State of West Virginia, either in the Northern or Southern

District thereof, nor is it the intention of this defendant to make his personal appearance in the State of West Virginia, either in the Northern or Southern District thereof, within any future definite period of time, so far as this defendant knows and so far as he is now advised.

And this defendant asks that the temporary restraining order issued in the above cause by this Honorable Court on the 24th day of October, 1907, be set aside, and that the bill, so far as it affects this defendant, being instituted for injunctive relief, be dismissed;

257 for the reason and because, as this defendant has here shown to the court, he has at no time been lawfully served with process to answer the said bill, and, inasmuch as he does not reside, as hereinbefore shown, in the State of West Virginia, and cannot and does not intend to appear within the said State of West Virginia, he cannot be lawfully served with process to answer the said bill and required to appear thereto in the Northern District of West Virginia.

And now this defendant, having brought to the attention of the court it- want of jurisdiction over this defendant because of its inability to lawfully serve this defendant with process to answer the said bill, asks that the said court take no further cognizance of said suit, and that same be dismissed, so far as same affects this defendant; this defendant hereby in nowise waiving or hereby intending to waive the lawful service of process upon him, and hereby declaring that he does not appear to the merits of said bill, nor does he by this statement hereinbefore contained intend to appear to the merits of said bill, but only bringing to the attention of this Honorable Court its want of jurisdiction over this defendant.

THOMAS HUGHES,
By CHAS E. HOGG,
Of Counsel for Defendants.

A. B. LITTLEPAGE,
CHAS. E. HOGG,
Counsel for Def'ts.

Motion of Plaintiff to Deny Motion of Defendants.

(Filed May 26, 1908.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL et al., Defendants.

Comes now the Hitchman Coal & Coke Company, the above named plaintiff, and shows to the Court:

First. On January 14, 1908, certain defendants, John Mitchell, W. B. Wilson, George W. Savage, individually, and in their several

official capacities, and Thomas Hughes, by Adam B. Little-
258 page and Charles E. Hogg appeared specially to move the court to dismiss said suit as to said defendants, and did move the court to dismiss said cause as to them, and in support of said motion filed a plea in abatement of said unserved defendants duly verified by affidavit, and a consideration of said motion was deferred until March 18, 1908, and on March 18, 1908, said Adam B. Littlepage and Charles E. Hogg did not appear and press their said motion.

Second. Although such plea in abatement was really read to the court by said counsel in presenting said motion and then filed as shown by said order of January 14, 1908, said defendants' said counsel failed to leave said plea with the clerk of said court and the same has not come into the physical possession of this court to this date.

Third. At the request of plaintiff's counsel of record made by mail on January 20, 1908, said Adam B. Littlepage sent to plaintiff's said counsel one of the pleas in abatement similar to that used in court on January 14, 1908, as aforesaid, which plea with the correspondence accompanying and identifying same is herewith filed and made a part of the supporting affidavit of plaintiff's counsel.

Fourth. On May 13, 1908, said defendant Savage, individually, and in his official capacity, was duly served within this district, and pluries subpœnæ are now in the hands of the proper officer of this court for service upon the remainder of said defendants, first named herein as unserved on January 14, 1908.

Therefore, plaintiff, by its said counsel asks leave of court to withdraw its said motion made March 18, 1908, that said motion to dismiss be denied, that said plea in abatement be overruled, and that said unserved defendants be assigned to appear and answer over to the merits of the cause, but only so far as said Savage in his individual and said official capacity is concerned, and by its counsel plaintiff now again moves the court that said motion to dismiss be denied, that said plea in abatement be overruled, and that each of said unserved defendants, namely: John Mitchell and W. B. Wilson, individually, and in their said official capacities, and said Thomas Hughes, be assigned to appear and answer over to the merits of the cause, and that in the consideration of plaintiff's motion to that effect as to each of said unserved defendants, the court will consider
259 the plea filed with this motion and referred to as furnished to plaintiff's counsel by said Littlepage as a counterpart of the plea in abatement filed by said Littlepage and said Hogg, as counsel for said unserved defendants January 14, 1908.

And plaintiff asks that the court will make such other order in the premises as to the court shall seem meet.

GEORGE R. E. GILCHRIST,
Attorney for Plaintiff.

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
v.
JOHN MITCHELL ET AL., Defendants.

In Equity.

GLENDALE COAL COMPANY, Plaintiff,
v.
JOHN MITCHELL ET AL., Defendants.

Affidavit of George R. E. Gilchrist.

I, George R. E. Gilchrist, being first duly sworn upon my oath in Philippi, West Virginia, say:

I am counsel of record for the Hitchman Coal & Coke Company and for the Glendale Coal Company, plaintiffs in the above mentioned two causes in equity, now pending in this court; that the attached paper marked Exhibit No. 1 to this affidavit is a carbon copy of an original letter written by affiant to Adam B. Littlepage January 20, 1908; that the attached paper marked Exhibit No. 2 to this affidavit is an original letter, dated January 27, 1908, sent by the writer, Adam B. Littlepage, to affiant; that the attached paper marked Exhibit No. 3 to this affidavit is an original letter, dated February 5, 1908, sent by the writer, Adam B. Littlepage, to affiant; that the attached paper marked Exhibit No. 4 to this affidavit is a carbon copy of an original letter written by affiant to Adam B. Littlepage February 7, 1908; and that the attached paper marked Exhibit No. 5 to this affidavit is the original paper received by affiant from said Littlepage accompanying said Littlepage's letter of February 5, 1908.

I make this affidavit for use before the court in support of any motion or of any pleading in which its subject matter is
260 properly usable in either or both of the cases mentioned in the caption.

GEORGE R. E. GILCHRIST.

(Two originals executed.)

Taken, sworn to and subscribed before me this 26th day of May, 1908.

HARRY M. PATTERSON,
Deputy Clerk U. S. Cir. Ct., N. D. W. Va.

EXHIBIT No. 1 WITH AFFIDAVIT.

WHEELING, W. VA., January 20, 1908.

Hon. Adam B. Littlepage, Charleston, W. Va.

DEAR SIR: I have mailed you today under separate cover a copy of the bill in the Hitchman case, and between covers have included a copy of the restraining order entered October 24, 1907, as well as a copy of the further order entered January 14, 1908. I promised to mail you a copy of the bill on returning home last week, but time required to print the order of the 14th inst. caused the few days' delay.

I have not received from you a copy of the plea in abatement, which you filed at Parkersburg on the 14th, and would be glad to have you send me one. I suppose you have been busy and overlooked mailing it.

Very truly yours,

(Signed) GEORGE R. E. GILCHRIST.

G-C.

EXHIBIT No. 2 WITH AFFIDAVIT.

CHARLESTON, W. VA., January 27th, 1908.

Hon. Geo. R. E. Gilchrist, Counsellor-at-law, Wheeling, W. Va.

MY DEAR MR. GILCHRIST: I know you will pardon me for not having answered your letter more promptly, but I inform you that I have just gotten through with a seven day and night trial
261 of a murder case here, and have only reached my desk to give attention to any of my office work within the past twenty minutes.

I received a letter similar to yours from the clerk, Mr. Harrison. I will look up the matter at once, and give it necessary attention. I was of the impression that the plea had been left with the clerk.

Very truly yours,

ADAM B. LITTLEPAGE.

ABL-F.

EXHIBIT No. 3 WITH AFFIDAVIT.

CHARLESTON, W. VA., February 5, 1908.

Hon. George E. Gilchrist, Wheeling, W. Va.

MY DEAR MR. GILCHRIST: I beg to apologize to you for the delay in answering your recent request for a copy of the special plea we submitted in the cause of Hitchman Coal & Coke Co. vs. John Mitchell and others at Parkersburg recently.

I have not been at my office since the Senate convened, and have been greatly pressed for time.

I received a letter from Mr. Harrison, clerk, and Hon. C. E. Hogg, requesting me to forward this special plea, saying you had called for same. I am enclosing you a copy. One or two of the special

pleas were signed and sworn to, and I was of the impression the same was left with the papers at the Parkersburg clerk's office. Mr. Hogg was of the impression I brought them away. I did not do this, however, but am enclosing herewith to you the one intended for President Green, but on account of personal service upon him, he returned it to me, and I herewith hand same to you. As soon as you shall have gotten through with it, please mail the same to Mr. Harrison, or you can retain it until we meet at Philippi in March.

I am doing my best to get the answer in readiness so as to submit the same to Mr. Hogg, and then to you.

Please forgive me for not having written you earlier.

I am, my dear sir,

Faithfully yours,

ADAM B. LITTLEPAGE.

Enc.

262 EXHIBIT NO. 4 WITH AFFIDAVIT.

WHEELING, W. VA., February 7, 1908.

Hon. Adam B. Littlepage, Charleston, W. Va.

MY DEAR MR. LITTLEPAGE: I am just in receipt of your letter of February 5th, enclosing one of the special pleas which you prepared for Mitchell to sign, and, subsequently, changed to Green, but which, owing to Green having been served, Green returned to you unsigned. As I understand it, the paper you enclosed is mutatis mutandis just like each of the four pleas which are supposed to be on file in the clerk's office in the Hitchman case and as well as like four similar pleas which are supposed to be on file in the same office in the Glendale case. As a matter of fact, as I recall the occurrence, you and Judge Hogg had with you only one of the pleas in the Hitchman case and none in the Glendale case, when we were at Parkersburg on the 14th ultimo, but the remaining three pleas in the Hitchman and all four pleas in the Glendale were outstanding, having been sent by mail to the respective defendants for their signatures; and that as fast as received, duly signed and sworn to, they would be filed by you in the clerk's office; these pleas, as I understand it, were to be the pleas of the defendants, Mitchell, Wilson, Savage and Hughes.

I note what you say about sending to the clerk the paper you have enclosed to me, when I shall have gotten through with it, or that I may retain it, if I prefer to do so, until we meet at Philippi in March.

I suppose you have just inadvertently suggested my mailing the paper to the clerk, because that paper, of course, would have no place in the record.

I will treat the enclosed paper as being mutatis mutandis copy of the four pleas in the Hitchman and of the same number in the Glendale case.

I thank you for taking the time to look up this copy for me, as I know your many professional and political engagements must keep you very busy.

With best wishes for your nomination for Governor on the Democratic ticket, if you will have it, believe me to be,

Very truly yours,

(Signed) GEORGE R. E. GILCHRIST.

263 EXHIBIT No. 5 WITH AFFIDAVIT.

(This is a carbon copy of a form, similar to the three pleas hereinbefore copied, which is unexecuted, and to which is attached a blank affidavit and jurat.—Clerk.)

Decree Directing Taking of Testimony.

And at the same day, to-wit: On the 5th day of November, 1910, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE COMPANY
v.
JOHN MITCHELL ET AL.

This day came the complainant, by George R. E. Gilchrist, its attorney, and the served defendants, by Charles E. Hogg, their attorney, and by consent of said parties, by their said attorneys, it is ordered that all evidence not introduced by orders entered this day that may be desired to be introduced in this cause by the parties or any of them shall be introduced orally to the court in its presence, instead of by means of depositions taken and filed in the cause.

By like consent, it is ordered that December 19th, 1910, at 11 o'clock A. M. at the Court House in Philippi, be fixed as the time and place when and where the hearing of such evidence shall commence, and such hearings shall be continued from day to day and from time to time as the court may determine until concluded.

Exceptions of Defendants.

(Filed Jan. 2, 1912.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and a Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United
264 Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6, United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America; and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

Exceptions Taken by the Served Defendants to the Evidence Introduced by the Plaintiff in the Above-entitled Cause, to be Argued and Considered on the Final Hearing Thereof.

These exceptions will point out first those parts of the documentary evidence which the served defendants regard as exceptionable and concisely state the ground of exception, and will also

designate by reference to the page or pages where found
265 those parts of the depositions taken in the cause that ought not, in the judgment of counsel for the served defendants, be considered, on the ground of their incompetency, irrelevancy or immateriality, as the case may be, setting forth also succinctly the ground of exception to such oral evidence.

I.

The said defendants except to the use as evidence of the sworn separate answer of the defendant A. R. Watkins, individually, and as president of Sub-District 5 of District 6 United Mine Workers of America, which was filed May 26, 1908, for the following reasons:

(1) Because no statement or admission appearing in this separate answer can be used as evidence against the co-defendants of the said Watkins.

(2) Because the said answer has been, by the consent of the court and without objection on the part of the plaintiff, withdrawn from said case as an answer, and therefore it only has the force and effect at the most of an affidavit.

(3) Because there is nothing contained in the said answer in the way of evidence that bears upon any of the material issues of fact as raised by the pleadings in this cause.

II.

Also to the order entered in this cause June 26, 1908, extending to July 16, *1809*, the time within which the remaining served defendants were required to file their answer in this cause, for the following reasons:

(1) An examination of the order discloses that it was entered by the consent of the parties to the cause.

(2) Because it does not appear in the record upon what ground the motion was predicated.

(3) Because it has no bearing upon any question raised by the pleadings herein.

III.

Also to the use as evidence of the joint and several answer of the defendants Lewis, Green, Sullivan, Savage, Watkins, Zelenka
266 and Rankin, filed July 13, 1908, for the following reasons:

(1) Because said answer has been withdrawn, and can not be treated as evidence for any purpose whatever in the cause, inasmuch as it is neither an affidavit nor necessary to prove an allegation in the said bill for any of the purposes of this suit.

(2) Because it is not competent as a matter of evidence, as there is nothing to give it the character of evidence.

IV.

Also the use as evidence of the separate answer of the defendant Green, filed July 13, 1908, for the reasons stated under exception No. III.

V.

Also to the use as evidence of the order entered in this cause July 13, 1908, filing the answer last referred to, for the following reasons:

(1) Because the said order is already a part of the record.

(2) Because it does not possess the character of evidencee for any purpose of this suit.

VI.

Also to the use as evidence of the sworn separate answer as amended of the defendant Watkins, accompanied by his own affidavit and those of Charles E. Hogg and Uriah Barnes, for the following reasons:

(1) Because the said answer was only tendered and never filed in said cause.

(2) There is nothing contained in said answer that can be treated as evidence in this cause bearing upon any of the issues in the suit.

3. The affidavits of said Hogg and Barnes can not be used as testimony in the cause for any purpose.

267 (4) Any and all of the documents under this head are immaterial, irrelevant and incompetent.

VII.

Also to the use as evidence of the order entered herein on August 20, 1908, tendering and asking leave to file the sworn amended answer of said Watkins, accompanied by the affidavit of himself and those of said Charles E. Hogg and Uriah Barnes, for the same reasons assigned under exception No. VI.

VIII.

Also to the use as evidence of the order entered in this cause July 22, 1910, withdrawing the separate answer of the defendants Green and Sullivan, and the original and amended answers of Watkins, and the joint and several answer of all the served defendants, for the following reasons:

(1) Because said order is already a part of the record.

(2) Because it does not possess the characteristics of testimony.

(3) Because it was entered with*o*ht objection from the plaintiff, who was present in court at the time by its counsel.

(4) Because the reason or ground of withdrawal does not appear in the record, but will be stated by affidavit at the hearing, and of which the plaintiff's counsel is already advised.

IX.

Also to the use as evidence of the order entered December 15, 1908, containing the motion of the served defendants to dissolve in part and modify the temporary injunction awarded herein, for the following reasons:

(1) Because said order is already a part of the record in the cause.
(2) Because said order does not possess the characteristics of evidence for any purpose herein.

X.

Also to the use as evidence of the order entered December 15, 1908, deferring further proceedings in the cause until the
268 further order of the court, pending the court's decision upon said motion to dissolve in part and modify said injunction of May 26, 1908, for the following reasons:
(1) Because said order is already a matter of record and its introduction in evidence is unnecessary.
(2) Because the said order is not evidence for any purpose in this cause.
(3) Because the ground which actuated the court to defer further proceedings in the cause is not set forth in the record.

XI.

Also to the use as evidence of the opinion of Alston G. Dayton, Judge, filed September 21, 1909, overruling said motion to dissolve in part and modify said injunction, for the following reasons:
(1) Because said opinion is already part of the record.
(2) Because it can not be treated as evidence for any purpose whatever.

XII.

Also to the use as evidence of the order entered October 6, 1909, overruling said motion of the served defendants to dissolve in part and modify said injunction of May 26, 1908, and directing further proceedings in said cause to be resumed, for the following reasons:
(1) Because said order is already a part of the record in the case.
(2) Because it can not be used as evidence for any purpose whatever herein.

XIII.

Also to the use as evidence of those parts of the record mentioned and described in the memorandum of counsel for the served defendants, filed November 20, 1909, in the matter of their appeal to the Circuit Court of Appeals from the order of this court overruling their motion made December 15, 1908, to dissolve in part and modify the injunction of May 26, 1908, adding to the said parts of
269 the record mentioned in said memorandum the affidavits filed by the plaintiff on its application for the injunction, for the following reasons:
(1) Because these matters already are a part of the record in this cause.
(2) Because none of said documents can be used as evidence for any purpose.

XIV.

Also to the use of the order of November 20, 1909, extending the time for filing the record with the clerk of the Circuit Court of Appeals, for the following reasons:

(1) Because said order is already a part of the record.

(2) Because it can not be used as testimony for any purpose in this cause.

(3) Because the ground upon which the court extended the time is not made to appear in the record.

XV.

Also to the use as evidence of the order entered April 15, 1910, showing the dismissal of said appeal, and containing the mandate of the Circuit Court of Appeals to this court directing that such further proceedings be had in the said cause by way of execution as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding, for the following reasons:

(1) Because the said order is already a part of the record.

(2) Because the said order and mandate can not be treated as evidence bearing upon any of the issues or questions arising upon the record.

XVI.

Also to the use as evidence of the plaintiff's written motion filed January 14, 1908, in open court at Parkersburg, the time originally set for the hearing of the plaintiff's motion for an injunction, wherein plaintiff, as a preliminary to contempt proceedings and in laying the foundation thereof, set forth in the motion and in the affidavits filed in support thereof that the served defendants,
270 some or all of them, were in defiance of the restraining order entered October 24, 1907, still endeavoring to unionize plaintiff's mine and endeavoring to have plaintiff's employees join the union while still in plaintiff's employ, in breach of plaintiff's contractual rights with its said employees, for the following reasons:

(1) Because said documents are already a part of the record in the cause, having been filed herein.

(2) Because these affidavits can not be treated as evidence upon the final hearing of the cause.

(3) Because the matters set forth in said affidavits, if they be true, arose after the institution of this suit, and therefore can not be treated as testimony here.

XVII.

Also to the use as evidence of the affidavit of E. T. Hitchman, dated January 11, 1908, including therewith accompanying exhibits numbered 1 to 29, inclusive, for the following reasons:

(1) Because the said affidavit is already on file in this cause.

(2) Because neither the affidavit nor exhibits filed therewith can be treated as evidence for any purpose on the final hearing of said cause.

XVIII.

Also to the use as evidence of the affidavits of Wayne Archer and B. F. Marling, each of which bears date January 11, 1908, for the following reasons:

(1) Said affidavits are already filed.

(2) They can not be treated as evidence for any purpose in this cause.

XIX.

Also to the use as evidence of the transcript of the record in the Circuit Court of Appeals, on appeal of this cause, the motion of the appellee to dismiss the appeal, the opinion of the court thereon, and the decree of the Circuit Court of Appeals entered therein,
271 all duly certified in manner to conform to the provisions of section 905 of the Revised Statutes of the United States, for the following reasons:

(1) Because each and all of said documents are already matter of record.

(2) Because they can not be treated as evidence for any purpose in this cause, as they do not bear upon any issue or question arising herein.

XX.

Also to the use as evidence of the stipulation between the attorneys of the plaintiff and the served defendants that all evidence not introduced by orders entered on the said 5th day of November, 1910, may be introduced by the parties orally to the court in its presence, instead of by means of depositions taken and filed in the cause, for the following reasons:

(1) Because said stipulation is already a matter of record.

(2) Because it is not competent as evidence.

XXI.

Also to the use as evidence of the "Proceedings of the Eighteenth Annual Convention of the United Mine Workers of America, held in the city of Indianapolis, Indiana, January 15 to 22, inclusive, 1907," for the following reasons:

(1) Because said proceedings consist of a printed volume of several hundred pages and contains nothing applicable to any of the issues or questions arising herein.

(2) Because in the introduction of a document like this it is the duty of the party introducing it to designate the parts thereof which he desires to use as evidence, to avoid encumbering the record and to give the opposite party an opportunity to contest the competency of the parts desired to be introduced.

(3) Because if the parts desired to be used are those contained in the bill as excerpts therefrom they are admitted to be true, and there is no issue created in the pleadings to which the evidence may be applied.

272 XXII.

Also to the use as evidence of the "Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6 United Mine Workers of America, held at Wheeling, W. Va., March 14, 15, 16, 18 and 19, 1907," for the reasons assigned under exception No. XXI.

XXIII.

Also to the use as evidence of the brief for appellants in the United States Circuit Court of Appeals for the Fourth Circuit, Case No. 9409, on appeal from an order of this court overruling the motion to modify the injunction, which is marked "Plaintiff's Documentary Exhibit No. 6," for the following reason: that the said brief can not be used as evidence for any purpose in this cause, as it possesses none of the characteristics of documentary evidence. It is not evidence.

XXIV.

Also to the use as evidence of the original bill filed by the Glendale Coal Company against John Mitchell and others in this court October 26, 1907, for the following reasons:

(1) Because the allegations in the bill of the Glendale Coal Company, a corporation, in a separate and distinct suit from the above cause, can not be used as evidence on behalf of the Hitchman Coal & Coke Company.

(2) Because an answer has been filed in said Glendale case positively denying the material allegations of the bill, and therefore nothing contained in said bill can be offered as evidence here.

(3) Because the Glendale Coal Company, being a corporation separate and distinct from the Hitchman Coal & Coke Company, another corporation, any acts done with reference to the property of the former company can not be used as evidence in support of other acts alleged to have been done with reference to the property of the latter.

XXV.

Also to the use as evidence of the original summons in the Glendale case, including the return of service as to each of the defendants, designated and identified as exhibits Nos. 8, 9 and 10 of the
273 plaintiff's documentary evidence, for the following reasons:

(1) Because the summons is a mere act of the clerk, and the return that of the marshal, and therefore such acts can not be treated as evidence against the served defendants for any purpose.

(2) Because a summons cannot be used as evidence, nor the return thereof, for any purpose.

XXVI.

Also to the use as evidence of the restraining order of October 24, 1907, and the bond and its approval, in the Glendale case, for the following reasons:

(1) Because these documents can not be treated as evidence for any purpose.

(2) Because they do not bear upon any issue or question in this cause.

(3) Because the Glendale case is that of a separate and distinct corporation and the matters connected with its business, either in or out of court, can not be tr-ated as evidence in favor of another corporation against the defendants, even if it had the character of evidence, which it does not possess.

XXVII.

Also to the use as evidence of the restraining order of January 14, 1908, and the bond and its approval, in the Glendale case, for the reasons stated under exceptions Nos. XXV. and XXVI.

XXVIII.

Also to the use as evidence of the temporary injunction and the affidavits read in support of the bill May 26, 1908, in the Glendale case, and the bond given, with the approval of the clerk, for the reasons stated under exceptions Nos. XXV., XXVI. and XXVII.

XXIX.

Also to the use as evidence of the seven items mentioned in an order entered in the Glendale case November 5, 1910, the
274 subject matter of the items being the answers filed in the Glendale case and subsequently withdrawn, for the reasons stated under exceptions XXV. and XXVI.

XXX.

Also to the use as evidence of the four items mentioned in an order entered in the Glendale case November 5, 1910, the subject matter being the motion to modify the injunction in that case and the subsequent action of the court in overruling that motion, for the reasons stated under Nos. XXV. and XXVI.

XXXI.

Also to the use as evidence of the joint and several answer of T. L. Lewis and others in the Glendale case, filed in this court September 5, 1910, for the following reasons:

(1) Because of the reasons stated under Nos. XXV. and XXVI.

(2) Because there are no admissions or statements in said answer that can be used as evidence herein.

XXXII.

Also to the use as evidence of the replication to the answer of the served defendants in the Glendale case, for the reasons stated under exceptions Nos. XXV. and XXVI., and for the reason that a replication can not be treated as evidence, it being the mere act of the plaintiff in making up the issue in the cause.

XXXIII.

Also to the use as evidence of the order entered November 5, 1910, suspending further proceedings in the Glendale case pending the final decree of this court, or the appellate court, in this cause, for the following reasons:

(1) Because it does not bear on any question or issue arising in this cause.

(2) For other numerous and obvious reasons apparent to the court.

275 XXXIV.

Also to the use as evidence of the bill filed by the Richland Coal Company against John Mitchell and others in this court October 24, 1907, for the following reasons:

(1) Because the Richland Coal Company is a separate and distinct corporation from the Hitchman Coal & Coke Company, and any acts done with reference to the property of the former can not be used as evidence in favor of the latter.

(2) Because the matters contained in said bill are mere ex parte declarations of a corporation through its representative or agent in the draft of said bill, and the allegations therein cannot be used, upon any ground, as evidence against the served defendants or any of them in this cause.

(3) Because the allegations in said bill are all positively denied by the answer filed in said Richland case.

XXXV.

Also to the use as evidence of the restraining order entered October 24, 1907, in the Richland case, in this court, and the bond and its approval, for the following reasons:

(1) Because the said restraining order is based upon the allegations of the plaintiff in said bill, before any service had upon the defendants, and was therefore an ex parte act as to them.

(2) Because the said bond and its approval were acts of the same character.

(3) Because of other obvious reasons apparent to the court.

XXVI.

Also to the use as evidence of the summons for the defendants in the Richland case in this court, together with the returns of service as to each defendant served, for the following reasons:

(1) Because the summons is a mere ex parte act of the clerk.
(2) Because the summons can not be used as evidence for any purpose in this case.
276 (3) Because it is a summons issued in a separate and distinct suit.
(4) Because of other obvious reasons apparent to the court.

XXXVII.

Also to the use as evidence of the temporary injunction awarded April 17, 1909, and the affidavit read in support of the injunction, in the Richland case in this court, for the following reasons:
(1) Because the issuance of said temporary injunction is simply an act of the court in the course of its practice.
(2) Because the temporary injunction does not possess any of the characteristics of documentary evidence, and is incompetent as evidence for any purpose herein.
(3) For other obvious reasons apparent to the court.

XXXVIII.

Also to the use as evidence of "Cotts' Exhibit No. 1," purporting to be a tabulation from the books of the Hitchman Coal & Coke Company for the period from May 2, 1903, to April 2, 1903, and from May 23 to June 23, 1903, for the following reasons:
(1) Because the data contained in these statements were in large part obtained second-hand from other parties and are not shown to be authentic.
(2) Because the production of the mines in the year 1903 is not material, nor does it bear on any issue or question raised by the pleadings in this case.

XXXIX.

Also to the use as evidence of "Cotts' Exhibit No. 2," purporting to be a memorandum prepared by the witness from the books of the plaintiff relating to the tonnage production of coal from March 20, 1904, to April 24, 1904, and from June 15, 1904, to July 15, 1904, for the reasons stated under exception No. XXXVIII.

277

XL.

Also to the use as evidence of "Cotts' Exhibit No. 3," purporting to be a memorandum prepared from the books of the plaintiff covering the tonnage production of coal from March 16 to April 16, 1906, and from June 12, to July 12, 1906, for the reasons stated under exception XXXVIII.

XLI.

Also to the use as evidence of "Cotts' Exhibit No. 4," purporting to be a statement showing the tonnage production of coal by the

plaintiff for the years 1902, 1903, and thence on to and including all the intervening years to the month of November, 1910, for the following reasons:

(1) Because the tonnage production for the years preceding 1907, is not material and does not throw any light upon the questions involved in this suit.

(2) Because the data contained in said exhibit are not shown to be authentic and derived from the personal knowledge of the witness.

XLII.

Also to the use as evidence of "Cotts' Exhibit No. 5," purporting to be a card evidencing form of contract between the Hitchman Coal & Coke Company and its employees beginning with January, 1908, for the following reasons:

(1) Because the said form of contract was adopted after the institution of this suit.

(2) Because if such a contract were made it could not operate to the prejudice of the defendants in their efforts peaceably to promote the membership of their organization.

(3) Because as appears from the evidence in this case it is not the contract made with the men prior to the institution of this suit.

XLIII.

Also to the use as evidence of "Cotts' Exhibit No. 6," purporting to contain a list of the names of plaintiff's employees during the years 1908, 1909, and to December, 1910, for the reason that
278 the number of men employed by plaintiff is not material to the matters in controversy in this suit.

XLIV.

Also to the use as evidence of "Koch's Exhibit No. 3," purporting to be the official mining scale of the United Mine Workers of America of the Pan Handle District of West Virginia in effect April 1, 1903, and ending March 31, 1904, for the following reasons:

(1) Because what the mining scale was in 1903 and 1904 is not material herein.

(2) What the mining scale was at any time is not material as to any issue or question raised by the record in this case.

XLV.

Also to the use as evidence of "Koch's Exhibit No. 4," the character of which is described in volume 1 of plaintiff's evidence, beginning at the bottom of page 170 and continuing nearly to the bottom of page 172, for the following reasons:

(1) Because the agreement between the Hitchman Coal & Coke Company and J. C. McKinley for his own company can not have any bearing upon any issue raised in this case.

(2) Because the matters referred to in the exhibit occurred long prior to the institution of this suit.

XLVI.

Also to the use as evidence of "Koch's Exhibit No. 5," purporting to be a scale for the month of April, 1904, as shown in volume 1 of plaintiff's evidence at pages 172 and 173, for the reason that this scale adopted in 1904 can have no bearing upon any issue or question raised in this case.

XLVII.

Also to the use as evidence of "Koch's Exhibit No. 6," purporting to be "Official Mining Scale between the Operators and the United Mine Workers of America for the Pan Handle District of West Virginia, in effect April 1, 1904, and ending March 31, 1906," and also to which is appended four rules marked respectively Nos. 1, 2, 3 and 4, and all of which appears on pages 174 and
279 175 of volume 1 of plaintiff's evidence, for the following reasons:

(1) Because it is not material what the scale was in the years 1904, 1905 and 1906 as to any questions arising in this suit.

(2) Because no evidence of a mining scale for any purpose is properly admissible as evidence in this case.

XLVIII.

Also to the use as evidence of "Koch's Exhibit No. 7," purporting to be a scale between the plaintiff's employees and the plaintiff, in effect April 1, 1906, and ending March 31, 1908, together with the regulations applying to such employment, as fully shown in volume 1 of plaintiff's evidence, beginning at the bottom of page 175 and continuing to the bottom of page 177, for the reason that none of the matters contained in this exhibit is relevant to any issue or question arising in this case.

XLIX.

Also to the use as evidence of "Koch's Exhibit No. 8," purporting to be "Official Mining Scale of Association of Pittsburg Vein Operators of Ohio for their mines in Belmont, Harrison and Jefferson Counties and the United Mine Workers, in effect April 1, 1906, and ending March 31, 1908," for the following reasons:

(1) Anything contained in said exhibit is foreign to the issues in this cause.

(2) For other obvious reasons to be assigned on the hearing.

L.

Also to the use as evidence of "McKinley's Exhibit No. 1," purporting to be a report of a joint conference of coal miners and op-

erators of Western Pennsylvania, Ohio, Indiana and Illinois, held in 1906, at Indianapolis, Indiana, January 25 to February 2 and March 20 to 29 of this year, for the following reasons:

(1) Because what transpired at said conference in nowise relates to any of the issues or questions arising in this case.

280 (2) Because the matters in said exhibit occurred prior to the institution of this suit and are in nowise connected with the object or purpose of this suit.

LI.

Also to the use as evidence of "McKinley's Exhibit No. 2," purporting to be a report of a joint conference of the Illinois Coal Operators' Association and the United Mine Workers of America, District 12, held at Springfield, Illinois, May *May* 17, to June 1, 1906, for the reasons stated under exception No. L.

LII.

Also to the use as evidence of "McKinley's Exhibit No. 3," purporting to be report of a joint conference of coal miners and operators of Western Pennsylvania, Ohio and Indiana, held at Toledo, Ohio, April 14 to 17, 1908, for the following reasons:

(1) Because said matters reported in said exhibit occurred after the institution of this suit.

(2) Because there is nothing therein that relates to any issue in this case.

LIII.

Also to the use as evidence of "McKinley's Exhibit No. 4," purporting to be a report of the proceedings of a joint conference of coal operators and coal miners of Western Pennsylvania, Ohio and Indiana, held at Cincinnati, March 8 to 29, 1910, for the reasons assigned under exception No. LII.

LIV.

Also to the use as evidence of "McKinley's Exhibit No. 5," purporting to be a report of President T. L. Lewis to the Twentieth Annual Convention of the United Mine Workers, for the following reasons:

(1) Because it purports to be proceedings which originated after the institution of this suit.

(2) Because there is not designated any part of said proceedings as bearing upon the issues in this cause, and the report is too voluminous to require search to be made by the court and counsel in the cause.

281 (3) Because, so far as counsel is able to ascertain, there is nothing in this exhibit bearing on the issues in this case or any of them.

LV.

Also to the use as evidence of "McKinley's Exhibit No. 6," purporting to be the report of Vice-President John T. White to the Twentieth Annual Convention of the United Mine Workers of America for the year 1909, for the reasons assigned under exception No. LIV.

LVI.

Also to the use as evidence of "McKinley's Exhibit No. 7," purporting to be the report of W. D. Ryan to the Twentieth Annual Convention of the United Mine Workers of America, for the reasons assigned under exception No. LIV.

LVII.

Also to the use as evidence of "McKinley's Exhibit No. 8," purporting to be official mining scale of Association of Pittsburg Vein Operators of Ohio for their mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America, being wage scale for 1908, for the following reasons:

(1) Because any wage scale for the year 1908 does not bear on any issue in this cause or question arising therein.

(2) Because any wage scale between the United Mine Workers of America and other persons can not bear upon any issue in this case.

And as a further reason applying to McKinley's exhibits Nos. 3, 4, 5, 6 and 7, it does not appear that they are authentic, or are true copies of the original; and, further, it does not appear that the original can not be produced.

LVIII.

Also to the use as evidence of "Cotts' Exhibit No. 7," purporting to be the "Tonnage Hitchman Coal & Coke Co., 1910," as supplementary to "Cotts' Exhibit No. 4," and fully shown on pages 3 and 4 of volume 2 of plaintiff's evidence, for the following reasons:

(1) Because the tonnage of the mine of 1910 is entirely foreign to the issue.

282 (2) Because the tonnage at any time is irrelevant, not tending to prove any of the issues between the parties.

LXIX.

Also to the use as evidence of "Cotts' Exhibit No. 8," purporting to be a list of the names of plaintiff's employees with whom contracts were made by the printed card, for the following reasons:

(1) Because the card system was not adopted until the first of January, 1908, some months after the institution of this suit.

(2) Because it does not represent the contract actually made prior to that time.

LX.

Also to the use as evidence of "Pickett's Exhibit No. 1," purporting to be "Notice to the miners of the Hitchman mine of a mass meeting on Friday evening at 6:30 P. M. at Nick Hiles' baseball ground for the purpose of discussing the principles of organization," which fully appears in volume 2 of the plaintiff's evidence at pages 11 and 12, for the following reasons:

(1) Because it is not known who placed the card at the point from which it was taken.

(2) Because it is not connected with any of the defendants.

(3) If it were so connected, it does not tend to prove any unlawful act or charge made in the bill.

LXI.

Also to the use as evidence of "Pickett's Exhibit No. 2," purporting to be a notice similar to that contained in Pickett's exhibit No. 1, for the reasons stated under exception No. LX.

LXII.

Also to the use as evidence of "Albert Jarrett's Exhibit No. 1," purporting to be a charter issued to the employees of the
283 Hitchman Coal & Coke Company, the contents of which appear in volume 2 of plaintiff's evidence at pages 93, 94 and 95, for the following reasons:

(1) Because what the Hitchman employees did after the company started to run non-union is obtaining an independent charter of their own does not bear upon any issue or question raised by the pleadings in this cause.

(2) Because the defendants or any of them are not connected with the matters to which said exhibits related.

LXIII.

Also to the use as evidence of "McKinley's Exhibit No. 9," purporting to be an official mining scale in force from April 1, 1910, to March 31, 1912, for the following reasons:

(1) Because it relates to a matter transpiring after the institution of this suit.

(2) Because what the mining scale was among the United Mine Workers, or even the employees of the plaintiff, is not material as to any of the issues raised in the pleadings.

LXIV.

Also to the use as evidence of what purports to be three letters addresed to J. C. McKinley, bearing date respectively, August 25, 1908, September 4, 1908, and September 14, 1908, each of which

letters is signed by William Green, and all of which are found in volume 2 of plaintiff's evidence at pages 189 to 195, inclusive, for the following reasons:

(1) Because the said documents relate to matters occurring after the institution of this suit.

(2) Because they contain nothing material or relevant to any issue in this case.

LXV.

Also to the use as evidence of "Austin's Exhibit No. 1," purporting to be a notice of a meeting at Nick Hiles' baseball ground, as shown in volume 2 of plaintiff's evidence at pages 233 and 234, for the following reasons:

284 (1) Because none of the defendants are connected with this notice.

(2) It does not appear that the notice related to any unlawful act on the part of the defendants or any of them.

(3) It does not appear that the notice contains anything bearing on the issues in this case.

LXVI.

Also to the use as evidence of "Austin's Exhibit No. 2," purporting to be another notice of the same character as that contained in his exhibit No. 1, for the reasons stated under exception No. LXV.

LXVII.

Also to the use as evidence of "Upstill's Exhibit No. 1," purporting to be "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, held March 8 to 29, 1910," for the following reasons:

(1) Because the matters contained in said exhibit transpired long after the institution of this suit.

(2) Because it does not appear what part of said exhibit is to be used and we are left to determine what part thereof is to become evidence in this case.

(3) Because there is nothing contained in said exhibit bearing on the issues in this cause.

LXVIII.

Also to the use as evidence of "Savage's Exhibit No. 1," introduced by plaintiff on cross-examination of the witness, purporting to be a copy of the strike order by the Ohio miners in January, 1911, as shown in the served defendants' evidence at pages 47 and 48, for the following reasons:

(1) Because said exhibit contains matter transpiring after the institution of this suit.

(2) Because it has no bearing whatever upon any issue or question arising herein.

285

LXIX.

Also to the use as evidence of "Lewis' Exhibit No. 1," purporting to be the report of the proceedings of the annual convention of the United Mine Workers of America held in 1911; introduced on cross examination, for the following reasons:

(1) Because the matters therein transpired long after the institution of this suit.

(2) Because what it contains does not bear on any issue or question in this cause.

LXX.

Also to the use as evidence of "Lewis' Exhibit No. 2," introduced on cross-examination, purporting to be a copy of the United Mine Workers' Journal of January 26, 1911, on the front page of which there purports to be given the picture of John Mitchell, ex-president, and the expenditures for the year 1910, for the following reasons:

(1) Because the matter contained in said exhibit arose after the institution of this suit.

(2) For other apparent reasons to be assigned on the hearing of the cause.

LXXI.

Also to the use as evidence of "Lewis' Exhibit No. 3," introduced on cross-examination, purporting to be a copy of the United Mine Workers' Journal of January 26, 1911, as shown in the served defendants' evidence at pages 284 and 285, for the following reasons:

(1) Because the matter contained in said exhibit occurred in 1911, after the institution of this suit.

(2) Because it does not bear upon any of the issues in the cause.

LXXII.

Also to the use as evidence of "Lewis' Exhibit No. 4," introduced on cross-examination, purporting to be a copy of the United Mine Workers' Journal of Thursday, January 26, 1911, as shown

286 in the served defendants' evidence at page 285, for the following reasons:

(1) Because the matter contained in said exhibit transpired after the institution of this suit.

(2) Because the said exhibit contains nothing relevant to any issue or question in this cause.

(3) Because the matter therein contained is not duly authenticated, and it does not connect the defendants therewith.

Before proceeding with the exceptions hereinafter taken to certain parts of the evidence introduced in chief by the plaintiff, contained in two volumes, and to certain parts of the evidence introduced by

the served defendants, and brought out on cross examination, contained in one volume, it seems proper to concisely state the issues or questions raised by the pleadings in the cause, that the court may the more readily determine whether or not the evidence excepted to ought to be admitted or the exceptions sustained.

Statement of Issues or Questions Involved.

(*a*) It is admitted, as alleged in the bill, by the answers of the served defendants that the plaintiff's mine is equipped and has shipping facilities, is engaged in mining coal and shipping the same, and that the product of its mine is 500 tons per day.

(*b*) That prior to April 1, 1906, plaintiff operated its mine on a union basis, and that after that date it has run its mine non-union, and that the strike of April, 1906, was ordered by the association.

(*c*) That the plaintiff proposed to its employees that they continue at work for it until the signing of the scale with other operators, and that it would then pay them any additional sum earned between April, 1, 1906, and the signing of the scale, provided the scale when signed should provide for an advance in wages on work done on and after April 1, 1906.

As to the matters above designated (*a*), (*b*) and (*c*), no evidence is admissible one way or the other, because the allegations made by the plaintiff are admitted to be true.

(*d*) An issue is made by the pleadings that the United Mine Workers of America, its subordinate asociations or branches,
287 by its officers, agents, employees and servants, have sought and are now seeking, by inducements, threats and intimidation, to cause the employees of plaintiff to leave its service, and to cause others who have engaged to enter plaintiff's service to break their engagements and not work for plaintiff, and to prevent others from working for plaintiff, and to compel plaintiff to employ none but persons who are members of the United Mine Workers.

(*e*) It is in issue also whether the United Mine Workers of America is a secret voluntary association; because it is averred that it is by the plaintiff, and denied by the served defendants.

(*f*) It is averred that the United Mine Workers' Association has certain express objects, some lawful and others unlawful; and it is denied that said association is endeavoring to carry out any unlawful purpose, and it is denied that any of its purposes is unlawful; so that the issue is raised as to whether or not the association or any of its purposes or objects be unlawful.

(*g*) It is also in issue whether or not the defendants have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure plaintiff's employees to break and disregard their several contracts with plaintiff, all with the avowed purpose of compelling plaintiff to unionize its plant without its consent; and it is also in issue as to whether or not to such end they have unlawfully and maliciously agreed, confederated, com-

bined and formed themselves into a conspiracy to compel, by threats, intimidation and other unlawful means, plaintiff's employees to join the union.

(*h*) It is also in issue whether or not defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are about to finally accomplish, namely: to cause plaintiff's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as plaintiff shall unionize its mine and surrender the control and management of its business to the United Mine Workers' organization.

(*i*) It is also in issue whether or not the defendants knew prior to the institution of this suit that each of plaintiff's employees
288 should not become members of the United Mine Workers of America, and that if they did become members thereof their employment with plaintiff should thereby cease and determine so far as their working for plaintiff is concerned, and that to this effect each of the said employees had signed a contract with the plaintiff.

The above statements, designated respectively by the letters (*a*) to (*i*) inclusive, embody substantially what is not in issue and what is in issue between the parties to this suit; that is, the statements from (*d*) to (*i*) inclusive present the only questions the court is called upon to decide in this cause.

LXXIII.

Also to that part of the deposition of the witness Edward T. Hitchman, appearing in plaintiff's evidence, volume 1, on pages 37, 38, 40, 41, 42 and 43, detailing the witness' experience with union labor while employed by his company or companies, both in Pennsylvania and West Virginia, for the following reasons:

(1) Because all of the matters referred to are foreign to the issues raised by the pleadings.

(2) Because it is not material what the witness' experience was with union labor, as it can have no bearing at all for any purpose of this suit; it throws no light upon the issues.

(3) Because if the Hitchman Coal & Coke Co. desired to run its mine upon a union basis the reasons for so doing were purely a matter of its own concern, as the plaintiff had the right under the law, without assigning any reason, to discontinue the use of union labor and return to non-union labor; motive in a case of this sort is wholly immaterial.

LXXIV.

Also to that part of the deposition of said Hitchman appearing at pages 46 and the few pages following, relating to the number of days the Hitchman Coal & Coke Company was idle by reason of the strike prior to its resumption on a non-union basis, for the reasons assigned under exception No. LXXIII.

LXXV.

Also to that part of the deposition of said Hitchman appearing at page 50 and 51 as to what took place between the witness
289 as the representative of the plaintiff and the men entering its employment, that they were to run only as non-union, for the following reasons:

(1) Because all these conversations are mere hearsay.

(2) Because such a condition, if any exists, could not affect the rights of the defendants to pursue peaceable methods to secure members from the employees of the plaintiff.

LXXVI.

Also to that part of the deposition of said Hitchman appearing on pages 53 and 54 as to conversations between witness and the general manager of the plaintiff, Mr. Koch, and Mr. Green, for the following reasons:

(1) Because there has been no proof of any conspiracy existing between the defendants to this suit, as alleged in the bill.

(2) Because a conversation had between Mr. Green and the witness and Mr. Koch could not be used to affect the other defendants, who were absent at the time.

LXXVII.

Also to that part of the deposition of said Hitchman appearing on page 55, wherein it is sought by means of this evidence to introduce certain newspaper clippings as evidence in this cause, for the reason that this is hearsay evidence, and therefore incompetent.

LXXVIII.

Also to that part of the deposition of said Hitchman appearing on pages 61, 62, 63 and subsequent pages, volume 1 of plaintiff's evidence, setting forth the reasons why plaintiff unionized its mine in 1903, for the following reasons:

(1) Because the motive for such action has nothing to do with the issues here.

(2) Because it is otherwise incompetent for reasons to be assigned at the hearing.

290

LXXIX.

Also to that part of the deposition of R. J. Cotts appearing on pages 84-91 inclusive, volume 1 of plaintiff's evidence, showing the tonnage production of the plaintiff during the period stated, for the reason that the productive capacity of the plaintiff's mine is stated in the bill and admitted by the answer, and therefore the evidence does not relate to any issue involved in this case.

LXXX.

Also to that part of the testimony of said Cotts appearing on pages 91 and 92, 93 and 94, as to the price per ton of coal, for the reason that the evidence does not bear upon any issue raised in the case.

LXXXI.

Also to that part of the evidence of said Cotts appearing on page 95, showing strike occurrences during the period named, for the reason that said evidence is not material.

LXXXII.

Also to that part of the evidence of said Cotts at pages 99 and 100 in which the written contract between the plaintiff and its employees beginning January 1, 1908, is recited, for the following reasons:

(1) Because the card itself is the best evidence.

(2) The contract was made after the institution of this suit.

LXXXIII.

Also to that part of the deposition of W. H. Koch appearing on page 123, volume 1 of plaintiff's evidence, in answer to the fourth and fifth questions from the top of the page, for the reason that said testimony does not bear upon the issues here.

LXXXIV.

Also to that part of the testimony of said Koch appearing on pages 124 and 125, in answer to each of the questions ap-
291 pearing on said pages, for the reason that the said evidence is foreign to any of the issues raised in this cause.

LXXXV.

Also to all the testimony of said Koch appearing on pages 126, 132, inclusive, so far as it relates to strikes and losses incident thereto sustained by the plaintiff, for the following reasons:

(1) Because it does not bear upon any of the issues arising in this cause.

(2) Because it all arose prior to the institution of this suit, and does not relate to any of the acts or matters charged against the defendants in the bill.

LXXXVI.

Also to that part of the testimony of said Koch appearing at pages 172 and 173, purporting to be a recital of the document filed by the plaintiff as "Koch's Exhibit No. 5," for the same reason assigned under the exception to said document heretofore made.

LXXXVII.

Also to that part of said Koch's deposition appearing at pages 174 and 175, volume 1 of plaintiff's evidence, which purports to be a recital of what appears in "Koch's Exhibit No. 6," for the reasons assigned under the exception heretofore taken to said exhibit.

LXXXVIII.

Also to that part of said Koch's evidence appearing at pages 175 and 176 and 177, containing a recital of what appears in "Koch's Exhibit No. 7," for the reasons assigned under the exceptions heretofore taken to said exhibit.

LXXXIX.

Also to that part of said Koch's evidence appearing at page 184, in answer to the last question on said page, for the reason that any agreement or understanding between the plaintiff and its
292 men as to conditions under which they were to work could not affect the lawful rights of the defendants.

XC.

Also to that part of said Koch's evidence appearing on page 214, relating to matters pertaining to the business of the Glendale Coal Company, for the reason that the same is entirely foreign to the issues in this case.

XCI.

Also to that part of the testimony of E. C. Pickett appearing on page 224, in answer to the second question on that page, for the reason that the same is hearsay, nor does it relate to any issue in the case.

XCII.

Also to that part of said Pickett's evidence in answer to the first and second questions on page 225, for the reason that same does not relate to any issue herein.

XCIII.

Also to that part of the testimony of John Oliver appearing on page 258, volume 1 of plaintiff's evidence, relating to the strike of 1904, for the following reasons:

(1) Because it is a matter that arose long prior to the institution of this suit, and is in nowise connected with it.

(2) Because the testimony is wholly immaterial.

XCIV.

Also to that part of the deposition of said Cotts appearing at page 3 and 4 of volume 2 of plaintiff's evidence, in answer to the last question on page 3, for the reason that the matter referred to originated after the institution of this suit.

XCV.

Also to that part of the deposition of said Pickett appearing on page 9, in answer to the third question from the top of the
293 page; for the reason that the evidence is immaterial to any issue raised in this case.

XCVI.

Also to that part of the deposition of said Pickett on pages 9 and 10 in answer to the last question beginning on page 9, for the reason that the same does not relate to any issue herein.

XCVII.

Also to that part of the deposition of said Pickett appearing on pages 11 and 12 in answer to the last question on page 11 for the following reasons:

(1) Because the defendants are not connected with the notice.

(2) Because it does not tend to show any unlawful act of the defendants.

XCVIII.

Also to that part of the deposition of said Pickett appearing on page 12 and 13 in answer to the last question on page 12, for the reason stated in No. XCVII.

XCIX.

Also to that part of the deposition of Wm. M. Daugherty appearing on pages 22 and 23, in answer to the last question on page 22 and the first question on page 23, for the reason that the method of organizing the plaintiff's mine in 1903 is not material to the issues herein.

C.

Also to that part of the deposition of said Daugherty appearing in answer to the last question on page 45 and to each and every question on pages 46 and 47 down to and including the answer to the third question from the top on page 47, for the reason that the matter is wholly immaterial as to the issues in this case.

CI.

Also to that part of the deposition of Albert Jarrett appearing at pages 93, 94 and 95, containing a recital of the charter of
294 Independent Mine Workers of West Virginia, and the answer to the first question at the top of page 95, for the reason that it does not apply to any of the issues in this case.

CII.

Also to that part of the testimony of the witness McKinley at page 125, in answer to each of the five questions at the top of said page, for the reason that the same is foreign to any issue raised by the pleadings in this case.

CIII.

Also to that part of the deposition of said McKinley appearing at pages 150 and 151, in answer to the last question on page 150 and to the question propounded by the court on page 151, for the reason that the witness details an isolated case, and it does not bear upon any of the issues arising in this suit.

CIV.

Also to that part of said McKinley's evidence appearing on page 152, for the reasons stated under exception No. CIII.

CV.

Also to that part of the deposition of said McKinley in answer to the last question but one on page 176, and to the answer to the last question beginning on page 176, for the reason that it does not relate to any issue raised in this case.

CVI.

Also to that part of the deposition of said McKinley in answer to the first question at the top of page 177, and the second question from the top, for the reason that the same is incompetent and irrelevant.

CVII.

Also to that part of the testimony of said McKinley appearing on page 181, including the last question on said page and the answer thereto on page 182, for the reason that the same does not bear on any issue in this case.

295 CVIII.

Also to that part of said McKinley's evidence in answer to the last question on page 186 and the first question at the top of page 187, for the reason that it does not relate to any matter connected with this suit.

CIX.

Also to that part of the deposition of said McKinley in answer to the last question on page 187, for the reason that it is foreign to the issues in this case.

CX.

Also to that part of the testimony of John H. Sivert appearing in volume 2 of plaintiff's evidence, beginning with the second question from the bottom of page 249 and continuing thence through page 250 and page 251 down to and including the answer to the last question on page 252, for the reason that the said evidence does not apply to any of the issues or questions arising herein.

CXI.

Also to that part of the testimony of John Mooney, appearing in volume 2 of plaintiff's evidence, in answer to each and every question on pages 260 and 261; also the answers to the last three questions on page 262, the answer to each and every question on page 263, and the answer to the first question on page 265, for the reason that said testimony does not relate to any issue herein.

CXII.

Also to that part of the testimony of Robert Myers, appearing in volume 2, being the answers to each of the last five questions on page 277 and to each and every question on pages 278 and 279, for the reason that it does not relate to any issue herein.

CXIII.

Also to that part of the testimony of C. C. Rowand, appearing in volume 2, in answer to the last four questions on page 294 and the first two questions on page 295, for the reason that said testi-
296 mony does not relate to any issue in this cause.

CXIV.

Also to that part of the testimony of E. A. Upstill, appearing in volume 2, in answer to each and every question on page 318 after the first two questions on said page; also the answers to each and every question on pages 319-333, inclusive, 335, 336, 339, 340, 341, 342, 343, 344 and 345, for the reason that all of said testimony relates to a matter not mentioned in the bill, and such evidence has no bearing whatever upon any issue or question arising upon the record in this case.

Explanatory Statement.

Counsel for the served defendants respectfully requests the court to bear in mind, in passing on the foregoing exceptions, that the court reserved the matter of disposing of objectionable testimony until the final hearing of the case; so that all the testimony went in under objection, to be urged at the hearing. In this situation of the case, the served defendants, in the cross examination of the witnesses, were necessarily required to cross examine as to all matters brought out, not knowing what the court would reject and what it would retain for consideration as bearing on the issues or any of them. Therefore, wherever the foregoing exceptions are sustained such part of the evidence on cross-examination as relates to the part as to which such exceptions are sustained is not to be considered by the court. So wherever anything has been brought out in rebuttal by the served defendants relating to plaintiff's evidence excepted to and the exception thereto sustained, it will not be considered by the court, but will be treated as a part of the evidence, excepted to in each and every case where the exception to plaintiff's evidence is sustained by the court; and this the served defendants by counsel ask may be done.

The undersigned defendants therefore pray that their aforesaid exceptions to the evidence taken and filed in this cause may be allowed to them and to each of them, and that the parts of the evidence to which the said exceptions and each of them relate may not be considered by the court and that the same be stricken from the record in this case as evidence therein for the purpose of a final hearing of said cause, and that the injunction heretofore awarded in this case may be dissolved in toto, and that they have a decree for their
297 costs by them and each of them about the prosecution of said suit in their behalf incurred and expended.

T. L. LEWIS,
Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America;
WILLIAM GREEN,
Individually and as President of District No. 6, United Mine Workers of America;
D. H. SULLIVAN,
Individually and as Vice-President of District No. 6, United Mine Workers of America;
GEORGE W. SAVAGE,
Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America;
A. R. WATKINS,
Individually and as President of Sub-District 5 of District 6, United Mine Workers of America;
JOHN ZELENKA,
Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America, and
LEE RANKIN,
Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America,
By COUNSEL.

CHAS. E. HOGG,
Attorney for the Served Defendants.

Narrative of Testimony.

(Filed July 10, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL et als.

Amendments proposed by the Hitchman Coal & Coke Company to the narrative lodged in the Clerk's Office of the said Court at Philippi, West Virginia, by the defendants, John Mitchell and
298 others, of the testimony of witnesses who testified upon the trial of said cause, and which narrative was prepared and filed by them under the provisions of equity rule 75 in perfecting an appeal to the Circuit Court of Appeals for the Fourth Circuit from the final decree entered in said cause on the 18th day of January, 1913.

EDWARD T. HITCHMAN.

Direct examination:

My name is Edward T. Hitchman, I reside in Wheeling, W. Va., my age is forty-three years and my business coal operator. Have been engaged in the coal business twenty-three years, nine years of that in West Virginia. Was engaged in business in Washington County, Pennsylvania, immediately prior to coming to West Virginia, and operated a coal mine there for about twelve years. My operations in Pennsylvania were in the Pittsburg District. Witness was asked whether in Pennsylvania he had any dealings with the United Mine Workers of America, and replied that he did not know whether they were called the United Mine Workers of America then or not, and that he was not able to answer that. Witness further testified that in Pennsylvania he ran a union and also a non-union mine, but that latterly he ran his mine non-union. When witness came to West Virginia he located at Benwood, and established the mine now known as the mine of the Hitchman Coal & Coke Company. That was in 1901. The operations were begun there in the early summer of 1901. The opening up of the mine consumed some time, and it was in the early winter of 1902, or early in the winter of 1902, that they started to mine coal at that mine.

Counsel for defendants interrupted and asked the witness whether he shipped coal, to which witness replied: "We did not ship any." Counsel for defendants then asked "You began to mine?" to which witness replied, "Yes, sir, and we may have shipped a little; I do not know."

On further direct examination, witness was asked, "When you employed labor in the opening up of the mine, was that labor union labor—meaning labor contracted for through the United Mine Workers of America—or was it non-union labor—meaning labor not contracted for through the United Mine Workers of America?" and replied: "It was not contracted for through the United Mine Workers."

299 Witness was asked: "When you first started to mine coal was the labor you contracted, or the labor you employed, union or non-union?" and replied, "Non-union."

Following questions by the court, the witness said that the Hitchman mine was opened up non-union, and at first operated non-union.

Witness further testified on direct-examination that the mine was operated non-union until April, 1903. W. H. Koch is the General Manager of the Hitchman Coal & Coke Company, and witness was associated with him in a business way in opening up the Hitchman mine at Benwood. Mr. Koch came from Pennsylvania with witness in order to establish the Hitchman mine. Witness is and always has been President of the Board of Directors of the Hitchman Company. Mr. Koch was in charge of the operations in the opening up of the Hitchman mine, and has always been the General Manager. When the Hitchman Company first started to mine coal, it disposed of the coal mined by it to the Baltimore & Ohio Railroad Company. The Coal Company had a contract with the Baltimore & Ohio with reference to supplying coal to engines.

Counsel for defendants interrupted to inquire whether the contract was in writing or whether it was verbal, and upon the witness testifying that it was a written contract, counsel for defendants objected to witness testifying about a contract that was in writing.

Upon further direct examination the witness was asked to state to whom the Hitchman Company disposed of its product, and under what circumstances when the Hitchman Company was first put into operation in the mining of coal, and replied that his company disposed of the coal to the Baltimore & Ohio Railroad Company under a contract that the railroad company had made with witness previous to the opening of the mine. Witness said that the daily supply furnished to the Baltimore & Ohio Railroad was very small to commence with; that it practically commenced at nothing and gradually increased as the company could get it to them. Witness was asked: "Did the B. & O. at that time and has it since that time, and does it today at that place have any other coal station or method of getting coal except through its dealings with the Hitchman Company?"

300 And replied, "They don't get it any place else." Witness further testified that the Hitchman Company now supplies the B. & O. with engine coal and that its mine is the coaling station of the B. & O. Witness was then handed the certificate of incorporation of the Hitchman Coal & Coke Company; it was offered in evidence and over objection made by defendants' counsel, was admitted subject to such exception, and marked Hitchman Exhibit No. 1.

On further direct examination, witness testified that all of the incorporators whose names appeared on the certificate of incorporation

referred to are living today except John F. Hosack, who is now deceased, and that since the incorporation of the company, E. T. Hitchman, W. H. Koch, John F. Hosack, E. A. Upstill, Howard Hazlett, Lawrence E. Sands and George R. E. Gilchrist, have been members of the Board of Directors; and that since the death of Mr. Hosack the Board of Directors has consisted of six members.

Witness is acquainted with the defendants, T. L. Lewis, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, and Lee Rankin; got acquainted with them along in the last nine years—has known some of them longer than others.

Witness further testified that in 1902 he was interested in operating a coal mine near Mt. Pleasant in Jefferson County, Ohio; that in the main the same persons were interested with him in the ownership of that mine as were interested with him in the ownership of the Hitchman mine. The Mt. Pleasant mine was opened up by witness and those associated with him as its owners.

Witness was asked: "Did you while you were in charge of the Mt. Pleasant mine have any business dealings with T. L. Lewis, D. H. Sullivan, George W. Savage, A. R. Watkins and Lee Rankin?" and replied, that he had. Witness further testified that he transacted business with them regarding the union; that that mine in Ohio was run union, and that they represented the United Mine Workers, and that witness had dealings with them—some of them—well all of them, witness thinks.

Witness says that the Hitchman mine was run non-union after it was opened up in 1902, and until about April, 1903; that during the spring of 1903 witness was at the Mt. Pleasant mine most of the time.

Witness was asked how it came that the Hitchman mine became unionized during the spring of 1903, and answered, "Well, the Ohio
mine was run union from the beginning—from the time we
301 opened—and the mine officials—organizers and so on—tried
to organize the Hitchman mine at Benwood, and they threatened me in Ohio—that they would close our mine down in Ohio if we did not allow the men at Benwood to organize, and the men seemed to be anxious to organize at Benwood and they were allowed to do so."

Witness further testified that the men at the Hitchman mine were not organized but a short time until they came out on a strike in 1903; that they struck on April 1, 1903, he thinks it was; that they were out on a strike at that time fifty some days.

Witness said that he could not recall what was the daily production of coal at that time. He said that the company's chief customer at that time was the B. & O. Railroad Company; that the company furnished them coal for their engines.

Upon being asked what happened when the men struck, after becoming unionized, with reference to the B. & O. engine coal, witness replied: "They had to get it elsewhere."

Counsel for defendants interrupted to inquire with the words, "That was in 1903?" and the witness replied, "Yes."

On further direct examination, witness was asked: "You say that you ran a union mine first in Pennsylvania and then latterly ran a non-union mine. What was your experience with reference to strikes and troubles, and annoyances, while you were running union in Pennsylvania?"

Counsel for defendants objected to the question and the court ruled that the witness being President of the company and his conduct being involved in this matter the witness would be allowed to answer the question simply as explanatory of the reason for his course of conduct.

The answer of the witness was as follows: "While the mine that I was connected with there was union, we had trouble all the time—strikes for weeks at a time, and then probably only for one or two days at a time, and the people I was connected with there could not stand for that, and we threw the union over, and ran non-union after we had had it for a year or two."

Witness was asked what influence did that experience of his in Pennsylvania have with reference to his conduct in opening up the Hitchman mine non-union, and replied: "So long as we had the contract with the Baltimore & Ohio Railroad I felt that we were bound to furnish them coal, and I felt we could do it a good deal
302 better with a non-union mine than we could with a union mine. When we went there, I said there should not be anything else but a non-union mine, and we started out in that way."

Witness was further asked: "And you eventually unionized under the compulsion you have mentioned, owing to the Mt. Pleasant mine being in union territory and being run union?" and replied, "Yes, sir."

Witness was asked what his experience with the union was with reference to strikes after the 1903 strike which followed the unionizing of the mine, and said that there was more or less trouble all the time that year, but no serious trouble until 1904; that in 1904, the men were all brought out on a strike again.

The witness was also asked: "What became of the B. & O. trade if it had any with you in 1904, during the 1904 strike?" and answered: "They forced us to fulfill our contract with them."

In reply to the question: "What did you do?" witness said: "To take care of any coal they might bring there, we had to put it on their engines for them."

Witness was asked if the Hitchman Company did that, and replied that they did in 1904. In reply to a question as to how the company did it, witness said: "We had to go to quite an expense. We closed up our mine mouth, which was a slope, and built an incline down under their tracks and took the coal from the cars off of their siding along the main tracks, and hauled it up this incline and over this pit mouth, and up around over a steel trestle that we have, over to the coaling station."

Counsel for defendants interrupted with: "That was during the strike of 1904?" to which witness replied, "Yes, sir."

Upon further direct examination, witness was asked if he recalled about how long that strike lasted and that condition lasted with reference to supplying the B. & O. coal, and replied: "Fifty some days;" that he did not remember the exact number of days.

Witness further testified that the next year following the settlement of the strike in 1904 there was not very much trouble with the union with reference to strikes or other troubles, and that down to April, 1906, there was not a great deal of trouble; an occasional day they would decide not to work, or something.

Witness was asked what happened in April, 1906, and replied: "They came out on a strike again."

303 Witness was asked to state what dealings he had, if any, with any of the defendants with reference to the continuation of work at the Hitchman mine pending a settlement of the national strike which had been ordered April 1, 1906, and answered that he did not have any personally himself at all.

The court asked this question: "What was the cause of the strike in your mine in April, when it was union? What grievance was there?" The witness inquired, "In 1906?" to which the court said, "Yes, sir," and the witness then replied: "Why, in the 1906 strike, we could not agree on a scale of wages, but we agreed with our men and our men agreed with us that they should continue at work, pending a scale, and the men did work for a while after the first of April, (I do not know how many days), under those conditions."

Witness was further asked: "Was this agreement, as to the scale, general, or was it just at your mine?" and answered: "It was national." He was asked, "Did you have any understanding with them, if the scale was raised, that you would pay it?" and answered: "Yes, sir; we did."

Witness said this was an agreement with the company's men.

Counsel for defendants said: "I did not catch the drift of that answer, and the testimony given. As I understand, you had an agreement pending the adjustment of the scale, with your men, to continue work, did you? Is it that what you said?" and the witness replied: "The men were to continue work."

Defendants' counsel said: "You agreed that they should continue, pending the adjustment of the scale?" to which the witness replied: "Yes, sir; that we would pay whatever the scale was; whatever was agreed to, we would pay it."

Upon further direct examination the witness was asked this question: "The scale you refer to as not having been agreed upon April 1st is the scale that was being discussed by the operators' association, in convention, with the miners, in convention?" and answered: "It was." The witness was then asked: "Was the Hitchman Coal & Coke Company a member of that operators' association?" He replied: "It was not." The witness was asked where those operators were located that held that convention—in the main. He replied: "In Ohio." He was asked if they were competitors of the Hitchman Coal & Coke Company in the general markets, and replied: "They were."

304 The witness further testified that pending the settlement of a scale which was in course of adjustment between the operators' association and the miners, in convention, the Hitchman Company at that time ran its mine union and agreed with its men that if they would continue at work the company would pay them

from April 1st whatever the new scale might be; that if the new scale when agreed upon was lower than the scale the company was then paying when the scale expired March 31st, 1906, there would be no reduction upon the wages as paid to the men, and that if the scale was raised as the result of this conference between the operators' association and the United Mine Workers the company agreed with its men that if they would work the company would pay them the increased amount dating it back to April 1st, 1906.

Witness further testified that he knows that the defendant officials of the United Mine Workers were advised by the general manager of the Hitchman Coal Company of that arrangement which the company had with its men.

Witness was asked: "What caused the men at the mine to strike after having worked for some time, on April 16th, 1906?" and replied that he presumed the strike was caused by the officials; that they would not allow the men to work under that arrangement. The witness further testified that when the men struck the mine was shut down, and that it was idle at that time for fifty some odd days.

Witness was asked: "What was the condition of your trade, in a general way, especially with regard to the service rendered the B. & O. at the time of that strike?" and replied: "We had to repeat just what we did in 1904. They held us to the contract, and made us take care of the coal that they brought there, and put it on their engines, and the same conditions existed as in 1904. The company kept that up during the entire period of the strike. This was in 1906.

Witness further testified that during the 1904 strike, and during the 1906 strike, the company had other trade besides the railroad trade, and that relatively the other business compared with the business the company had with the Baltimore & Ohio at those periods in the proportion of about half and half; while at the time of the 1903 strike the Baltimore & Ohio got the most of the business. The company extended its commercial business as time went on, and its present operative condition is that about half of its business is commercial business and about half is railroad. During the fifty some odd days of the 1906 strike the mine was closed down all the time entirely. The company took care of the Baltimore & Ohio
305 trade as it had done in 1904, and the company's other trade just had to go, as the company could not take care of that, there was no way to do it. This was also true of the company's trade in 1904, during the 1904 strike; and to the extent that the company had commercial business in 1903 it was the same. The company lost that business. The company has company houses in which some of the company's men live; those houses adjoin the mine. There are thirteen double houses, making the equivalent of twenty-six single houses; during the period of these strikes the company's men who were living in the houses at the time of the strikes just continued to stay there.

The witness was asked: "At the time this strike was in progress in 1906, and before you resumed work non-union, what dealings did you have with your men looking to their resuming work?" and replied: "Along about the first of June following the strike, Mr. Koch

was away on a trip, and Mr. Pickett, our mine superintendent, telephoned me that some of our men wanted to meet me. I met with them by appointment through Mr. Pickett, and they wanted to know how they could get back to work—that they could not stand it any longer; that they were not getting any benefits, and they must get back to work; and I told them that they could go back to work, but they could not go back as members of the United Mine Workers of America; that from that time on, this mine would be run non-union, and the company would deal with the men, or with each man, individually, from that on. The result of the negotiations was that they went to work non-union." And witness further said: "I told them they could not work there any other way, and that each one would have to re-employ himself and work non-union.

The witness testified that he told these men that the company's mine would be run non-union. The court said to the witness: "Then just tell what was the extent of the agreement between you and your men. Just what it was, if anything," and following an interjection by defendants' counsel of the words: "And whether it was with them individually or as a body," the witness replied: "I had my understanding with a self appointed committee, that came to see me, that they were to work non-union, and that every man would have to get his own job back from the mine superintendent, individually, and that we would have no more union—that we would treat with the men individually."

The witness further testified that the men wanted to know what the company was going to pay them—what scale the company would pay them—and that he told them he could not arrange a scale with them, but that Mr. Koch would when he came home; they went to work without any scale the next day; a scale was subsequently agreed upon between the men and the company.

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Witness was asked this question: "How much time, if any, has your company lost by reason of labor troubles since resuming work non-union in June, 1906?" and replied: "None at all."

The witness further testified that he was present at the McLure House in the spring of 1906 when there were with him Mr. Koch, the manager of the Hitchman Company, and the defendant, William Green; that he does not remember all of the conversation that took place in his presence there between Mr. Koch and Mr. Green on that occasion. Witness remembers, as far as witness was concerned and as far as the Hitchman Coal & Coke Company was concerned, that Mr. Green was told that if he brought the company's men out on a strike that he would be taking something away from them he would never be able to give back to them; that those men—if they stayed with the union or struck with the union—would never get work at the company's mine again; that they never could get the jobs back that they had at the company's place.

The following question was asked by the court: "Was Mr. Green informed in that conversation that if the union insisted on calling your men out on a strike, that you would re-organize your mine as a non-union mine?" and the witness replied: "Yes, sir."

Upon further direct examination the witness said that the occasion and origin of this conversation between Mr. Koch and Mr. Green was by appointment, he believed, but that he did not know absolutely: that the company's men were working and they wanted to work, and the union wanted them to come out—the officials wanted to bring them out; that the company was insisting that its men be allowed to work; they were working and were satisfied; and this conversation with Mr. Green was with reference to the men continuing to work.

The witness was handed a paper filed January 14th, 1908, which contained an affidavit to which his signature appears, and attached to that affidavit are twenty-nine exhibits, the exhibits consisting of clippings from newspapers. He was asked to look at the paper and say whether the signature is his signature, and whether the clippings were taken from the papers they purport to have been taken from.

307 The witness answered that the signature was his signature, and that the newspaper clippings are the ones taken from the papers which they were supposed to be taken from. This paper and the attached newspaper clippings related to the preliminary motion filed at Parkersburg, January 14th, 1908, upon the subject of the acts of defendants in attempting to organize the plaintiff's mine in defiance of the restraining order which had been granted on October 24th, 1907. The paper and these newspaper clippings are the same as those heretofore admitted in evidence as being items mentioned in the order entered November 5th, 1910, in the Hitchman case, to the admission of which in evidence the defendants objected.

Cross-examination:

When the Hitchman mine was opened in 1902, the production was small and its capacity greatly increased as time went on; the mine was opened in the summer and fall of 1902 for the shipment of coal; the mine was unionized in April, 1903; at that time the Mt. Pleasant mine was being operated union by witness.

The witness was asked and answered questions as follows:

"Q. I believe that you stated that the men at the Hitchman mine were anxious to unionize?

A. Yes, sir, they asked if we had any objections to their unionizing.

Q. And you said you had not, and they were accordingly unionized?

A. Yes, sir.

Q. You also stated in that connection that the defendants in this case threatened to close down the Mt. Pleasant mine unless you did unionize the Hitchman mine?

A. Yes, sir.

Q. There are ten defendants in this case as you are aware, Mr. Hitchman, are there not?

A. Yes, sir.

Q. Which, if any, of these defendants, made that threat to you?

A. Mr. Watkins. Mr. Sullivan did not make it as a threat; he got around it in another manner and wanted to know what we would do if he did do that."

When asked further questions the witness said that Mr. Watkins made this statement to witness at the Mt. Pleasant mine; that there was no one present except Watkins and witness; thinks that Mr. Sullivan was not present at that time; does not remember what Mr. Sullivan's language was.

The Hitchman mine continued to run union until April, 1906.

308 Witness does not recollect the amount of coal that was being furnished the B. & O. Railroad Company at the Hitchman mine, when the union organized the mine; between that period, and a year after, the company increased the output to the B. & O.; the output may have increased in 1905 over 1904; the daily output since April 12, 1906, has not increased aside from the increase in traffic on the B. & O. making a greater increase of coal necessary for the business of the B. & O.; the management of the company's business is under the control of a Board of Directors.

Witness became acquainted with the defendants Lewis, Green, Sullivan, Watkins and Rankin in the nine years; that is, during the last nine years beginning with 1901.

Witness and his associates never had the Mt. Pleasant mine fully developed; began with union labor there when shipping of coal was commenced, and continued.

Witness stated that he had business transactions with Lewis; he was with him in an operators' convention at Wheeling; he had nothing to do with Lewis then with reference to making a contract to unionize the Hitchman mine. Witness met Watkins first at the Mt. Pleasant mine; John Stevenson was President of Sub-District Five when the Hitchman Company organized its mine; he was one of the men who represented the organization when the company unionized; witness met Rankin along with Stevenson. Rankin was Secretary of the organization that Stevenson was President of; witness had dealings with Rankin in that capacity. Witness never met Sullivan with relation to the Hitchman mine; met him with reference to the Mt. Pleasant mine.

The following questions were asked and answers given:

"Q. You say that you had trouble all the time that your mine was running union, from 1903 to 1906. What do you mean by that term: 'You had trouble'?

A. Well, everything did not run smoothly. Occasionally we would lose a day. The men would have some grievance or other, and they would not go to work.

Q. And you adjusted that, and they resumed?

A. Yes, sir.

Q. Well, that is what you mean by 'having trouble?'

A. Yes, sir.

Q. You had a contract and they claimed that the contract was violated by you, did they not?

A. No, I think not. Well, probably they did, yes.

Q. They made some complaint that the contract was not being carried out?

A. Yes, sir.

309 Q. And you examined into it—(Interrupted).

A. And then they broke their contract by not working.

Q. That is to say, until it was adjusted?

A. Yes, sir, until it was adjusted.

Q. And when it was adjusted they resumed?

A. Yes, sir."

The witness further testified that he could not say definitely how many men the company employed during the time the mine was running union.

Witness was asked: "Have you as many or more since you have been running non-union as you had when you were running union?" and replied: "It has varied."

Witness further testified the mine has increased its capacity and taken on more men; in April, 1906, the men went out on a strike in compliance with directions from the union; the Hitchman Company desired them to remain pending the question of a scale; the men were asking an increase; we said we would pay whatever the scale was; we agreed to pay it if they would remain; we agreed to pay the scale that the union proposed at that time, and the men worked for a while, and went out about the middle of April.

When the mine started up non-union the agreement in regard to the men was that they were to work non-union; the company guaranteed them that they would make as good wages, or that it would pay them as good wages, as anybody else did; they were to get as good wages as any other men could get; so far as witness made a contract with the men it was verbal; there was a scale drawn up under which the men were to work; there was no written contract at that time; that was referred to the general manager, Mr. Koch; the company simply decided to run non-union; that is as far as witness went with the matter; witness was acting in Mr. Koch's place, he being away; the board of directors of the company adopted a resolution to run the mine non-union and to employ only non-union men; witness is speaking from recollection entirely—has not the records with him; does not know personally that the defendants were advised by the general manager of the agreement on the part of the company with the men as to not joining the union.

In 1907, when the injunction was sued out in this case, the company had thirteen double houses, counted as twenty-*sig* single residences, each residence being designed to accommodate one family; the company had the heads of more than twenty-six families in its employ at that time; witness could not say how many heads

310 of families, or married men, and single men occupied these twenty-six single residences. The company was employing about three hundred men at that time, but how they were divided as to heads of families witness does not know; the company had one hundred and fifty or two hundred men, or more, that were not living in company houses; the men double up pretty thick in some of those houses, and witness would not undertake to say that at least two hundred and fifty men employed by the company at that time

were not living in the company houses; these other men rented houses of other people and paid their rent.

Witness does not recollect what time in the spring of 1906 it was when he met with Mr. Koch and the defendant Green at the McLure House in Wheeling; must have been between the first and middle of April, 1906; Green met Mr. Koch by appointment, and witness was with Koch; the purpose of the meeting was to talk over having our men continue at work.

Witness ran his mines in Pennsylvania on a union basis two or three years; it was in Washington County, Pennsylvania; witness worked there for several years; when witness came from Washington, Pennsylvania, he had not been actually out of the coal business at all; was out of active management of the mine about eighteen months; when witness came to West Virginia from Washington County he sold his mines in Pennsylvania; they were non-union when witness disposed of them; witness does not know but thinks they were probably afterwards unionized; witness is not a member of the United Mine Workers of America; has examined the constitution of the National organization, the one put in evidence, examined it several years ago; so far as witness knows the constitution put in evidence is substantially what the constitution was at the time the witness contracted with the union in 1903, in that constitution sub-district 5 is practically the same as it was in 1903; when the Hitchman Company made its contract to run the mine union in 1903, witness supposed that the United Mine Workers were working under a constitution; witness never called it in question personally; witness also knew the United Mine Workers had a local at the Hitchman mine; the company collected dues assessed against the men and transmitted it to the proper authorities of the United Mine Workers from 1903 to 1906,—three years; witness does not remember of having his attention called to the preamble prefixed to the constitution; a copy of which is filed as Exhibit No. 1; does not remember that his at-

311 tention was directed to the preamble prefixed to the constitution of District 6; witness collected a part of the newspaper clippings attached to his affidavit filed in January, 1908; collected a part of them himself; does not know who collected the balance of the clippings; in April, 1906, the men were at work and the company offered to pay them the advanced scale proposed if they would continue and not come out; the company offered to pay the proposed advanced scale right then and there; the men did not want to come out; the union said the men could not stay even if the scale were accepted by the company; the company's men reported that the officials did not allow them to work that way under any circumstances; the company's men reported that; witness knows from the company's general manager that this was the case; does not know it personally.

R. J. COTTS.

Direct examination:

My name is R. J. Cotts; residence, Glendale, West Virginia; age thirty-five years; occupation, bookkeeper for the Hitchman Coal & Coke Company; have been employed as bookkeeper of the Hitchman Coal & Coke Company since June, 1903; prior to that time was chief clerk in the yard office of the B. & O. R. R. Co. at Benwood, W. Va. The orders for cars for the Hitchman mine came to witness's office through the superintendent's office of the B. & O., and were given by witness to the yard people for distribution. Cars were then, pursuant to that, given to the mine; witness therefore had some means of knowing the amount of business to a certain extent that was being done by the Hitchman Company; the books of the Hitchman company are very extensive; many entries; could tell from the books in any one statement the amount of production at any given time by collection from the general books. Knows from the records on the books whether the Hitchman company in the month covered by March 2d, 1902, to April 2d, 1902, mined and disposed of coal for engine use and for commercial use, by shipments; knows this in part from his observations while he was in the employ of the B. & O., in the yards; can tell from the memorandum what the total of the coal mined and disposed of for commercial purposes was in that particular period, but can not give the figures off hand, aside from his tabulations; witness can not tell the amount for the same period that was furnished to the B. & O.
312 R. R. Co. for engine use aside from witness's tabulation; passing to the subsequent period from May 23d, 1903, to June 23d, 1903, witness's answer would be the same; to the period from March 20th, 1904, to April 20th, 1904, witness's answer would be the same; to the period from June 15th, 1904, to July 15th, 1904, witness's answer would be the same; to the period from March 16th, 1906, to April 16th, 1906, witness's answer would be the same; to the period from June 12th, 1906, to July 12th, 1906, witness's answer would be the same. With regard to the output or tonnage of the Hitchman Coal & Coke Company for engine use and for commercial use for the year 1902, arranged quarterly, witness's answer would be the same, beginning July, 1902; then for October, November and December, 1902, and for the year 1903, in like manner, the witness's answer would be the same; for the year 1904, in like manner, the witness's answer would be the same; for the year 1905, for the year 1906, for the year 1907, for the year 1908, for the year 1909, and for the year 1910, including the month of November, in like manner, the witness's answer would be the same.

Witness is handed a paper which is marked Cotts' Exhibit No. 1, and is admitted in evidence, and says that he prepared the tabulation of the tonnage from the books of the Hitchman Coal & Coke Company; that the tonnage as shown from March 2d to April 2d, 1903, is 6273.10 tons of commercial coal and 7432.95 tons of engine

coal; witness means by engine coal, that it was furnished to the B. & O. directly on their engines; the tonnage from May 23d to June 23d, 1903, was 2460 tons of commercial coal and 8119.25 tons of engine coal.

Witness is handed a paper which is Cotts' Exhibit No. 2 and is admitted in evidence, and says that the tabulation was made by him from the books of the Hitchman Coal & Coke Company; that the tonnage shown from March 20th to April 20th, 1904, was 11133.70 tons of commercial coal and 8768.65 tons of engine coal; the period from June 15th to July 15th, 1904, shows a production of 6363.50 tons of commercial coal and 12505.70 tons of engine coal.

Witness is handed a paper which is marked Cotts' Exhibit No. 3 and is admitted in evidence, and says this paper was prepared by him from the books of the Hitchman Coal & Coke Company; the period from March 16th to April 16th, 1906, shows a production of 9151.10 tons of commercial coal and 16293.25 tons of engine coal; the production from June 12th, 1906, to July 12th,
313 1906, shows 6615.95 tons of commercial coal and 15953.35 tons of engine coal.

Witness is handed a paper which is marked Cotts' Exhibit No. 4 and is admitted in evidence, and says he prepared this paper from the books of the Hitchman Coal & Coke Company, and the tonnage shown for the quarter ending September 30th, 1902, is engines 4177.95 tons, commercial 272 tons; for the quarter ending December 31st, 1902, the engine tonnage was 12154.95 tons, commercial coal 569.85 tons; total tonnage for the year 1902, engines 16332.90, commercial 841.85.

The tonnage for the first quarter 1903, ending March 31st, was engines 9704.60, commercial coal 1772.75 tons; for the second quarter ending June 30th, 1903, the engine tonnage was 10412.50, commercial 2636.70 tons; the third quarter ending September 30th, 1903, the engine tonnage was 23441.80, and the commercial 21873.50 tons; for the fourth quarter ending December 31st, 1903, the engine tonnage was 26251.10, commercial 18188.45 tons; total tonnage for the year, 69810. tons of engine coal, and 60471.40 tons of commercial coal.

For the first quarter of the year 1904, ending March 31st, the engine tonnage was 25028.75 tons, commercial 30992.20 tons; the second quarter ending June 30th, 1904, the engine tonnage was 11805.90; commercial coal 8972.10 tons; for the third quarter ending September 30th, 1904, the engine tonnage was 38731.35, commercial coal 20301.60 tons; for the fourth quarter ending December 31st, 1904, the engine tonnage was 34672.75, commercial 38316.20 tons; total tonnage for the year engines 110238.75 tons, commercial 98582.10 tons.

For the first quarter of the year 1905, ending March 31st, the engine tonnage was 32933.75 tons, commercial coal 29712.80 tons; for the second quarter ending June 30th, 1905, the engine tonnage was 31803.20, commercial coal 14891.60 tons; for the third quarter ending September 30th, 1905, the engine tonnage was 39608.20

tons, commercial coal 30263 tons; for the fourth quarter ending December 30th, 1905, the engine tonnage was 46431.60 tons, commercial coal 40697.50 tons; total tonnage for the year 1905, engines 150776.75, commercial coal 115564.90 tons.

The total tonnage for the first quarter ending March 31st, 1906, was engine coal 45843.95 tons, commercial coal 33885.70 tons; for the second quarter ending June 30th, 1906, the engine tonnage was 21249.10 tons, commercial coal 2519.55 tons; for the third
314 quarter ending September 30th, 1906, engines 49240.70 tons, commercial 34288.90 tons; for the fourth quarter ending December 31st, 1906, engines 52909.70 tons, commercial 45638.15 tons; total tonnage for the year 1906, engines 169243.45 tons, commercial 116332.30 tons.

For the year 1907 for the first quarter ending March 31st, engines 41856.40 tons, commercial 41702.45 tons; second quarter ending June 30th, 1907, engines 44613.10 tons, commercial 37917.55 tons; for the third quarter ending September 30th, 1907, engines 52277.65 tons, commercial 39622.05 tons; for the fourth quarter ending December 31st, 1907, engines 48512.30 tons, commercial 33074.20 tons; total tonnage for the year 1907, engines 187259.45, commercial 152,316.25 tons.

For the first quarter of the year 1908, ending March 31st, engine tonnage 26,604.60 tons, commercial 8,494.75 tons; for the second quarter ending June 30th, 1908, engines 24,623.50 tons, commercial 14,297.50 tons; for the third quarter ending September 30th, 1908, engines 28,661.05 tons, commercial 4,838.25 tons; for the fourth quarter ending December 31st, 1908, engines 31,866.50 tons, commercial 4,317.05 tons; total tonnage for the year 1908, engines 111,705.65 tons, commercial 31,947.55 tons.

For the first quarter of the year 1909, ending March 31st, engine tonnage 28,193.40 tons, commercial 3,615.70 tons; for the second quarter ending June 30th, 1909, engines 28,783.60 tons, commercial 10,978.60 tons; for the third quarter ending September 30th, 1909, engines 33,608.45 tons, commercial 33,825.70 tons; for the fourth quarter ending December 31st, 1909, engines 39,950.45 tons, commercial 38,829.10 tons; total tonnage for the year 1909, engines 130,535.90 tons, commercial 87,249.10 tons.

For the first quarter of the year ending March 31st, 1910, the engine tonnage was 35,900.35 tons, commercial 47,278.15 tons; for the second quarter ending June 30th, 1910, engines 36,745.20 tons, commercial 55,002.85 tons; for the third quarter ending September 30th, 1910, engines 39,416.85 tons, commercial 15,212 tons; for the months of October and November of the fourth quarter, engines 27,214.35 tons, commercial 24,889.45 tons; total tonnage for the eleven months of 1910 is, engines 139,276.75 tons, commercial 142,382.45 tons.

Witness further testified that the price paid by the B. & O. R. R. Co. to the Hitchman Company for the engine tonnage of 7,432.95 tons, mentioned in Cotts' Exhibit No. 1, for the period from
315 March 2d, 1903, to April 2d, 1903, was ninety cents per ton, witness thinks, but he is not positive of it; for the next ton-

nage, 8,119.25, for the period from May 23d, 1903, to June 23d, 1903, it was $1.00 per ton.

As to the price for the commercial tonnage for these two totals, witness replied that there was no fixed price, but that it would be approximated at about a dollar per ton.

Upon being asked the same question as to the 8,768.65 tons, being the amount of engine coal for the period from March 20th, 1904, to April 20th, 1904, as shown by Cotts' Exhibit No. 2, witness replied that the price was a dollar.

Upon the same question being asked as to the 12,505.70 tons of coal covering the period from June 15th to July 15th, 1904, as shown by Cotts' Exhibit No. 2, the witness replied that the price was ninety-five cents per ton; and with regard to the commercial coal footings on that same exhibit witness said the price per ton would average about ninety-five cents; it varied.

Asked the same question as to the tonnage of 16,293.25 tons of engine coal for the period from March 16th, 1906, to April 16th, 1906, as shown by Cotts' Exhibit No. 3, the witness said that the coal from March 16th, 1906, until April 1st, 1906, was billed at ninety-five cents, and the coal from April 1st to April 16th, was billed at a dollar.

Asked the same question as to the footings 15,953.35 tons of engine coal for the period beginning June 12th, 1906, and ending July 12th, 1906, as shown by Cotts' Exhibit No. 3, the witness replied one dollar; witness stated that the approximate price of the commercial coal evidenced by the two totals on his Exhibit No. 3 varied; it averaged about ninety-five cents per ton.

Upon being asked what in a general way for the year 1902, the company received per ton for coal as shown by the tabulation for the year 1902, embraced within Cotts' Exhibit No. 4, witness replied that the engine price at that time was ninety-five cents, but he does not know what the commercial coal was.

For the year 1903 witness says that previous to April 1st, 1903, the commercial coal averaged about $3.00 per ton, due to the anthracite strike; engine coal previous to April 1st was ninety-five cents, and after April 1st engine coal was a dollar, and commercial coal would average about a dollar, the price of commercial coal had come down very materially after the settlement of the anthracite strike, from an average of three dollars to one dollar, approximately.

316 Asked as to the price for the year 1904 of commercial and engine coal received by the company for the tonnage as shown for that year by Cotts' Exhibit No. 4, the witness said the price would average about ninety-five cents for commercial, and after April 1st, ninety-five cents for engine coal.

Asked the same question for the year 1905, the witness said the price of engine coal was ninety-five cents, and the commercial coal would average about ninety-five cents.

Asked the same question for the year 1906, the witness replied the engine coal was ninety-five cents to April 1st, and from April 1st, it was a dollar, and commercial coal would average between ninety-five cents and a dollar.

The witness was asked the same question for the year 1907, and replied the engine coal was a dollar, and the commercial coal would average about ninety-five cents.

For the year 1908, his answer was that the prices were about the same as 1907.

For the year 1909, his answer was, engine coal in 1909 was a dollar, and commercial coal would average ninety-five cents.

For the year 1910, including the month of November, witness said engine coal to April 1st, 1910, was a dollar, and from April 1st, $1.05, and commercial coal would average about ninety-five cents.

The witness Cotts further testified that the first strike occurred April 2, 1903, and the mine resumed May 23, 1903; the second strike was on April 20, 1904, and the mine resumed June 15, 1904; the third strike was April 16, 1906, and the mine resumed non-union on June 12, 1906; it has run since June 12, 1906, non-union, and there has not been any strike in that period.

The following question was asked by the Court: "What have been the wages paid since June, 1906, as compared with those paid by union mines?" and the witness replied: "In practically every instance we paid the same scales as the miners' organization,—that is, the union scale,—with one exception, and we paid more than the organization demanded in that exception."

Upon further examination of the witness, he testified that that is the condition today; that that was the condition at the time of the attempted unionizing of the men in the summer and fall of 1907, and that that condition has continued ever since. From the books of the company witness knows that the company's men, who continued at work for sixteen days in April, 1906, were paid
317 at the advance which the union asked for; that this was the basis upon which the compensation of the men was figured at the pay ensuing the first day of April and up to the time the men quit work on April 16, 1906; the increase being that which was demanded by the United Mine Workers of America of the operators, and which increase was the subject of contention and the reason the scale was not signed April 1st between the operators and the United Mine Workers of America; the advance paid was 5.55% over the scale which expired March 31, 1906, and that pay was made April 25, 1906; the men were not working for the company on April 25, 1906, when that pay was made, but they were all there on pay day; and the company paid them the advanced wages demanded by the United Mine Workers in a scale which had not at that time been agreed upon; this payment of 5.55% was made pursuant to an offer accepted by the men prior to their striking April 16, 1906; the company was not willing to sign the scale then because there was some contention about the price for run of mine coal. The price for run of mine coal had been up in 1903 and had been settled at that time. The scale of the United Mine Workers for the price of run of mine coal is seven-ninths witness thinks, but is not positive of that—seven-ninths of the price of screened coal, and in the particular vein of coal the company is working the

screened coal only ran about sixty per cent. instead of seven-ninths which they demanded, and its scale of run of mine coal has been figured at about 64.7% of the price of screened coal; the company had never paid the union scale for run of mine coal based on the seven-ninths previous to 1903 and the organization there, the company paid so much a car for mining coal; after the mine was unionized in 1903, the company paid for that time on the run of mine basis about sixty-two per cent of the price of screened coal, and agreed to make a test and see the actual percentage of screened coal that its coal contained and make its scale from that information; but after the company started in this test in the summer of 1903 there was some contention raised among the men that the test was not being made fairly, and they struck and were out one day, (witness can not give the date of that); Mr. Haskins was the president of the Ohio miners and he came down and settled it by agreeing that the company should pay a tonnage basis; and the coal that went on engines the company was to pay a run of mine rate of thirty-four cents, which was an increase of about one cent and a half above what it had been paying; since that time the
318 company has always figured the run of mine on the same basis that that was at that time.

The witness was asked the following question: "So that while the company was willing to pay the increase of 5.55% demanded by the union at the time of the contention about the new scale of 1906, the company, if it had signed the scale at that time with the union, would have had to forego the advantage that it had already obtained by reason of the settlement of the run of mine question?" and answered: "Yes, sir."

To the further question: "It having been settled to the satisfaction of the union and its men once before, it would then be subject to a new contract?" the witness said: "Yes, sir."

The witness further testified that under the proposed scale of 1906 the scale of run of mine coal was seven-ninths he thinks, but is not positive about it, and that the price of screened coal in 1906 was 50.5 cents a ton, witness thinks.

Question by the Court: "And what was run of mine?" to which witness answered, "We paid thirty-one cents a ton."

Upon further direct examination the witness Cotts, was handed a card marked Cotts' Exhibit No. 5, which was admitted in evidence, and said of it that it is a memorandum of employment between the company and the men employed.

Upon direction of the court, counsel for plaintiff read the card marked Cotts' Exhibit No. 5. It reads as follows:

"I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Co. is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Co. I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the

employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read."

Upon further direct examination the witness said: "Before a man gets his check, or is permitted to go to work, he is sent to the office, and that memorandum is read to him or he reads it
319 himself, if he is able to, and he signs it or not, as he sees fit, but he has to sign it before he is accepted for employment." The witness was further asked: "If a man does not sign the card, is he employed?" and replied: "No, sir, we have never had a case of that kind though."

The witness says he can not tell how many of these cards the company has in use by reason of the men having entered the employment of the company. He is shown a paper marked Cotts' Exhibit No. 6 purporting to be a memorandum or list of men employed during the year 1908, and those employed during 1909 and those employed during 1910, down to December 9th, and was asked if he prepared that and if he prepared it from the records of the company, and if it is correct. The witness replied that he prepared Cotts' Exhibit No. 6, and that it is correct, except possibly some of the names are not spelled exactly right, and he added: "It was as near as we could tell them by their signature."

Over objection the court admitted the memorandum; counsel for plaintiff producing and filing with the list, the cards in question which have on them the names of each one of these men as they signed them.

Counsel for defendants objected and excepted to the admission in evidence of the card marked Cotts' Exhibit No. 5, and to the list of persons employed and signing these cards marked Cotts' Exhibit No. 6, and the following took place:

The Court:

Q. "When did you first enter into this contract? When was the arrangement made?"

A. "The written contract we made commencing January, 1908, and previous to that it was verbal."

Q. "Is this contract the same as the verbal one had with the men in 1907?"

A. "Yes, sir."

Upon further direct examination the witness was asked the following question: "At the time of the proposed strike April 1, 1906, when the company proposed to and did pay its men an increase of 5.55% in order to get them to continue to work, what arrangement, if any, that you know of, was made by the company with the men respecting the disposition of the coal that might be mined by the men pending the adjustment of the scale between the Opera-
320 tors Association and the United Mine Workers of America?" and replied: "It was agreed that only such coal would be mined as would take care of the fuel requirements of the B. & O., and no commercial coal was to be mined."

And the witness further answered: "We only got out the engine coal. We did not load a car during that period."

The following then took place:

The Court: "Let me ask you one question:

Q What knowledge, if any, did the officers of the United Mine Workers have of the facts that you have detailed here, that you would pay the increased scale price, and that you would agree only to get out the fuel coal for the railroad that you were under contract for? In other words, did they know that when they called this strike?

A. Yes, sir; I think they knew it through Mr. Koch.

Q. What do you base that on?

A. On a telephone conversation that I heard him have from one end of the line.

Q. Who was that with?

A. He talked to Columbus, I believe with Mr. Sullivan, but I am not positive who was at the other end.

Q. Who did that talking at your end?

A. Mr. Koch, the General Manager."

Cross-examination:

This conversation over the phone took place some time during April, 1906; witness could not say the date; it was in April, 1906; witness thinks it was before April 12, 1906; witness knows that some time in April, 1906, Mr. Koch talked over the phone about this additional scale and this price and said he would give it; this additional scale was what the miners' union proposed; the term 5.55% additional of the scale applied to everything—the whole scale; it was a general increase; a mine scale is based on pick mining; the scale price from 1904 to 1906 was based on 85 cents for pick mining; the miners demanded 90 cents for the ensuing period from April 1, 1906, which would be an increase of 5.55%; that same increase would be all over the mine, day work included; to all kinds of coal, pick and machine; so far as applying that increase went it

321 was not material whether the company produced and marketed run of mine coal alone or whether the company produced and marketed screened coal—there was practically no difference.

Upon further cross examination the witness said that as bookkeeper for the Hitchman Coal & Coke Company he used double entry; that he prepared personally Cotts' Exhibits 1, 2, 3, 4, 5 and 6; Cotts' Exhibit No. 1 purports to give the daily output for the month of March, 1903, in tons; witness keeps no day book and no journal; keeps a mine register to keep the tonnage in—the entries of the daily output; that register does not contain the names or numbers of the miners producing coal—that is not the way the company figures tonnage; the company takes the railroad weights of the cars after they are loaded for its tonnage; this the company obtains from the return shipments and sales; witness gives the matter of weights and shipments his own personal supervision

so that he can verify them himself; he prepared those absolutely; did not take bills of lading for the shipments that were made; don't get bills of lading for coal; the Railroad Company furnishes a weight sheet for the coal loaded every day showing the weights; it comes to the office through the mail and that is what those weights are figured from. Cotts' Exhibit No. 2 purports to give the output daily from the 20th day of March to April 1st, and from April 1st to April 20, 1904; the daily output in 1903 previous to June, 1903, witness took off the books; he did not compare that personally; he did not enter the original weights in the mine register; he was not in the employ of the Hitchman Company at that time; witness took this memorandum from a book which had already been made up by somebody else; and that is what he found there; he can swear that it is a portion of the company's records; he believes it to be correct; but he does not know that of his own personal knowledge.

The Court:

"Q. Let's see if I understand. Up to some date, you stated. What was it?

A. Up to March, 1903.

Q. And prior to that time you were not in the employ of the company?

A. No, sir; I came in June, 1903.

Q. And up to that date you simply take this from the books?

A. Yes, sir.

Q. And after that date the entries in the books were made by you?

A. Yes, sir.

Upon further cross examination witness testified that Cotts' Exhibit No. 2 purports to give the daily output for parts of the
322 two months of March and April, 1904; that he took the last ten days in March and the first twenty days in April, 1904, because he was figuring the tonnage for a month before and a month after each strike, on those tabulations; that the company kept on running continuously from the 20th of March to the 20th of April, 1904; that Cotts' Exhibit No. 3 is a statement of the daily output from March 16th to April 16, 1906, and a statement from June 12th to July 12, 1906; that his object in making that up in the manner in which he did, was for the same purposes—for a month before and a month after the strike; in making the compilations in Cotts' Exhibits No. 1, 2, 3 and 4, he used the mine register; the mine register contained entries made by himself; he won't say that he made absolutely all of them; other clerks in the office made other entries; in testifying to the accuracy of these compilations, witness is not limited to what he saw in the mine register—not absolutely; the company makes its invoices off of that and that is what the company has been paid for, according to these weights; witness could not make up these compilations here from memory; he relied upon the register; part of which was made up by himself and the other part by others; witness could not say what proportion of the register was filled out by others; witness will not un-

dertake to say in any one year how much was filled out by himself and how much by others—that is part of the daily routine there; witness made up the mine register from reports made to him from the weigh master's office of the B. & O. Railroad Company—the weigh master of the B. & O. Railroad Company; they furnish the Hitchman Company weights from different places; as far as the engine coal is concerned, the Hitchman Company weighs that coal itself; it has men employed to weigh the coal; witness never weighed a pound of it; the Hitchman Company gets those weights from the weigh master who weighs the coal and furnishes a report and a ticket from the B. & O. engineer showing that he got that much coal; witness made up this mine register as to the engine coal from reports brought to witness by the weigh master; the weigh master attended to the weighing of the coal and made these reports to the Hitchman Company; and from these reports that the weigh master brought to the Hitchman Company, the entries of the engine coal were made by other clerks in the office; the witness made very little of it—practically none; part of the commercial coal was weighed in Benwood at the shipping point; coal consigned to the Lake or points on the C. L. & W. division of the B. & O. is weighed at Holloway Ohio; coal consigned east is weighed at Fair-
323 mont; these reports were sent to the company by the weigh master of the B. & O. people; frequently or generally sent by mail; witness took these reports that were sent the company of these weigh masters and transcribed from those reports into the mine register; and from that witness made these copies.

Upon further cross examination the following questions were asked and answers made:

"Q. Don't you know that the United Mine Workers, when they proposed the increase of scale beginning with April 1, 1906, were endeavoring to get the different mines not only in Ohio, but in West Virginia, to sign that scale?

A. I don't know anything about it.

Q. Well, you know that they proposed the 5.55% advance?

A. As far as we were concerned, yes, sir.

Q. Well, didn't you say that that was the union scale proposed?

A. Yes, sir; that was the union scale, but I do not know what their endeavors were in relation to other mines.

Q. Did you not know that they were proposing a uniform increase?

A. Referring to mines in Ohio; not in West Virginia.

Q. Well, weren't they endeavoring to apply the same scale to all mines in West Virginia and the Panhandle?

A. They may have been in the Panhandle, yes, sir.

Q. Well, if they were endeavoring to do that and you people agreed to sign that scale, or to accept that advance, there was nothing then between you and the United Mine Workers?

A. I had nothing to do with the agreement.

Q. I say there was nothing between you?

A. I can not answer the question.

Q. Well, could there have been? Do you know of anything that could have been between you?

A. Why, the only thing between us was that run of mine proposition, again—coming back to the seven-ninths instead of what we were paying."

Upon further cross examination the witness said that the 5.55% applied to screened coal and to run of mine coal; that he heard Mr. Koch say that he was willing to give it; the company thought that 5.55% increase applied to both screened coal and run of mine coal, but the other side didn't think so; the company had never paid the seven-ninths of the screened prices which they then incorporated in their scale or did have, but the company had
324 a special arrangement made there at one time to take care of its run of mine coal; the company is practically the only mine that pays for coal on a run of mine basis, and this special scale was made for its benefit in 1903, and when the question came up in 1906, of the signing of the scale again, it is witness's understanding the union tried to get the run of mine coal back to the seven-ninths basis; this scale that was submitted contemplated not only the 5.55% increase, but also a price of seven-ninths of the price of screened coal to be paid for the run of mine coal—that is my understanding; the company increased the price of run of mine 5.55% over what it had been paying previous to April 1, 1906,—on a basis fixed by Mr. Haskins; witness's understanding is that the union desired a uniform price of seven-ninths for the screened coal; that difference existed between the company and the union; that was a difference in favor of the Hitchman Coal & Coke Company and against the miners; but when the miners quit there was no difference between the miners and the Hitchman Company, but only between the union and the Hitchman Company; that difference existed between the miners' officials, and not between the company's men and the Hitchman Coal & Coke Company; the men were satisfied with the price the company was paying for run of mine coal, and all the coal mined in April was run of mine coal and paid for at the run of mine price; the men were not disregarding the union's regulations at that time; that regulation was fixed by Mr. Haskins under previous contracts.

The Court:

"Q. Let me see if I understand that; Haskins had been the State President or President of District No. 6?

A. No, he was President of the Ohio State organization—that is District No. 6.

Q. And he had made a special provision in reference to this run of mine coal, because of the condition of your mine and the character of the coal?

A. Because of the character of the coal; yes, sir.

Q. Was it different from that of the other mines?

A. It is different from the coal that this seven-ninths per cent. is based on. That was Hocking Valley coal, which mines very large, and there is very little slack in it.

Q. Now, because of the slack and because of the expense of mining, he determined that this rate that he fixed for you was fair in proportion to the seven-ninths he required from other mines?

A. Yes, sir.

325 Q. And this had been in existence by reason of his determination to settle—your special rates?

A. Yes, sir.

Q. Now, let me ask you this question: What, if you know, was this strike against—all of the operators or against individual operators. For example: If an operator had yielded to this scale would they have withdrawn the strike or do they continue the strike in such cases?

A. I could not answer as to all operators. The Pittsburg district got to work before the strike was settled in our territory.

Q. But what I want to know is this: Here were a number of operators in your district?

A. Yes, sir.

Q. Now, suppose one of those had complied and signed the scale, would the strike have been declared off at once against that mine?

A. I do not think so."

Upon further cross examination witness said: My understanding of it at that time was that they would settle by districts only; witness did not inform himself as to conditions upon which the strike would be suspended as to each operator.

Witness was asked this question: "Don't you know it was to the interest of these people to get each operator to accept, as fast as it was possible to do it, and that it applied to the whole district, and as fast as one accepted it, the men went in?" to which witness replied, "I did not understand it that way; no, sir."

Upon further cross examination witness said he never talked to an officer at all; he did not know of them—was just giving his understanding of it; if it were otherwise, witness does not know it.

Witness knows that machines are used at the Hitchman mine; he does not know anything about conditions in the Hocking Valley; there is not very much difference between the conditions which can be applied to a mine which uses machines and to a mine that uses the pick only; there would be a little more slack from the machine cut than there would be from the pick cut; that slack would have to be taken up; it would take time and labor from the employee.

Witness was asked this question: "Exhibit No. 5 purports to be a contract such as you began making with your employees of January, 1908, does it not?" and replied, "Yes, sir, some time in January."

Witness further testified that beginning with June 6, 1906, all contracts between the Hitchman Coal & Coke Company and its employees were verbal; he does not know exactly how many men the company employed when it started up non-union in June,

326 1906; would say about two hundred; the number of those miners increased up to January 1, 1908,—it varied; the mine superintendent, Mr. Pickett, employs the miners that work in and about the Hitchman Coal mine; the time of those employees was kept by the mine boss, boss driver and weigh master;

witness made the entries on the books of their time, and value of their services—their labor; had nothing to do with fixing the terms of employment of the men; was not present with the mine superintendent in all cases when employments were made; can not specify what contracts were made between any of the employees of the Hitchman Coal & Coke Company through its mine superintendent; could not name any that he was present at—don't remember—but he had been present on several occasions; witness received his information from the mine superintendent or from the General Manager—from both places, and heard a good many contracts personally, but he could not name the men now; witness does not know but very few of the employees; would not know all of them today; if the company's own men were to come out here today, witness would not know all of them.

Witness was asked this question: "Then after all, your information as to these contracts that were not in writing is quite general and yet indefinite?" to which he replied, "Yes, sir." And to the further question: "And you are not able to specify?" witness replied: "I am not able to specify."

Upon further cross examination the following questions were asked and answers given:

"Q. Coming down to this written contract that has been exhibited here as an illustration of what all of them contained. Where are these kept?

A. In the office.

Q. You do know about them then commencing with January 1, 1908?

Yes, sir.

Q. Exhibit No. 6 purports to contain a list of the employees of the Hitchman Coal & Coke Company for the years 1908, 1909 and 1910?

A. That list of men is a list of the men that were employed during those periods. They are not all there now, and some of them did not stay very long. It is a list of people though that were employed and went to work."

Witness further answered and said, that he has no tabulated list of the men who were employed beginning with June
327 6, 1906, and continuing through the intermediate period up to January 1, 1908; that his pay roll shows; he could furnish one from the pay roll.

Upon further cross examination the following questions were asked and answers given:

"Q. And all you know about these men being in the employ of the company is what you see from the pay roll?

A. Yes, sir.

Q. Who places these names upon the pay roll?

A. I do.

Q. Who furnishes you that list?

A. Which list?

Q. That you place upon the pay roll—the names of the employees?

A. We have it in the office.

Q. Who brings it to the office?

A. Why, all the loaders and machine men I get myself when they go to work, and the day men I get their names and time from the superintendent's time book.

Q. He furnishes you his time book from which you take the list and place the names upon the pay roll?

A. Yes, sir.

Q. That is, the mine superintendent?

A. Yes, sir.

Q. Then you get the names of all inside men, mining from him?

A. No, I get the names of all working day work, such as drivers, timber men and so on; a man loading coal—a miner—I get his name myself when he comes into the office to get his loading checks.

Q. Then you get the names of all those working in the mine, yourself, from the employees?

A. All the loaders and the machine men I get myself; the drivers and day men employed inside the mine I get through Mr. Pickett, from his time book."

W. H. Koch.

Direct examination:

My name is W. H. Koch; residence, Glendale, West Virginia; age, thirty-seven, business, manager Hitchman Coal & Coke Company; have been such manager since its incorporation; has the same position with relation to the Glendale Coal Company; the Glendale Coal Company's mine is in Marshall County about two miles south of the Hitchman mine and its property adjoins the Hitchman; the office of the Glendale mine is at the Hitchman Coal & Coke Company's office, and the Glendale mine is
328 operated from that office; the members of the board of directors of the Glendale Coal Company are the same as the members of the board of the Hitchman, and they have always been the same.

Witness has lived in West Virginia about nine years; resided in Pennsylvania prior to coming to West Virginia; was there engaged in the coal business with the Ellsworth Company; was with them about eighteen months just previous to coming to West Virginia; have been employed in the coal business all together for about twenty years; have been manager of the Glendale and of the Hitchman all of the time the Hitchman has been opened and ever since the purchase of the Glendale mine in 1905, which witness thinks was about that time.

Mr. Pickett is the mine superintendent; he has charge of the employing of men at the office there for both mines. When the Hitchman was being opened up non-union labor was employed, that is, the men were not members of the United Mine Workers of America; the mine was opened up non-union; the Hitchman Company got down to the business of really supplying coal in the fall of

1902, witness thinks it was; at that time the company was running non-union, but subsequently the mine was run union and the unionizing of the mine came about in this way: "The board of directors, which included myself, were opposed to having a union mine, owing to previous experiences that some of us had had, but during the spring of 1903 there was some agitation started among some of our men to organize. In the meantime we owned an Ohio property and Mr. Hitchman reported that they had threatened to close up the Ohio mine—which was run union—if we did not organize at the Hitchman mine. I learned afterwards—in fact I talked with the men about the organization—that the union had organizers in our mine and were working with our men, which brought about this feeling."

The following questions were asked and answers given:

"Q. You mean they had sent men into your employ for the purpose of creating discontent and organizing your men?

A. Yes, sir.

Q. Well, when this result had been accomplished and the men seemed desirous to organize as the result of the efforts of the organizers, who had entered your employment as employees and were unwittingly employed by you, what did you do or what did you say? Did you meet the men?

A. I met the men and told them if they preferred to or-
329 ganize they could do so. I did not tell them about the Ohio proposition. After consulting with the company we decided the best thing we could do was to let them organize, and I so told the men, and they organized; but the organizer—the man that was working—never went to work any more. He left. He had fulfilled his mission."

Upon further direct examination witness testified, after they organized the men went on a strike, I think the next day; this meeting witness had with the men was in the latter part of March, 1903; the scale expired March 31st, 1903, and the company unionized on the 1st of April, 1903; the men then went on a strike April 2d, 1903.

Upon being asked why the men went on a strike the witness replied that it was due to some difference between the union and the operators, witness does not remember just what. Witness further testified that the Hitchman Coal & Coke Company was not connected with the Operators' Association that the union was dealing with about the new scale. Upon being asked how long was the mine idle as the result of that strike of 1903, witness replied that his recollection is the men went to work the latter part of May; he is not positive of the date, though; and upon being reminded that in the testimony it has been stated that it was May 23d, witness says he thinks that date is correct. Upon being asked in what condition that strike left the company with reference to the fulfillment of contracts that it then had for the delivery of coal, witness replied that the company simply ceased to operate and it could not fill any of them; the company had orders at that time for coal; it expected to fill them but was not able to fill them, although it would have

been able to fill them had it not had the strike; in ordinary course the company would have filled them. At the time the men went on strike April 2d, 1903, the company was supplying coal to the B. & O.; the coal furnished the Baltimore & Ohio Railroad was the principal part of the business, but it was furnishing some commercial coal.

Witness is referred to Cotts' Exhibit No. 1 and to a number of ciphers under the column of commercial coal under date of March 22d, 1903, and asked his explanation of that; the witness replied that the company did not load any commercial coal that day. On the same exhibit on May 23d and May 25th, and on June 2d, 3d, 5th, 6th, 7th, 14th, 18th, 19th, 29th, 21st, 22d, and 23d ciphers appear under the head of commercial coal and the witness
330 is asked to give his explanation. The witness replied that his explanation was, possibly no cars, for evidently the company did not load any on those dates.

Referring to Cotts' Exhibit No. 2, 1904, March 20th and 27th, and April 1st, 3d, 10th, 17th and 20th, there are ciphers and witness is asked his explanation. Witness replied that all of those dates except two undoubtedly were Sunday and as to those two more than likely the company did not have cars.

In the same exhibit, June 15th, 16th, 19th and 26th, and July 3d, 4th and 10th are ciphers, and the witness is asked his explanation. Witness replied Sundays or days without cars, one or the other.

On Cotts' Exhibit No. 2, June 15th, 1904, there is nothing but ciphers in the engine column and the witness asked if he can explain that. Witness replied there must have been a strike that day and no coal.

Witness further testified that the company while running union had a few similar difficulties from time to time but they were adjusted without extending into any considerable strike; they are distinguishable from what would be called a regular strike. The company never had any shut down or suspension even for one day running non-union, neither before the company was running union nor since when running non-union.

Referring to Cotts' Exhibit No. 3, in the commercial column, March 18th to March 25th, 1906, there are ciphers and witness is asked his explanation. His reply was that it was likely Sunday. In the same exhibit, Cotts' Exhibit No. 3, in the commercial column, April 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 14th, 15th and 16th, there are nothing but ciphers. Witness is asked to explain that, and on the same exhibit where the engine coal is tabulated there seem to be no ciphers. To this witness answered that was during a period that the company worked—that the company's men worked under an agreement that they were to take care of the engine fuel but the company agreed not to load any commercial coal; that is the reason this tabulation shows no commercial coal mined, but it does show that the company mined engine coal.

"The Court:

Q. Was that on account of the strike conditions?

A. Pending a settlement we got our men to work and
331 agreed to pay them the advance, and they worked, but only to take care of the engines.

Q. That was at the end of the scale and pending a settlement as to what the scale should be?

A. Yes, sir; there was a general strike on the first of April, but our men continued at work.

Q. That was in what year now?

A. Nineteen hundred and six."

Upon further direct examination, witness was asked:

"Q. That was at the time immediately preceding the breaking away from the union by the men and the running of the mine non-union?" to which the witness replied: "Yes, sir."

"The Court:

Q. How long did they continue to get out engine coal at that time?

A. Sixteen days.

Q. From the first day of April to the 16th?

A. Yes, sir.

Q. Then there was a total suspension?

A. Yes, sir.

Q. How long did that last?

A. Until June 12th of the same year.

Q. Have you any method by which you could estimate the average daily loss to the company on account of the total suspension during that period of time—not accurately but an estimate of it?

A. I would say roughly $7,500.00.

Q. Tell how you figure that $7,500.00?

A. I figure fourteen days in April and twelve in June; that would be twenty-six days, and in the twenty-six days we produced at least thirty thousand tons of coal, which at twenty-five cents net per ton would be $7,500.00. On a daily basis figured at twelve hundred tons, which would be a fair average at that time, it would make $300.00, at twenty-five cents net per ton."

Upon further direct examination, going to Cotts' Exhibit No. 3 again, and taking the aggregate of coal produced for commercial and engine use for the month preceding the strike on April 2d, 1903, and taking into consideration the aggregate of the coal produced for commercial and engine use for a month next ensuing the resumption of work May 23d, 1903, the witness was asked what was the company's net loss as the result of the strike inaugurated April 2d, 1903,
332 and which terminated when the men resumed work union May 23d, 1903; the witness answered: Purely as a daily loss it would not be as much per day because the company was not producing as much coal at that time as the period just referred to before—1906—but it was very disastrous for the company in a business way right at that time on account of trade the company was trying

to get and had hopes of securing, which of course it lost, and that went to other fields because the company was unable to take care of it; it is pretty hard to give you that in dollars and cents; the company was running approximately five hundred tons a day at that time, and the loss on that, well, witness does not think the company's profit would have been more than eighteen cents a ton possibly, so that five hundred tons would only be ninety dollars a day; the company took care of the B. & O. engine coaling business while the men were on strike, but not from the company's mine however; the railroad company brought the coal there from other mines and forced the company to deliver it to their engines, and that necessitated the closing up of the company's pit mouth and arranging a kind of incline there and installing a stationary engine, and it had to handle the coal out of these hopper bottom cars by running over its property and on over a trestle into the bin in the usual way at a great big expense; the company tried to get the railroad company to pay it for it, and witness remembers the figures the company gave them were thirteen cents per ton that it cost the company to handle it; the recollection of witness is that it was about four hundred tons of coal a day that the company handled for the B. & O. in that way resultant upon that strike, but he says he may be wrong in that; if it was four hundred tons a day and it cost the company thirteen cents, that would be $52.00 a day; the men were on strike at that time fifty-one days so that it would amount to about $2,600.00.

Passing to the 1904 strike, the witness was asked what was done by the company, if anything, with reference to supplying coal or coaling the engines of the B. & O. during the period the men were on strike, beginning April 20th and extending to June 15th, 1904, and replied, "The same arrangement."

Upon being asked what witness would say about the cost to the company and its losses pursuant to that arrangement resultant upon that strike, the witness replied: "We not only lost the business from our own coal and the profit on it, but we were put to the additional expense of handling this coal for the railroad company, and at
333 that time they used nearly six hundred tons a day as against about four hundred tons the previous strike, and the cost would be proportionately larger of course."

Passing to the 1906 strike the witness was asked if the company made any arrangement about loading coal for the B. & O. and was put to any additional expense, and replied: "The same arrangement; we handled the coal in the same manner."

Upon being asked how much was the company's approximate loss arising from that method of supplying coal to the B. & O. during the 1904 strike, the witness replied: "Counting the loss of profit on our coal and the cost of handling the other coal, I would roughly say that it would aggregate three hundred dollars a day;" that strike was in operation from April 20th to June 15th, 1904, which would be about fifty-six days—$17,000.00.

Coming to 1906 the witness was asked what he would say was the aggregate loss to the company, and replied: The loss was greater at that time because the company's output was larger. Witness says

he does not remember the dates, but upon the dates being suggested, April 16th to June 12th, he answered fifty-seven days; and being asked if he would not exclude June 12th because the men went to work on that date, said, Yes, sir; including the cost of handling the coal for the railroad company witness feels safe in saying that the company lost $400.00 a day at that time, that is, for the fifty-six days, and in addition to that the company lost all its commercial tonnage for the first sixteen days.

Upon being asked what the company's loss would approximately be upon the commercial coal which witness had just said the company lost by reason of the strike called April 1st, and which the company's men did not obey until April 16th, owing to the company having arranged with them to continue work at the increased price, provided they were asked only to mine engine coal, the witness replied that the loss would be about $2,100.00.

The witness is handed a small pamphlet entitled "United Mine Workers of America, District No. 6, Ohio, issued by the authority of the Executive Board of District No. 6, Ohio Miners, United Mine Workers of America, G. W. Savage, Secretary-Treasurer, for scale year April 1, 1908, to March 31, 1910," and is asked to state what it is and where he got it. Witness replied that it is what it purports
to be on the face of it, and was furnished witness on request
334 by the defendant Lee Rankin; he was secretary-treasurer of
the sub-district of District 6, and this pamphlet is offered and admitted in evidence marked Koch's Exhibit No. 1.

Witness is handed a paper purporting to be an official mining scale of the Pittsburg vein of subdistrict 5 of District No. 6 U. M. W. of A., Belmont, Jefferson and part of Harrison counties, Ohio, and the Pan Handle district of West Virginia, "All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations," and witness is asked to look at the paper and state what it is. Witness replies that it is the scale of wages for the district as stated in the question; it was furnished the witness through the miners' officials; that paper is offered and admitted in evidence and marked Koch's Exhibit No. 2, to which the served defendants objected.

Witness is handed a paper headed, "Official Mining Scale, United Mine Workers of America of the Pan Handle District of West Virginia, in effect April 1, 1903, and ending March 31, 1904. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations," and witness is asked to look at this paper and state what it is and where he got it. Witness answers: This is a scale covering the prices to be paid for the different work for the period just stated in the question, and was made by the operators of the Pan Handle District together with the representatives of the miners; this paper is offered and admitted in evidence marked Koch's Exhibit No. 3 to which the served defendants objected.

Upon being asked from whom he got the paper marked Koch's Exhibit No. 3 witness replied that usually the operators and miners when they meet appoint a committee of both to have the scale printed and they furnish it to the operators interested.

Witness is handed a document consisting of four typewritten pages, which is headed, "The following conditions are attached as an amendment to the official mining scale, United Mine Workers of America, of the Pan Handle District of West Virginia, and are to be considered by both the United Mine Workers as well as the Hitchman Coal & Coke Company as a part of said scale." The paper has attached to it on the third page under the heading "Signed for Operator, W. H. Koch, Manager for Hitchman Coal & Coke Co., 5/22/03," and under the heading, "Signed for Miners," are the names "C. W. Savage, Secretary and Treasurer, John Stevenson, President Subdistrict 5 of 6; William Daugherty, John F. Jewell, Z. C.
335 Martin." Attached to that agreement and as the fourth page, there is matter which contains at the foot the following: "For the Company, J. C. McKinley, George W. Savage, John Stevenson." Witness is asked to look at this paper and state what he knows about it; witness replies: This paper is an agreement that was made between himself representing the Hitchman Coal & Coke Company and J. C McKinley for his company covering special conditions that were not covered by the regular scale for that period, and on the part of the miners witness remembers distinctly of Stevenson being there as well as Daugherty, Jewell, and Martin, whose signatures are attached.

Witness was asked what connection, if any, had that paper with the signing of the scale by the Hitchman Company and the resumption of work May 23d, 1903, immediately following the strike of April 2d, 1903, and replied: "The scale that was gotten up was prohibitive for us under our conditions, and that agreement was made a part of it or we would not have signed it.

The witness was asked the following question and gave the following answer:

"Q. This paper contains on its first page, under paragraph second the following language: Coal to be paid for on run of mine basis. Price of run of mine coal to be three-fifths of scale price based on ninety cents per ton for coal over a one and three-eighths inch screen. If this is not satisfactory to the miners affected a test is to be made lasting for two weeks or fourteen days over screens as agreed upon by this district, viz: 1⅜ inch space between bars with a ⅝s bar and sixty superficial feet area. What, if anything, has that provision to do with the arrangement you spoke of yesterday having been entered into relative to a modification made by the union of the union scale for your company upon the subject of the run of mine coal scale?

A. The price designated in the union scale I think is based on 7-9 of the screen price, but is not operative to any great extent at No. 8 mines, owing to the fact that these mines have no occasion to use it to any extent, whereas at the Hitchman mine, owing to our supplying engine coal, and at the McKinley mine, owing to some local trade that they have there, it was used very largely, and the 7-9 proposition was so out of reason compared to our coal that it made it prohibitive, and that is the reason we insisted on getting a percentage that was equitable; hence that agreement."

336 That paper is offered and admitted in evidence marked Koch's Exhibit No. 4, to which the served defendants objected.

On further direct examination the witness, W. H. Koch, was asked the following question: "Look at the paper now handed you headed, 'Scale for month of April, 1904,' and sub-headed, 'Wheeling, W. Va., April 14, 1904.' At a joint conference of operators and miners of sub-district 5 of District 6, Ohio, the following resolutions were unanimously adopted: 'First: This convention do now adjourn to meet Tuesday, April 26, 1904, at 9 o'clock, A. M., at Wheeling, W. Va.; that last year's scale and conditions shall prevail until the 30th of April with the reduction called for by the Indianapolis Convention. Second: That a committee of two operators and two miners be appointed to examine the scale and issue statement to superintendent and miners of the district. Committee for the Miners: W. H. Worker and Lee Rankin. Committee for the Operators: J. J. Robey and P. McBride,' another sub-heading reads as follows: 'The Official Mining scale, U. M. W. of A. of the Pittsburg Vein of Sub-district 5, of District No. 6, in effect April 1, 1904, to end April 30, 1904. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations." This paper has at the bottom of it, on one side, the following signatures: 'James Minder, Hugh Mullen, James Jarrett, Com.,' and on the other side having the printed signatures 'Signed on behalf of the operators: J. J. Robey, P. McBride. On behalf of the miners: W. H. Worker, Lee Rankin,' and in writing the signature, 'Hitchman Coal & Coke Company, W. H. Koch, Manager, 4/18/04.' Look at that paper and state what it is," and replied, "This was the scale agreed upon for that month between the operators and miners and was called a temporary scale and was signed by me and used as such."

The attention of the witness was directed to the figures "4/18/04," and he said that this paper was signed on the 18th day of April, 1904.

The paper referred to above was then offered and admitted in evidence, marked Koch's Exhibit No. 5, to which the served defendants objected.

The witness further testified that after the signing of this paper, Koch's Exhibit No. 5, on April 18, 1904, the men employed by the company who were then working union, struck on the 20th
337 day of April, 1904, and that as the result of that strike, the mine was idle until, witness thinks, some time in June.

The witness was asked the following question: "I now hand you a printed paper having attached to it a typewritten sheet of paper; the paper has upon it the following heading: 'Official Mine Scale between the Operators and United Mine Workers of America for the Pan-handle District of West Virginia. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations. In effect April 1, 1904, and ending March 31, 1906.' The typewritten sheet attached to the printed paper just identified has the following heading: 'The following local rules are made as a part of the Panhandle scale of W. Va. as adopted for the period, April 30, 1904, to March 31, 1906, and are to be recognized as such by both operator and miners interested.' And immediately following that heading are four short rules which I will read.

Rule 1. The check weighman, if possible, must be an employee of the company, but should he be chosen from the outside, he must not be objectionable to the company.

Rule 2. Day labor is allowed to work overtime and to be paid scale price for such overtime. This is to be done without any recess between the end of the eight hour day and the overtime.

Rule 3. Enough men to report for work and work on holidays, Sundays and day on which a death by accident to an employee might occur to keep fuel supplied for engines.

Rule 4. Work shall begin at seven o'clock A. M.; work until eleven o'clock; one hour for dinner, and work from twelve M. until four o'clock P. M., Eastern Standard time.' At the foot of that paper and the language, 'Signed and agreed to on behalf of the company,' is the signature, 'W. H. Koch.' On the other side of the same sheet of paper and opposite the signature of W. H. Koch, and under the heading, 'Signed and agreed to on behalf of the miners,' are the signatures, 'James Jarrett, Walter Miller, S. P. Rowand, James Conoway.' Look at this paper and state what it is?' and replied: "This first paper described by you is a mining scale as regularly made up for the district and for the period mentioned. The typewritten sheet is a special agreement that I made for the company, with our employees, and the signatures represent-
338 ing our miners are the ones on the lower right hand corner."

The witness stated that that paper is the scale from April 30, 1904, to March 31, 1906, and that under it the Hitchman Company operated after it resumed work union following the strike which took place on April 20, 1904.

The paper is offered and admitted in evidence, marked Koch's Exhibit No. 6, to which the served defendants objected.

The witness was asked the following question: "I now show you a printed paper purporting to be a mine scale between the employees of the Hitchman Coal & Coke Company and the Hitchman Coal & Coke Company, in effect April 1, 1906, and ending March 31, 1908, and having also at the head in writing these words: 'All persons accepting employment at the mine hereby agree to be governed by the following rules and regulations.' The paper has some modifications of the printed scale by markings in ink of certain figures opposite the printed figures, indicative of the price to be paid for the particular service, and it has crossed out in ink the following language: 'Rule 9. We adopt the check-off system as a part of the agreement in this district. This pertains to regular dues and assessments of the U. M. W. of A. but shall not give any right to collect fines, unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, or local union, or the party upon whom the fine is imposed object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. Check-off lists shall be handed in at my office not later than 5 p. m. on the 2nd and 17th days of each month; otherwise operators shall not be required to check off same.' In addition to having that rule I have just quoted, and which is printed, stricken out in ink, the following rule No. 10, is also stricken out in ink. 'Rule No. 10. No strikes shall take place at any mine

under the jurisdiction of Sub-District 5 of District 6, except for specific violation of agreement. That is, screens irregular; failure to pay on pay day without explanation; violation of mining laws by operators, or reductions from scale wages until the grievance of the mine affected has been thoroughly investigated by the officers of District 6, U. M. W. of A. and operators interested. Any man or men that cause a stoppage of work at any mine in violation of this rule, shall be subject to dismissal at the will of the company.' In addition to this Rule No. 10 last referred to as being stricken out in ink, the third paragraph of Rule No. 19 is stricken out
339 in ink. That paragraph reads as follows: "Miners so suspended shall have the right of appeal to officials U. M. W. of A. and operators interested:' and in addition to having that third paragraph of Rule No. 19 stricken out, Rule No. 22 is stricken out in ink. Rule No. 22 reads as follows: 'Mines to be placed on a screen basis; run of mine to be paid for on an average of each man's screened coal per day. The price of run of mine from Boggs Run mine shall be 61 cents per car.' And in addition to having Rule No. 22 as above stricken out in ink, Rule No. 25 is also stricken out in ink. Rule No. 25 reads: 'No new rule, neither local nor general shall be permitted unless mutually agreed upon by operators and miners interested.' Attached to this printed scale is a slip of paper upon which is written: 'Rule 22. Run of mine coal used at bin to be paid for at the rate of (32 1/3) thirty-two & 1/3 cents per ton, r. of m.' This printed scale has attached to it for the purpose of signature a piece of paper upon which is written: 'Hitchman Coal & Coke Company, W. H. Koch, Manager.' Look at this paper and state what it is?" and replied: "The printed part of it was an old scale that we changed the figures on, with an advance *on* 5.55% and struck out the part pertaining to the U. M. W. of A. and the men were paid by it for the two years, or the part of the two years that we worked."

This paper was offered and admitted in evidence, marked Koch's Exhibit No. 7, to which the served defendants objected.

The Official Mining Scale of Association of Pittsburg Vein Operators of Ohio for their mines in Belmont, Harrison and Jefferson counties, Ohio, and the United Mine Workers of America was identified by the witness, as being in effect from April 1, 1906, and ending March 31, 1908, and was offered and admitted in evidence marked Koch's Exhibit No. 8, to which the served defendants objected.

Upon further direct examination the witness Koch testified that the Hitchman Company has approximately about five thousand acres of coal, that the Glendale Company has about twelve hundred acres of coal; the Hitchman mine is equipped with mine machinery as well as with electrical haulage—it is a modernly equipped mine; it has a steel trestle about twelve hundred feet long, running over to a bin which is designed and constructed so as to be used as a coaling station; all of this is near the B. & O. roundhouse at Benwood—about twelve hundred feet from the mouth of the mine; the
340 trestle runs out from the mine near the roundhouse that twelve hundred feet over property of the B. & O. in the B. & O. yards; the Coal Company loads coal from the mine

from its trestle into cars placed on the main track or on siding near the mine; that coal, the Coal Company ships to different points, to the mills for local consumption, and during lake navigation, which usually starts about the first of April, and ends the first of December, to Lorain, which is called lake coal.

The court asked the witness what thickness of vein of coal the Hitchman Company has, and to which the witness replied, that it averages about five feet eight inches.

Upon further direct examination the witness said that the daily output of the Hitchman mine when the mine is running in full, is about eighteen hundred or twenty hundred tons, that the amount supplied to the B. & O. for engine purposes varies a great deal owing to what their requirements are; the B. & O. coals a large portion of its engines at the Hitchman mine—all of the Wheeling Division—all of the Ohio River Parkersburg division, a great many of the Pittsburg division, and a part of the Central Ohio division, at the time witness speaks; there was not so much at the time of the 1903 strike, because the Coal Company did not have the tonnage to supply them; at the time of the 1904 strike, the company was supplying coal to all of the engines that came into the Benwood yard—witness's recollection is that the company took an average for the time, and it ran about one hundred and ten engines a day; at the time of the 1906 strike the condition was the same. The witness says that at the time the men quit work, April 16, 1906, they had no grievance of any sort with the company, and the company had none whatever with them. The men had not at that time made any sort of complaint to the company.

Witness further testified that the Hitchman Coal & Coke Company was not connected at that time with the Operators' Association that was dealing for the new scale with the United Mine Workers of America; that the company was not connected with the Operators' Association.

The witness was asked the following questions and made the following answers:

"Q. At the time the scale with the United Mine Workers expired March 31, 1906, what, if anything, was said or done by you in dealing with the officials of the United Mine Workers, and in dealing with your men, relative to a continuance of work at your mine pending the adjustment or agreement upon a scale between the operators and the United Mine Workers?

341 A. The scale then in force expired on March 31st, and owing to the fact of the necessity of our taking care of the railroad company, I took it up with a committee of our men about continuing to operate provided we paid the advance, as it was talked about.

Q. What was that advance?

A. It was 5.55%. The men seemed willing to do this but preferred to get the sanction of their officers who were then in convention at Columbus, before agreeing to it. I, in their presence, got in connection with Columbus over the telephone and talked with their officers and explained the situation to them, and told them

that the men were there with me, and I think some of the men talked also explaining the situation. But I could not get any satisfaction from them and neither could the men. However, regardless of their failure to help us out in the predicament in which we were placed (meaning the officials) our men continued at work on the first day of April, but only to take care of the engine coal. We agreed not to load any commercial coal during that period. On the night of the 15th or 16th of April, I think it was, John Zalenka, who was an officer of the Sub-District, came down and requested our men to call a meeting—that he wanted to talk to them. Some of the men very courteously invited me to be present at that meeting, which I attended. I do not know what Zalenka told them, as I could not understand the language that he used, but I do know that the next day our men went out on a strike.

Q. The men went out on a strike April 16th?

A. Yes, sir.

Q. So this visit of Zalenka to the mine, and the meeting with the men, and his talking in a foreign tongue, and your presence at the same meeting where you did not understand what was said, took place on the night of the 15th of April?

A. I presume so. I might say, here, that I do not think he talked in a foreign tongue to keep me so much from knowing what he said, but because a great many of the men present were foreigners.

Q. Were you given any sort of an understanding as to what he did say?

A. Nothing, except the men quit the next day.

Q. Do you know whether any other of the defendants visited your mine during the period the men worked without a scale?

A. Watkins was there. I do not remember the date but it was during that period.

Q. What did he do when he was there, as you recall?

A. Nothing that I know of.

342 Q. Did you have any talk with him?

A. Yes, sir.

Q. Well, as nearly as you can recall, state what was said or done?

A. My recollection is that I tried to show him that they had not treated us properly.

Mr. Hogg: Who was this, now?

Witness: Watkins, the President of the Local District at that time.

Mr. Hogg: Zalenka was the man that you say was at the meeting on the night of the 15th?

A. Yes, sir. As I said, I tried, to show him that they had not treated us properly and again explained to him in person that if they insisted on those men leaving their work that he or his organization was going to take something from them that they would never be able to give them back,—that is, employment by the Hitchman Coal & Coke Company under their rules. I did not see him talking to any of the men but I rather inferred that he found out that a majority were foreigners and that is the reason he sent Zalenka later on.

Q. What, if anything, was the final communication he had with you at that time when leaving you?

A. Nothing.

Q. You mean that he gave you no indication of what he would do?

A. I do not remember just what he said but from my knowledge of the man I feel safe in saying that he didn't say anything.

Q. And do I understand you to say that after he went away that the next thing that happened was the appearance of Zalenka on the ground and his meeting with the men and you, and his talking in a foreign tongue, and you not understanding him, and he going away and the men quitting the next day?

A. Yes, sir; except Zalenka met with me not by any arrangement with me. I simply was notified by the men, which is rather unusual.

Q. Your presence at that meeting, then, was not anticipated by Zalenka?

A. No; he was not looking for me.

Q. You attended because you were asked to attend by some of the men employed by the company?

A. Yes, sir."

Upon further direct examination the witness, Koch, said that he was away from home at the time the company's men made the arrangement with Mr. Hitchman under which the mine resumed work non-union June 12, 1906; that upon his return home
343 he was told about the arrangement made, which was followed out; that he and the men, after his return,—agreed upon the scale of wages, and that that scale is the scale marked Koch's Exhibit No. 7; that beginning with the resumption of work non-union it was distinctly understood and agreed that the men who were employed by the company were not to become members of the United Mine Workers, or any affiliated body, while they stayed in the company's employ, and the company on its part agreed that it would give them employment and not recognize the United Mine Workers while they were at work with the company; as to their compensation for their labor the company agreed to pay the men the same wages as were paid for the same class of work by union mines in that district, or the district over the river, which was the same; when the men were employed at that time the contract of employment to pay the scale mentioned there was verbal.

The following questions were asked and answers given:

"Q. Do you still make your contracts in the same way?

A. No and yes. Mr. Pickett employs all the men, and to each and every man is explained the situation as it has existed since that date; but commencing with 1908, I think, we adopted a memorandum which we have been keeping since that time on file, of each man that is employed.

Q. What is the purpose of that memorandum?

A. It is simply a reference—that is all—and the proof that the man knows exactly what the conditions are as well.

Q. You mean that the company uses an employment card upon which the man recognizes that he works under certain conditions with respect to union or non-union?

A. Yes, sir.

Q. Does that card express, or does it not express, so far as that question is concerned, the contract which you made with your men when you resumed work June 12, 1906?

A. It expresses it; yes, sir.

The Court: Is this the same card that was filed with Mr. Cotts' deposition?

Mr. Gilchrist: Yes, sir."

Upon further direct examination the witness said that he believed that in the talk to the men on April 15, 1906, *Za*lenka spoke in the foreign tongue not for the purpose especially of preventing
344 witness from understanding, but because a great many of the employees were foreigners.

Witness further said that when work was resumed June 12, 1906, a great number of the men who had theretofore been employees of the company returned to work, but they could not apply and be employed in a body; they had to apply individually for their work —each man for himself; and being asked how, as a general proposition, the company's employees ran respecting nationality—Americans and foreigners—witness said that the majority are foreigners; that that condition on that subject existed from the time the mine resumed non-union June 12, 1906, to the time the restraining order was granted in this case on October 24, 1907; that practically the same condition on the same subject existed for the time between October 24, 1907, and January, 1908, and that from January, 1908, to the time witness speaks there has been no material change in the situation upon that subject.

The following questions were asked and answers given:

"Q. Now you said a while ago that you had an employment card which served as a memorandum in order to show the men and in order that you yourself might be able to show the men, if any occasion arose for it, or show any one else, the understanding between the men and your company on the subject of the union. Had that any sort of relation to the fact that so many of your men were foreigners?

A. We don't make any exception. Everybody is hired on the same basis.

Q. During the time that the mine was shut down between the period from April 16, 1906, and June 12, 1906, when the mine resumed non-union, were any efforts made either by the men themselves, or by the union officials, or by any one or more of these defendants, that you can now recall, looking to the resumption of mining by your company union?

A. I do not recall any.

Q. Did you during that time from April 16, 1906, to June 12, 1906, make any effort to operate the mine?

A. No, sir.

Q. And the men that struck—where were they during this time?

A. They were around there, I suppose.

Q. Were any of them occupants of your houses?

A. Yes, sir.

Q. Did you disturb them?

A. No, sir.

Q. After the mine resumed work non-union on June 12, 1906, were or were not efforts made from time to time by the union officials, or any one or more of these defendants, to influence you to re-unionize the mine?

A. There was.

345 Q. Well, please state, so far as you now recall, what meetings, if any, you had, and what was said or done at those meetings?

A. Upon one occasion Green, Watkins and Zalenka called on me at my office. I inquired their business and they told me they wanted to talk union and tried to explain to me wherein the company would be better off by having the organization there; but I told them that I couldn't see it that way. When leaving Mr. Green asked if I wouldn't think over the matter farther, and I told him that I would. The next time I saw him was in Wheeling and the other two gentlemen were with him—Watkins and Zalenka. He asked if I had given the matter any consideration. I told him I had, but that I hadn't found any reason to change our plans or the decision already made. He asked me then—when separating—if I would not put it up to our board of directors, and I told him I would. I did this at the next meeting and they turned the proposition down most emphatically. I did not see Green for some time, but he called me on the telephone several weeks after and asked me what had been done with that proposition, and I told him that I had put it up to the board of directors and they had refused to consider it in any manner whatever. I think that was the last discussion I had with him regarding that subject.

Q. Were those men—Watkins and Green or Watkins and Zalenka—at the mine more than once during the time intervening between June 12, 1906, and the granting of the restraining order, in October, 1907, relative to unionizing the mine?

A. If they were I don't recall it, but I met them in Wheeling and the same subject was taken up.

Q. In talking with them you and they treated each other in a gentlemanly manner, I presume?

A. Yes, sir.

Q. What sort of an explanation, if any, did you give to those men when they were urging you to have the mine run union?

A. Mr. Green endeavored to explain to me the numerous advantages that our company would enjoy by being affiliated with the United Mine Workers of America, and after going into that very extensively, (he is a very able man, by the way), I simply told him that from the experience I had had personally with the union, instead of its being as he said, that we found it to be the contrary.

Q. That is, the Hitchman Company?

A. Yes, sir; and if that was the only inducement he had we could not entertain it at all.

Q. Did he offer any sort of excuse or apology for any of your wrongs as you explained them to him?

346 A. He said that he thought that was a mistake—that it should not have been done—and I told him that he had been given a chance to rectify that mistake before it occurred, and that he had failed to do so.

Q. What did you refer to by that particular reference?

A. To my telephone conversation with him, asking him to permit our men to continue at work.

Q. And that was the time of the strike of April 16, 1906?

A. Yes, sir. Well, pardon me; the telephone conversation was prior to April.

The Court:

Q. What occurred at that telephone conversation prior to April?

A. The officials, as I understood it, were in Columbus, and as I remember it, they were trying to arrange this new scale, but they had failed to agree, and anticipating a shut down of our mine in the absence of any scale I had taken the proposition up with a committee of our men and they were perfectly willing to work, but wanted the sanction of these officers before doing so.

Q. Was it an arrangement whereby you would run your mine pending a settlement of the scale?

A. Yes, sir; for them and with them. I took it up by telephone —which was the only means we had—with the officers in Columbus, and explained to them our conditions there due to our railroad contracts, and the men also, I think, talked with some of them; but they refused to take any hand in helping us out. However, I made an arrangement with the men myself regardless of these officials, and they continued at work for the fifteen or sixteen days of April and until Zalenka put in an appearance; then they quit.

The Court: I understand it now."

Upon further direct examination the witness said that he was manager of the Glendale mine.

At this point the following took place:

"The Court: After this temporary arrangement of the scale of wages, did you agree to pay it?

A. The men were asking for the 5.55% advance and we paid on that basis.

Q. On the advanced basis?

A. Yes, sir; for that period of time.

347 Mr. Hogg: That was paid after the men quit April 30th?

A. Yes, sir; but it was April 25th; it was not due until then.

Mr. Gilchrist: Please explain when and how you paid with reference to time.

A. We have two pay days each month. The period from the first to the fifteenth is included in one pay roll, the payment of which is made on the 25th of the same month. The period from the 16th to the 30th or 31st, as the case might be, is made up on another pay roll, and the payment of that is made on the 10th of the month following, except when it comes on Sunday, then we pay on the Saturday preceding.

Q. Then, as I understand you, in ordinary course you paid these men who struck pursuant to Zalenka's visit April 16th, 1906, an advance of 5.55% on the wages the men were earning prior to April 1st, 1906, which was the union scale?

A. Yes, sir.

Q. And that you paid these men on the next pay day for all the services rendered by them?

A. Yes, sir.

Q. And that they at that time were on a strike?

A. Yes, sir.

Q. Please explain why, if you were willing to pay the 5.55% advance on the wages, and why if you did in fact, as you have testified, pay this advance of 5.55% to these men at the regular pay April 25th for the services they rendered from April 1st to April 16th, you did not sign the scale with the union inasmuch as you were paying the advance?

A. The only scale we had an opportunity to sign, or could have had, was the one which carried with it that run of mine proposition; that was entirely prohibitive for our property; but we had fought that matter out once with them. Of course, we could not consider it at all—I mean paying it—as far as the run of mine was concerned. Our men did not ask us to pay it; it was only the union.

Q. You say you could not consider it. Why?

A. I don't remember the exact proportion, but I have always understood that the run of mine scale, as it was provided for in the Ohio scale, is based on the Hocking Valley district, which did not make very much slack. Now the run of mine scale as a general proposition is not used in this number eight coal, but only to a very small extent for wagons or boiler coal, or something of that sort—whereas at the Hitchman property, due to the coaling arrangement at the B. & O. roundhouse, we average from forty to fifty-five per cent. of our tonnage that must be paid for on a run of mine basis, varying, of course, with the season and so forth.

348 Q. Well, do you mean to say that you receive such a sum for your coal that if you used the general scale rule in reference to that, it would be unprofitable for you to mine at all?

A. Yes, sir; the coal won't make that. All the different prices of coal are based on the screened coal price, but the only basis that they have in their scale in Eastern Ohio is based on the Hocking Valley field, and our coal has an entirely different formation as regards the percentage of slack which it makes.

Q. And if you had adopted the general rule you would not have been able to fill your orders for run of mine coal, because of the cost of it. Is that what you mean?

A. Yes, sir. Just one moment: I understand that is seven-ninths. I know it is greater than our coal.

Mr. Gilchrist:

Q. And you know then that to mine run of mine coal at your mine on a union scale would be impossible as a business proposition?

A. Yes, sir; on that basis.

Q. And that arises from the difference in the coal?

A. The nature of the coal; yes, sir.

Q. During the time that the mine was run union you say that you had had this very question up with the union officials, and that

the matter had been all threshed out and settled. With whom was that done? Was it John Stevenson?

A. John Stevenson, then president of the sub-district, and Mr. Haskins, president of the state organization of Ohio—both of them.

Q. Well, I saw in one of these Exhibits, I believe in your Exhibit No. 4, which was a modification of the scale upon which the men resumed work upon the settlement of the strike May 23d, 1903, a provision under paragraph second relating to the price of run of mine coal, and providing that the basis should be three-fifths of the scale price based on ninety cents per ton for coal over a 1⅜ screen, and that if this did not prove satisfactory, upon trial, that a test might be made running over a couple of weeks. Was that provision relative to this run of mine question that you have just been talking about?

A. Yes, sir.

Q. Do you recall or do you know whether any resort was made to a test?

A. Yes, sir.

Q. If so, state when and under what circumstances that test was made, and what the result was.

A. We started the test as we agreed to do and the question arose among our men in regard to the disposition of what is called 'bug dust.'

349 Q. Explain what 'bug dust' is.

A. It is machine cuttings—part of the coal—the slack—and in order to adjust that difference of opinion, Mr. Haskins came to my office, and after going over the matter pro and con, we agreed to discontinue this test which was made at their request, and settled on a basis, I think, of sixty-four and a fraction per cent, although I am not sure as to those figures.

Q. For the time that you ran union after the settlement of that question about the run of mine coal, what was the practice of your company relative to paying for run of mine coal?

A. It was all based on that settlement.

Mr. Hogg: You mean from the time the settlement was made, while they ran union?

Mr. Gilchrist: Yes, sir.

Q. Now, if your company was willing to pay the 5.55% and did pay it to the men for the time they worked from April 1st to April 16th, 1906, what reason, if any, had you for not signing the scale? Was it this run of mine question?

A. It was the run of mine question.

Q. Was that subject discussed between you and any of the officials as to the reason why?

A. I don't remember.

Q. What was the reason you did not sign it?

A. On account of the run of mine."

J. C. McKINLEY.

Direct examination:

My name is J. C. McKinley; age thirty-three years; residence, Wheeling, West Virginia; occupation, coal operator.

The witness is shown a pamphlet having on its title page the following: "Constitution National Union United Mine Workers of America. Revision 1907. Office State Life Building, Indianapolis, Indiana," which is otherwise identified in this cause by an endorsement on the back "Plaintiff's Documentary Exhibit No. 1," and is asked to look at this document and state what, if anything, he knows about it; to which the witness replies that it is a copy of the Constitution of the United Mine Workers of America, that he saw the same pamphlet in connection with the evidence and papers filed in the Richland case when in the latter part of October, 1907, an ap-
350 plication was made in the Circuit Court of the United States for the Northern District of West Virginia for an injunction to restrain the defendants in this case from interfering with plaintiff's property, at which time also an application was made on behalf of the Hitchman Coal & Coke Company, and an application was made on behalf of the Glendale Coal Company against these same defendants for injunctions to restrain them from interfering with the plaintiff's property in each of those cases.

Plaintiff's Documentary Exhibits Nos. 1, 2 and 3 are admitted to be genuine and no further proof of identification is required.

The witness was shown a paper-backed book having on its title page "Proceedings of the Eighteenth Annual Convention of the United Mine Workers of America, held in the city of Indianapolis, Indiana, January 15th-22nd, 1907, inclusive, which is otherwise identified on the cover in writing "Plaintiffs' Documentary Exhibit No. 4," and is asked to look at the book and say what, if anything, he knows about it; to which the witness replies that this is a copy of the proceedings of the United Mine Workers Annual Convention and was furnished to witness by one of their Secretaries and filed at Philippi, or produced in court at Philippi, in October, 1907, at the time a restraining order was granted in the Hitchman case and a similar one in the Glendale case and a similar one in the Richland case. This book, plaintiff's Documentary Exhibit No. 4, is offered and admitted in evidence, to which the served defendants objected.

Witness is handed a paper-backed book or pamphlet having on its title page the following "Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6 United Mine Workers of America, held at Wheeling, W. Va., March 14, 15, 16, 18, and 19, 1907," and is asked to look at this book or pamphlet and state what, if anything, he knows about it, to which witness replies, this is a copy of the Proceedings of the Annual Convention of Sub-District 5 of District 6 as furnished witness by the secretary of same and which was filed in the cases mentioned, the same as those other Exhibits 1, 2, 3, and 4; this document has on its back the endorsement "Plaintiff's Documentary Exhibit No. 5," and is offered and admitted in evidence, to which the served defendants objected.

Witness is handed a paper-backed book having on its title page the following "Interstate Conventions, 1906, Joint Conferences Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana
351 and Illinois, Indianapolis, Indiana, January 25th to February 2nd and March 20th to 29th, 1906," and is asked to look at this book and state what, if anything, he knows about it, to which witness replies it is a copy of the proceedings of the joint conference held between the operators and miners, and is produced by witness as evidence in this case; witness says this copy was furnished him by the Secretary of the Operators' Association; that he was connected with the Operators Association that was in that Convention and was a member of and was in attendance at the Convention a part of the time. This book is offered and admitted in evidence marked "McKinley's Exhibit No. 1," to which the served defendants objected.

Witness is handed a paper-backed book or pamphlet having on its title page the following: "Joint Convention of the Illinois Coal Operators' Association and United Mine Workers of America, District Twelve, held at Springfield, Illinois, May 17, to June 1, 1906," and is asked to look at this book or pamphlet and state what, if anything, he knows about it, to which witness replies, this is a copy of the proceedings of the negotiations between the United Mine Workers and the Operators' Association of Illinois. This report was sent witness by the Operators' Secretary or Commissioner of Illinois. This book is offered and admitted in evidence, marked "McKinley's Exhibit No. 2," to which the served defendants objected.

Witness is handed a paper-backed book having on its title page the following: "Interstate Convention of 1908, Joint Conference of Coal Miners and Operators of Western Pennsylvania, Ohio and Indiana, held at Toledo, Ohio, April 14, 17, 1908," and is asked to look at this book and state what, if anything, he knows about it; to which witness replies, this is a report of the proceedings of the joint conference between the operators and miners held in Toledo in 1908, a copy of which was furnished witness by Mr. Brooks, the Secretary; witness was a member of the Operators' Association and was in that Convention. This book is offered and admitted in evidence marked "McKinley's Exhibit No. 3," to which the served defendants objected.

Witness is handed a paper-backed book having on its title page the following: "Proceedings of Joint Conference Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, March 8-29, 1910," and is asked to look at this book and state what, if anything, he knows about it, to which witness replies, this
352 is a report of the proceedings of the joint conference held in March of this year at Cincinnati, a copy of which was furnished witness by Mr. F. S. Brooks, the Secretary; witness says he was a member of this Operators' Association that was in that Convention and that witness was in attendance at the Convention only a part of the time. This book is offered and admitted in evidence marked "McKinley's Exhibit No. 4," to which the served defendants objected.

Witness is handed a pamphlet having on its outside cover the following: "Report of President T. L. Lewis, Twentieth Annual Con-

vention of United Mine Workers of America," and is asked to look at this pamphlet and state what, if anything, he knows about it, to which witness replies, this is the report of T. L. Lewis, President of the United Mine Workers, to their Annual Convention; witness thinks it was for the year ending December 31st, 1908, although it may be December 31st, 1909; it was furnished witness by a former President of the United Mine Workers who is not now President. This pamphlet is offered and admitted in evidence marked "McKinley's Exhibit No. 5," to which the served defendants objected.

Witness is handed a pamphlet which has on its outside cover "Report of Vice-President John T. White, Twentieth Annual Convention of United Mine Workers of America," and which has on the first page "Vice-President White's report, Indianapolis, Indiana, January 19, 1909," and is asked to look at it and state what, if anything, he knows about it, to which witness replies, this is a printed copy of the report of John T. White, National Vice-President of the United Mine Workers of America, for the year ending December 31, 1908; witness got that with the report of T. L. Lewis as before stated from a former President of the United Mine Workers. That pamphlet is offered and admitted in evidence marked "McKinley's Exhibit No. 6," to which the served defendants objected.

Witness is handed a paper-backed book or pamphlet having on its outside cover the following "Report of Secretary W. D. Ryan, Twentieth Annual Convention of United Mine Workers of America," and having on its first page the following: "Report of Secretary Ryan," and witness is asked to look at this book and state what, if anything, he knows about it, to which witness replies, this is a report of W. D. Ryan, Secretary of the National Organization of the United Mine Workers of America; this was furnished witness together with the report of President Lewis and Vice-President White by a
353 former president—National President—of the United Mine Workers of America. This book is offered and admitted in evidence marked "McKinley's Exhibit No. 7," to which the served defendants objected.

Witness is handed a pamphlet having on its title page the following: "Official Mining Scale of Association of Pittsburg Vein Operators of Ohio for their mines in Belmont, Harrison and Jefferson counties, Ohio, and the United Mine Workers of America," and on the first page the following: "Conditions of the Columbus Day Wage Scale, 1898," and is asked to look at this pamphlet and state what, if anything, he knows about it, to which witness replies, it is the official mining scale for the Eastern Ohio mines, known as No. 8 District, that was agreed upon in 1906 and made effective from April 1st, 1906, to March 31st, 1908, and contained the prices and conditions of labor in and around the mines. This pamphlet is offered and admitted in evidence, marked "McKinley's Exhibit No. 8," to which the served defendants objected.

Cross-examination:

Witness says that the copy of the proceedings of the Eighteenth Annual Convention of the United Mine Workers, held in Indian-

apolis, Indiana, January 15-22, 1907, inclusive, which was filed as Plaintiff's Documentary Exhibit No. 4, was furnished to him by George W. Savage, who resides at Columbus, but witness does not know whether the record of the proceedings of the Convention was made up by George W. Savage or by somebody else; since getting this copy witness has not compared it with the proceedings as made up by the Secretary—all witness knows about this being a copy of the proceedings is that he asked for a copy and this was sent to him—witness asked for a copy of the official report and that was sent to him; witness of his own personal knowledge has no means of knowing whether it is a true copy of the original or not.

With reference to Plaintiff's Documentary Exhibit No. 5, purporting to be a copy of the proceedings of the Ninth Annual Convention of Sub-District 5 of District 6 United Mine Workers of America, witness says that that copy was furnished him by the Secretary of Sub-District 5 of District 6 and that the Secretary of Sub-District 5 of District 6 gave it to witness personally; witness does not know whether that Secretary compared this copy with the original to ascertain whether it was a correct copy, but witness thinks that he did, witness says he asked the Secretary for a copy before the
354 Secretary had had it printed and the Secretary said: "Just as soon as I get it fixed up and have it printed I will give you a copy"; witness says that he did not see the Secretary compare it with the original before the Secretary gave it to the printer; witness did not compare it with the original copy after he got it.

As to McKinley's Exhibit No. 1, which purports to be a copy of the Joint Conferences of Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana, and Illinois, witness says that he was a member of that Association—the Operators' Association—and that he was a member of that convention; the stenographic report was made up by Mrs. Mary Burke East; since getting this copy witness has not compared it with the original record; witness could not say definitely where the original record is; he did not compare it with the original; the only way witness knows it is a copy is that it was furnished to him as a copy.

As to McKinley's Exhibit No. 2, purporting to be a report of the Joint Convention of Illinois Coal Operators' Association and the United Mine Workers of America, District 12, held in the months of May and June, 1906, witness says that that was furnished him by the Operators' Secretary; that the witness does not know whether that Operators' Secretary has the original of this record in his possession but supposes that he has; cannot say positively that he has; did not compare this with the original to see if it is correct.

Upon further cross examination witness says that as to McKinley's Exhib-ts numbered 3, 4, 5, 6, and 7, witness cannot say where the originals of those proceedings are, neither has he compared any of those exhibits numbered as McKinley's Exhibits 3, 4, 5, 6 and 7 with the original record of which they purport to be copies; they were simply furnished witness upon request as copies.

Witness says that as to McKinley's Exhibit No. 8 he obtained that copy immediately after it was made and that he took part in the con-

ventions and meetings that made it; that he knows it is the scale that was adopted then; the 8-hour rule went into effect in 1898—it was generally adopted at that time—and this scale was based on the 8-hour regulation; witness says there seems to be some confusion as to the statement there as to the Columbus Day Wage Scale for 1898. That is merely printed in the front of this scale in order to make the eight hour conditions clear and to cover the condition of labor around the mine.

[End of cross-examination.]

355 W. H. KOCH.

Recalled for further direct examination.

The witness, W. H. KOCH, upon further direct examination was asked the following questions and made the following answers:

"Q. Did you meet William Green, John Zalenka, and A. R. Watkins at your office along about July 1, 1907?

A. Yes, sir.

Q. If you can recollect what took place and what was said during that visit of those men to your office, state what was done and what was said?

A. Mr. Green was spokesman for the mine officials, and he tried to explain to me in what manner the company would be better off by recognizing the union and unionizing the mine; that they could control them for us, which he evidently presumed we could not do, and the entire conversation on his part was along that line. I could not agree with him and on leaving he asked me to think the matter over."

The witness was then asked the following question: "Well, after they left what, if anything was said?" and to this and to a question by the court the witness replied that he had information shortly afterwards that some of these officials had told one of the plaintiff's men that in this conference with plaintiff witness had decided to unionize the mine and that that man had better join forces with them, (these officials) or the next thing he knew he would be out altogether.

The following questions were then asked and answers given:

"The Court:

Q. That is, you had information to that effect?

A. Yes, sir.

Q. Well, now, what action did you take upon that information?

A. Upon my meeting with these same officials a short time later in Wheeling, I accused them of circulating that false report, and they denied it—each one of them. I told them that it was not necessary to incriminate themselves, as I knew who said it. Green questioned the correctness of my information, and I told him I had gotten it from one of our men whose word I would take in preference to any of theirs.

356 Q. Did you indicate to these men or any one of them at that time which one of them it was?

A. No, sir.
Q. Had you been told which one it was?
A. Yes, sir."

Upon further direct examination witness said the Hitchman mine is a slope mine; the coal is about eighty feet deep vertically from the surface, and the slope in the mine from the surface to the coal is about nine hundred feet; the coal is hauled out of the mine by an endless rope haulage up the slope; the coal is hauled by electric motors on the trestle.

The following questions wereasked and answers given:

"Q. Give me a short but comprehensive statement as to the effect of stoppages upon your mine with respect to its physical condition and with respect to the expenses incident to keeping up the mine during stoppages.

A. Owing to the nature of the coal, and especially of our roof, it is very expensive on account of the roof breaking and coming down, and of course all that has to be cleaned up at great expense before the mine can resume; and then in a great many instances you lose a part of your coal and the expense of cleaning up would cost more than the coal would be worth.

Q. Can you distinguish as to the effect between the main entries, side entries and rooms, and work gotten in readiness for future mining?

A. It is worse of course on the rooms, and the next worst condition is the room entries. The reason for that is that the main entries are protected more than those entries that you do not expect to operate so long; the consequence is there is more damage done where there is not so much protection; but we leave sufficient protection, of course, to keep the property in good physical condition while operating; but if we suspend a week, or two weeks, or six weeks, or two months, we can not offset that very well.

Q. And as a result of these stoppages, as I understand you, the roof falls in in various places, and in some instances you are unable to ever mine the coal that may be in the rooms, owing to the fact that it would cost more to remove the obstruction and downfall than the coal in the room would be worth?

A. We have had instances of that sort; yes, sir.

Q. During strikes you have had with the United Mine Workers?

A. Yes, sir."

Upon further direct examination the witness said that the Hitchman Company had never had any strikes except when it
357 was running its mine with the United Mine Workers; that the company's earnings depended upon the company's output; that the regularity of production and ability to produce and deliver without disappointment or delay has a great deal to do with the earning power of the company.

The following questions were asked and answers given:

"Q. What effect, if any, would stoppages have?

A. In the way of trade, you all understand, there is great competition in this coal business, and we can not go out and get trade by simply asking for it. Those things have to be looked after and

cared for, and expenses have to be incurred, and after you get the business, then you would be forced to fail to deliver owing to a strike, in which the buyer is not interested, and most naturally some other fellow will get the business.

Q. Have you experienced such trouble as a result of these strikes incident to your dealing with the United Mine Workers of America?

A. Yes, sir."

Upon further direct examination witness said, with reference to lake trade, that there is a very large territory in the North and Northwest in which there is very little, if any, coal found and that territory is furnished with coal from the coal centers—principally Indiana, Illinois, Ohio and Pennsylvania—and is taken up during the summer season usually, or largely, and owing to the cheaper transportation it is taken to Cleveland, Lorain, Ashtabula, and some other points, where they have dock facilities, and it is loaded on vessels and taken over to the other side to Duluth, Superior, Milwaukee, and a number of other places—and unloaded there, and then delivered from those points; it is stored there until the following winter; the reason it is done in the summer is on account of the cheaper transportation; transportation is cheaper in the summer on account of being able to transport it by water instead of rail all the way, and possibly and largely owing to return cargoes; in explanation of that witness says that a great many of these coal carrying boats come south from that country, bring iron ore down —some of them—and others bring lumber, and going back they take the coal; that the coal trade so far as this lake trade during the summer is concerned is a kind of rush business, and to be in the market the seller must be active and must be able to deliver
358 promptly when he contracts; if it is not furnished during the lake season, it is not furnished that year at all, and that ends it.

The following question was asked and answer given:

"The Court: Is the season governed by the time when the lake freezes up?

A. The insurance partially governs that your Honor. The insurance people are governed by the weather to a great extent—that is, as to the opening time and closing time."

The witness on further direct examination was asked the following questions and gave the following answers:

"Q. Give approximately the date of the opening and the date of closing the lake season. I understand, of course, it depends on the season?

A. Yes, sir. Usually the first of April is set for the opening, or about that time, and from the middle of November to the first of December for the closing, although I have known it to be closed earlier and have also known it to remain open later.

Q. At the time of the attempted unionizing of the Hitchman mine in the summer and fall of 1907, were you mining coal, and if so, were you furnishing lake coal?

A. Yes, sir; we were.

Q. Were you able, as a matter of fact, up to the closing of the season of that year, to fill all the orders that came to you?

A. No, sir.

Q. Can you explain why it was that you were unable to do that?

A. Our sales agent in Cleveland disposes of the tonnage that we expect that we will be able to deliver; and based on figures that I had given him he sold a certain amount of lake coal, but before we got through making deliveries we found we needed more men—in fact, we were hiring men constantly, and due to the agitation of the United Mine Workers' Agents we were placed in a position where we did not feel free to hire these men who made applications for work. There was no scarcity of men, but we were afraid to put them on for fear they were sent there for a purpose and that they might cause us trouble. The consequence was our output was cut down and we did not get as much coal out as we needed, and I understood from Mr. Upstill that he had to buy some at other places to take care of that contract.

Q. At the time these proceedings were going on between you and the officials of the United Mine Workers, do you know
359 whether they knew anything about your contract with your men not to become members of the Mine Workers' Union, and on your part that you were to run the mine as non-union?

A. I told them so.

Q. Why does your company still insist on running non-union?

A. We can get better results. We don't have the shutdowns and the annoyances to which we were subjected through no cause of ours or our men either, when we were running union."

Upon further direct examination, the witness said that the method of employment at the Glendale mine as compared with the method of employment at the Hitchman mine is the very same; that the opening at the Glendale mine is a shaft about ninety feet deep, to which statement the served defendants objected.

The following questions were asked and answers given:

"Q. Did you ever see a man by the name of Thomas Hughes, one of the defendants in this suit, about your mine, and if so, state as nearly as you now can recall, what he did and what he said?

A. I saw him about the property—in front of the property—and understood from the men that he was there to organize them.

The Court:

Q. Did you have any conversation with him?

A. No, sir.

Q. When was this—before or after your conference with Green?

A. After.

Q. How long after?

A. Possibly six weeks.

Mr. Gilchrist:

Q. Did you see Hughes more than once?

A. Yes, sir.

Q. Where was the next time you saw him?

A. I saw him several times around the Hitchman property and once at the Glendale.

Q. And do you recall the month and the year when Hughes was there?

A. I recall very well the year—1907—and I think the month was September."

(End of direct examination.)

360 Cross-examination:

The witness, W. H. Koch, was asked and answered the following questions:

"Q. Mr. Koch, you organized union beginning 1903, did you not?

A. I did not organize it, no; the miners organized it,—the men there.

Q. And you contracted to run union at that time?

A. Yes, sir.

Q. I believe you stated that you met your men—your employees—and stated to them that if they wanted to organize you had no objection to interpose?

A. Yes, sir.

Q. And you say that after you organized there was a strike for one day, after you organized union?

A. No, sir; there was a strike for longer than that.

Q. I understood you to say that the next day after you went on the union basis, the men went out?

A. It lasted about six weeks as I recollect.

Q. I am getting at this first: You stated in your examination in chief that they went out the next day after the union was formed?

A. That is correct.

Q. Do you know what that was about? Wasn't it some matter of disagreement in regard to the scale, or something of that sort?

A. Yes, sir.

Q. Anyhow it was adjusted and they went to work the next day?

A. Beg pardon; I did not say that.

Q. Well, did they go to work the next day?

A. No, sir.

Q. When did they go to work?

A. My recollection is they were out fifty some days after that time.

Q. The next day after they became union?

A. Yes, sir.

Q. What day did you become union?

A. About the first of April.

Q. And the next day they went on a strike?

A. April 2nd they went on a strike.

Q. Was that a general strike all over the country?

A. I think it was but I am not sure as to that.

Q. Then when the strike was adjusted, they resumed as usual, union?

A. Yes, sir.

Q. Do you recall the cause of those men going out on a strike or not?

Witness: At our mine?
Mr. Hogg: Yes.
A. My recollection is it was in regard to run of mine.
361 Q. That was the dispute?
A. Yes, sir,—the run of mine basis.
Q. Were you willing before they came out on the strike to pay the run of mine basis that was paid in Ohio?
A. No, sir.
Q. That was the difference?
A. Yes, sir.
Q. They wanted the run of mine basis that was paid on the Ohio scale and you declined to give it?
A. They wanted the run of mine basis as called for in the scale of the Ohio side.
Q. And you declined to give that?
A. Yes, sir.
Q. And that brought about the strike?
A. Yes, sir.
Q. Now, during those fifty days while they were out, efforts were made to adjust that difference, I presume, between you and the organization?
A. I suppose there were but I do not remember.
Q. You finally did get it adjusted?
A. Yes, sir.
Q. And on a different basis from that obtaining in the Ohio field?
A. Yes, sir.
Q. Are engines coaled on the Ohio side as they are coaled on your side with run of mine coal?
A. I think they are; yes, sir.
Q. Do you recall at what mines on the Ohio side?
A. There are a number of mines in Ohio that coal engines, I imagine.
Q. And they take the run of mine coal as they take the run of mine coal in West Virginia?
A. I suppose they do but I do not know as to that.
Q. Were you willing to pay the run of mine price for mining engine coal that was being paid on the Ohio side, just before the strike?
A. We had no occasion to pay the scale before the strike.
Q. Well, you were not willing to pay it, were you?
A. We were not asked to pay it before we unionized.
Q. I say after the strike—after you unionized?
A. No, no, sir.
Mr. Hogg: I am now addressing myself to you after the organization on a union basis?
Q. Then when this difference as to the run of mine coal was adjusted, after you went union, it continued until April 1st, 1906, did it, on that basis? You adjusted the price on that basis?
A. The first adjustment was not adhered to. It was to be a test but the miners' officials, through Mr. Haskins, called that test off and we agreed on a price that has been the basis ever since.

362 Q. The test, then, was to bridge over the difficulty you had until you could get some final basis, and it continued until this final basis was fixed, did it?

A. It continued until it was called off.

Q. It was not supposed to be permanent? It was temporary?

A. I think the agreement said for fourteen days.

Q. And then you fixed it permanently?

A. Yes, sir.

Q. And had no more trouble on account of run of mine coal, while you were running union, as to the price?

A. Oh, yes.

Q. As to the price after you fixed it by agreement?

A. The question came up in the settlement and our signing the scale in 1906.

Q. What difficulty did you have then?

A. When the advance was granted to 5.55% the miners wanted to reopen that run of mine question again.

Q. I do not believe you understand the question I am propounding?

A. Possibly not.

Q. The question I asked is this: After the expiration of the fourteen days, when you adjusted the differences on the scale of run of mine coal, that adjusted it until April 1st, 1906, did or did it not?

A. Yes, sir.

Q. Then you had no more disagreement or difficulty as to the price of run of mine coal until after the 31st day of March, 1906?

A. As I recollect it that is correct; yes, sir.

Q. And the disagreement between yourself and the union, or between the Hitchman Company and the union, arose out of the price to be paid for run of mine coal?

A. As I recollect it.

Q. You were willing to extend the 5.55% to the screen coal and to the run of mine coal on the basis which you had previously been operating?

A. Yes, sir.

Q. But you were not willing to accept the basis fixed for the Ohio field for run of mine coal?

A. We were not.

Q. In your examination in chief you stated that there was an organizer among your men preparatory to your adopting the union scale and policy in 1903?

A. Yes, sir.

Q. And that he went away after you engaged your men on the union basis?

A. Yes, sir.

Q. I wish you would state who that man was? What was his name?

A. I cannot recall his name. I could describe the man but I cannot recall his name.

Q. He was none of these defendants?

A. No, sir.

Q. Do you know of your own knowledge if he was a member of the United Mine Workers of America?

A. He purported to be; that is all I know about it.

363 Q. You do not know of your own knowledge?

A. No.

(End of cross-examination.)

E. C. Pickett.

Direct examination:

My name is E. C. Pickett; age, forty-two; residence, Glendale, West Virginia; occupation, mine superintendent—superintendent for the Hitchman and Glendale mines; have worked for the Hitchman Coal & Coke Company since November 4, 1901; has been in coal mines nearly all his life, or since he was old enough; during the period after the 1903 strike at the Hitchman mine and up to the time of the strike of 1906 at that mine, the Hitchman mine was operated union; prior to becoming union in 1903, the Hitchman mine was operated non-union; and since it started up after the 1906 strike it has been operated non-union.

The following questions were asked and answers given:

"Q. Do you remember what took place after March 31st, 1906, with reference to the men continuing to work?

A. Well, the men continued to work until April 16th, 1906, and they had a meeting with John Zalenka, or he had a meeting with them. I think it was on the night of the 15th of April. I am not sure about that but I think it was the night of the 15th, and they stopped work on the 16th of April, 1906.

Q. Was there any dispute between the company and the men, so far as you have any knowledge?

A. No, sir; not the men that were working for the Hitchman Coal & Coke Company at that time.

Q. Was there any difference that you know of at that time between the officials of the United Mine Workers and the company with reference to the men working?

A. Why, the only difference was that the officials apparently wanted the men to stop. In fact, from that time—from the first of April, or March 31st, until April 16th,—I do not think that any of the officials came around the mine at all until Zalenka came in on the 15th.

Q. Have you any knowledge of any efforts made by Mr. Koch to secure the consent of the officials of the United Mine Workers for your employes to continue at work pending the settlement of the scale between the operators and the United Mine Workers?

A. Yes, sir.

364 Q. And if so, state what that is?

A. Well, at different times—at several different times—Mr. Koch made an effort to have some of the officials come to the Hitchman mine and try to fix up the scale, or some agreement, by which the men would be permitted to work pending a settlement, but he failed to get any of them there.

Q. Did you hear any telephone conversation on that subject?
A. Yes, sir.
Q. Between whom, so far as you were informed, at the time?
A. I heard a conversation between Mr. Koch and President Green—at least I was informed it was President Green.
Q. And where was Green?
A. Why, I think he was in Columbus at the time of the conversation, or supposed to be.
Q. Did you hear Mr. Koch say anything in that telephone communication respecting the company's willingness or unwillingness to pay the union scale that the union was contending for?
A. Yes, sir.
Q. What, if anything, did you hear Mr. Koch say?
A. Mr. Koch told him that we wanted the men to continue to work and did not want the mine closed. He told him that he didn't want the mine to be closed down—that he wanted the men to continue to work and especially to continue to load the railroad coal, and he told him that the company was willing to pay the price that the men asked, and if they would permit the men to continue to work that he was willing to sign the scale and pay whatever scale was agreed upon, but if they stopped the men that they were taking something from those men that the miners' organization could not give them back—and that was, employment at the Hitchman Coal & Coke Company.
Q. And you say the men struck on April 16th?
A. Yes, sir.
Q. Following the visit by Zalenka?
A. Yes, sir.
Q. And the meeting with the men?
A. Yes, sir.
Q. Do you know anything respecting the circumstances under which the Hitchman mine resumed operation, June 12th, 1906, non-union?
A. Yes, sir.
Q. If so, tell what you remember about those facts, giving your personal knowledge and not anything that anybody told you?
A. Well, the men had a meeting with Mr. Hitchman prior to June 12th. I was present at this meeting. Mr. Hitchman told the men that the company would not recognize the United Mine Workers after being treated the way they had been but if the men were willing to go to work non-union that they could do so. Mr.
365 Koch was not at home at the time and Mr. Hitchman told them that he would not sign a scale with them at that time, but as soon as Mr. Koch came home he knew that he would fix the matter up satisfactorily to the men; and the men were perfectly satisfied with that agreement and they went to work non-union.
Q. Were you present at any time in 1907 when there was a meeting between Mr. Koch, William Green, John Zalenka and A. R. Watkins?
A. Yes, sir; I was present.
Q. State, so far as you now recall, what was said at that meeting during your presence and in your hearing?

A. Mr. Green tried to show Mr. Koch where it would be to the advantage of the Hitchman Coal & Coke Company to have the men reorganized, and told him that he thought it would be a whole lot better to deal with the officials of the United Mine Workers direct than to deal with the men. Mr. Koch told him from past experience he had found it to be just the opposite, and when they left I remember of Mr. Green asking Mr. Koch to consider the matter and that he would see him at another time.

Q. What difficulties, if any, had the Hitchman Coal & Coke Company encountered during the time the mine was run union?

A. Well, they had numerous strikes—they had several. At different times they had strikes and difficulties that were not caused by any misunderstanding or dissatisfaction among the employes of the Hitchman Coal & Coke Company, but the strikes were all brought about by the officials of the United Mine Workers, by them ordering the men to strike in sympathy with other mines—a sympathetic strike it is called—or at the expiration of the scale; and one time—I think it was in 1903—my recollection is there was a little dispute over the run of mine scale, but this was the only strike that we had, that I remember of, that was not brought about by the officials of the United Mine Workers.

Q. Explain so far as you now recollect what the trouble was in 1903 as to the run of mine coal?

A. Well, the run of mine price—the scale was based on the run of mine price in the Hocking Valley district, and it was too high for this No. 8 coal—the coal at the Hitchman Company's mine.

The Court:

Q. What was the run of mine price?

A. I am not sure, but it was either seven-ninths or five-sevenths of the clean coal price. I am not sure which it was; I am not positive; it was either five-sevenths or seven-ninths, and I think it was five-sevenths.

366 Q. Five-sevenths of what price?

A. The clean coal price. Whatever the clean coal price was to be, the run of mine price was to be five-sevenths of that I believe.

Mr. Gilchrist:

Q. If any difficulty arose about that run of mine coal in 1903, how was that difficulty adjusted?

A. Well, the men went to work on an average basis pending a test which was to be made, agreed upon by the officials with Mr. Koch, and the coal was averaged, and the men were paid for the run of mine coal. Whatever the clean coal averaged they were paid the same basis for the run of mine until this test was made. The test was started. I do not remember just the date it was commenced. Mr. Haskins was State President of the United Mine Workers at that time, I think, and he was present when the test was to be made. The test was to be two weeks or fourteen days or something like that but it did not continue for the full length of time. It was called off by Mr. Haskins and a flat price was agreed upon for

run of mine coal between Mr. Haskins and Mr. Koch, which has been the basis of run of mine coal ever since.

Q. And you are paying now in mining run of mine coal a price corresponding to that settlement?

A. Yes, sir.

Q. I am not sure that I understood whether you said just what was in controversy between the union officials and the United Mine Workers at the time the men quit work April 16th, 1906. Had the run of mine basis scale in Ohio anything to do with the failure on the part of the company to at once sign the new scale inasmuch as the company announced that it was willing to pay the advance of 5.55%?

A. No, sir; it had not, I do not think.

Q. Did you hear any discussion of that between Columbus and Wheeling in that conversation?

A. The only conversation I heard was Mr. Koch talking to Mr. Green that night. Mr. Koch expressed his willingness to sign the scale or demand that the union was making if the men were permitted to continue at work, and told them that all he asked them to do was to permit the men to work on and that he would sign the scale that might be agreed upon later, or he would sign the 1903 scale—that was the scale the men were demanding at that time.

Q. And that was the scale that you had been working under up to March 31, 1906?

A. Yes, sir; excepting the men were demanding an advance and the company agreed to pay the advance.

Q. What, if anything had you to do with the employment of men at the mine after the settlement of the strike and the
367 going to work non-union, June 12th, 1906?

A. I had full charge of the employment of all of the men and I employed all of them myself.

Q. State as nearly as you can now recollect just what you did and what you said when you came to employ a man?

A. Any man that made application for employment, I told him personally the conditions under which we were working and explained it to him. I told him that we were paying the price which had been demanded by the union and were paying as much as anybody else, but the mine was run non-union and it would continue to run non-union; that the company would not recognize the United Mine Workers of America, but if they (these men) wanted to work under these conditions it was perfectly satisfactory with me, and, if not, why I did not want them to accept of the position at all. And every man that went to work there expressed himself saying that it was satisfactory to him to work under those conditions; that all they wanted was the price; that is, that they wanted to be paid for their work the same as other people.

Q. What, if anything, was said on the subject of their membership in the union if they wanted to continue working at your mine?

A. I also told them that any man who wanted to become a member of the United Mine Workers—that that was his business—but he could not be a member of the United Mine Workers and be affiliated with the United Mine Workers and be under the employ of

the Hitchman Coal & Coke Company, or be under the jurisdiction of the United Mine Workers; that the mine was run non-union so far as the United Mine Workers of America were concerned.

Q. You mean you made every man understand that while he worked for the Hitchman Company he must keep out of the union?

A. Yes, sir; or at least they said they understood it. They told me they understood it and gave me reason to believe that they understood it.

Q. Since January, 1908, in addition to having the contract such as you have stated you made with the men and make now, what precaution have you taken with reference to having the men indicate in some way their understanding about the question of unionism?

A. We have an employment card at the office that every man receiving employment at the Hitchman mine is required to sign or does sign before he goes to work.

Q. Then I understand you to say that the first thing that is done by the men is to see you and you explain to him the condi-
368 tions about the mine and the terms upon which he may work at the mine?

A. Yes, sir.

Q. And then if he desires to work under those conditions, you require him further, as an evidence of his understanding of that as to the union question, to sign this memorandum card?

A. Yes, sir.

Q. You have employed all the men since June 12th, 1906?

A. Well, now, there was a time that I was sick and the men that were employed during that time, of course I did not employ them. With the exception of that time, I have.

Q. With the exception of some temporary illness?

A. Yes, sir.

Q. Did you ever meet organizer Thomas Hughes?

A. Yes, sir.

Q. Well, state so far as you now recall, what he said and what he did, within your personal knowledge?

A. Well, the first time I met Mr. Hughes or saw Mr. Hughes, he was near the tipple of the Hitchman Coal & Coke Company looking over the sheets where the weights are put up for the inspection of the coal every day. There is a sheet put up each day near the tipple and he was standing there looking at that sheet. At this time I did not know who he was, but I believe it was that same day, or possibly the next day, I was walking down the board walk in front of the company houses and I saw Mr. Hughes sitting on one of the porches talking to some of the men, and I suspicioned that he was talking organization to them and trying to induce them to join the union; so I went up to him and asked him if he knew he was on the company's property and he said he did. Then I told him, I says, "The best thing you can do is to get off of the company's property and stay off;" and he says, "All right; I can do that, too;" and he got up and walked out on the street. Then I saw him several different times after that and talked to him on different occasions.

Q. Well, on those occasions, what in substance was your conversation as near as you now recall?

A. Well, one day, in particular, I met him in front of the Western Supply Company's store.

Q. Where is the Western Supply Company's store?

A. Why, it is almost directly east of the well, it is in the same building with the Hitchman Coal & Coke Company's office.

Q. Adjoining the mine?

A. Yes, sir; right near the mine. He came up to me and I was talking to him about the organization. He wanted to know
369 why we objected so hard to the union—if the company was willing to pay the price or wages fixed by the union, why they objected so much to the union. I told him it was because they had always in the past caused them so much trouble by the stoppage of the mine, and that they apparently did not want to deal square with the Hitchman Coal & Coke Company, and for different reasons; but that these were the principal reasons. As far as the price was concerned, that the company did not object to paying the men the price and as much as anybody else; but even at that it had been proven that the union would not allow the men to work even if the company was willing to pay the price. Mr. Hughes said to me, he says, "Well, it does not make any difference to me, anything about it," he says; "I am working for the union just the same as you are working for the Hitchman Coal & Coke Company." He says, "I am getting $3.75 a day for staying here and you cannot stop me from walking up and down this street." I says, "We won't try to stop you." He says, "I am getting $3.75 a day from the union for working here and I am going to stay here until they call me away;" and he did stay there for several days, and when they would be going home from their work in the evening I saw him on several different occasions stopping the men and talking to them. Of course I did not hear what he had to say to them. I supposed that he was talking union to them but I did not hear it.

Q. Do you now recall any other conversation you had with Hughes?

A. Well, one morning I went to the Glendale mine on a street car; this was the day after the men had quit work at the Glendale, or some of the men had quit work there, and I met Mr. Hughes on the pike a little south of the Glendale mine, and he said to me, "Well, I suppose you fellows are good and mad this morning?" I says, "I do not know of anybody being very mad;" and he says, "This puts the men in a pretty bad fix—these men that you discharged the day before;" and he says, "If they go to work and get a job at any union mine, our rule is a man that has been working at a non-union mine and gets employment at a union mine—it is our rule to impose a fine of twenty dollars on each and every man over and above his initiation fee," and he says, "Lots of these men haven't got the twenty dollars to pay." I told him that was not our fault; that they did not have to quit; that they knew the conditions under which they were working and that they did not have to quit; that we did not force them to join the union; that we asked

them not to and they agreed not to join." And I left him
370 at that time. I do not remember how long it was then before I saw him again but I saw him nearly every day for a certain period of time. I do not remember how long he was around there but he was there pretty nearly every day for a couple of weeks and may be longer.

Q. Did you hear him make any address at any time?

A. Yes, sir.

Q. State what you now recall as to that?

A. Well, one night he made an address on the steps that go to a gate in front of a residence on the pike just North of the Hitchman mine, and he told the men that the reason the Hitchman Coal & Coke Company did not want to recognize the union was, that it would not be very long until they would work for a whole lot less wages than they were getting then, and he tried to induce them to join the union for their own protection, and said it was only a question of time until the Hitchman Coal & Coke Company would cut their wages, and so on. I do not remember just exactly what he said but that was the substance of his address.

Q. Did he say anything in that address about any of your employes?

A. He did in one particular: he did to one man in particular.

Q. Well, what did he say?

A. He said that the mayor of Benwood had told him that there were better men than William Daugherty, or that there had been better men than William Daugherty, hung; and he said—I don't remember; well he intimated that he thought he ought to be hung, too. I do not remember just exactly the words he said now.

End of direct examination.

Cross-examination:

Upon cross-examination, the witness, Pickett, said that he had been mine superintendent of the Hitchman Coal & Coke Company for about nine years; that on and after June 12th, 1906, he had the employment of the men who worked in the mine of the Hitchman Coal & Coke Company; that when the men came to him to be employed he told them that the Hitchman mine was running non-union, and that it intended to run non-union; that if they worked for the Hitchman Coal & Coke Company they would have to work as non-union men; that is what witness said to every one that applied for employment; the men stated that they were satisfied to
work with that understanding—they gave me reasons to be-
371 lieve that they understood what witness said; some of the men—some of the foreigners could not just talk plain or speak the English language very well—but they always understood, or appeared to, and said that they understood the conditions and were perfectly satisfied; at that time that was all that constituted the agreement with the men when they went to work, and witness continued to employ the men verbally in that manner until the adoption of the card in 1908; then they signed that card and left it at the office.

Upon further cross examination witness said that between the first of April, 1906, and the 16th of April, 1906, witness was present when Mr. Koch was holding a conversation with Mr. Green over the phone. Witness does not know, of his own knowledge, who was at the other end of the phone; witness heard Mr. Koch say to the party at the other end of the phone that the Hitchman Coal & Coke Company was willing to pay the advance; that was to be an advance on the price that had been paid for two years previous—or a part of the two years—that the company worked on a price that had been agreed upon between Mr. Koch and Mr. Haskins for run of mine coal.

At this point the witness was asked and answered questions as follows:

Q. Did you know that at that time the scale proposed by the union contemplated the Hocking Valley scale?

A. No, sir; I did not.

Q. Well, you knew that it was to be a uniform scale throughout Ohio?

A. All I know about this scale is that the scale that we were working under had been agreed upon between Mr. Koch and the officials of the United Mine Workers of America, and I naturally supposed it was a union scale.

Q. Well, did you know that was a difference—I mean in the scale of the Hocking Valley and in the Ohio country generally on run of mine?

A. I heard it.

Q. Well, you heard the differences they had were adjusted?

A. I knew they had had just previous to this—that they had had a scale of a certain percentage for run of mine which was based on the per cent. of the screen coal. As I said before I do not remember for certain whether it was seven-ninths or five-sevenths.

Q. You do not seem to catch my question. You recollect that you spoke about there being a test?

A. Yes, sir.

Q. And that that test was to be made for a period of fourteen days but that it was called off by Mr. Haskins. That is correct, isn't it? That is what you said?

A. Yes, sir.

372 Q. Now, then, you went to work and fixed up an arbitrary basis different from the one in Ohio agreed upon by the union and Mr. Koch?

A. Yes, sir.

Q. Now, that was the basis upon which the advance was to be made?

A. Yes, sir."

Upon further cross examination the witness, Pickett, said that he does not remember the exact date when he first saw Mr. Hughes after the company started to run its mine non-union in 1906, but says that it was along in the fall of 1907; rather thinks it was October, but is not positive; when witness first saw Hughes then, he saw him near the tipple of the Hitchman Coal & Coke Company; near the pit mouth; did not talk to him on that occasion; just saw

him there; did not know him at that time—it was the first time witness ever saw him; at that particular time witness was not informed that that was Mr. Hughes; the next time witness saw Hughes, it was either that same day or the day following. Witness saw him in front of a company house. The houses run east and west and there is a board walk in front of the houses, and witness saw him down in front of a house.

At this point the witness was asked and answered questions as follows:

"Q. You were how far from him when you saw him?

A. Well, I don't just exactly remember, when I first saw him. I was several hundred feet from him when I first saw him.

Q. Then you went to him and asked him his business there, did you?

A. No, sir; I did not.

Q. What did you say to him?

A. I just asked him if he knew he was on the company's property.

Q. And he answered that he did?

A. Yes, sir.

Q. And you told him to get off?

A. I told him to get off of the company's property and to stay off.

Q. And he got off and went out into the street?

A. Yes, sir.

Q. Now, when he got into the street did you try to talk to him some?

A. Not on this special occasion I did not.

Q. Now, when did you next see him?

A. Well, I do not remember exactly the next conversation. I remember of having this conversation that I speak of in front of the Western Supply Company's store, but I do not remember whether that was the next time I saw him or not.

Q. Well, the next time you talked was in front of the Western Supply Company's store?

A. Yes, sir.

373 Q. Do you recollect what he was doing there?

A. He was just standing there.

Q. Was there anybody else there?

A. Not right then.

Q. Now, at that time you engaged him in conversation?

A. No, sir; he engaged me.

Q. Well, what did he say to you?

A. He asked me why the Hitchman Coal & Coke Company objected to the union when they were willing to pay the price.

Q. And you told him your objections?

A. Yes, sir.

Q. Now, that was the extent of your conversation? You told him your objections?

A. Yes, sir.

Q. And then you went on?

A. Yes, sir.

Q. And he and you parted?
A. Yes, sir.
Q. Now, when did you next see him to talk with him?
A. I think the next time was at Glendale.
Q. That was on the property of the Glendale Coal & Coke Company?
A. No, sir.
Q. It was in the town of Glendale?
A. It was on the pike that runs from Wheeling to Moundsville.
Q. Well, what were you doing up there?
A. I had charge of the Glendale mine.
Q. And you were on your way to the Glendale mine?
A. Yes, sir.
Q. Then on your way there you met him?
A. Yes, sir.
Q. Did you meet him or overtake him?
A. Well, he was standing there and I came up to him.
Q. Was there anybody else there?
A. No, sir.
Q. You had this conversation then with him alone?
A. Yes, sir.
Q. Now, did he there engage you in conversation or did you engage him?
A. Well, I don't exactly remember which one spoke first, but the first words of course—the first thing he said was, "I suppose you fellows are good and mad this morning?"
Q. "Good and mad this morning?" Well, what did you say?
A. I said, "I do not know of anybody being mad."
Q. Well, what else was said?
A. Then he told me—he says, "This puts these men that you discharged yesterday—it puts them in a pretty bad fix."
Q. And what did you say?
A. Well, he continued to tell me the consequences.
Q. Well, now, did you say anything else after he told you the consequences of the discharging of those men?
A. All I said was, that as far as putting them in a bad fix was concerned, they did not have to join the union.
374 Q. And you told him that it was their own fault that they were discharged?
A. Yes, sir.
Q. And not yours?
A. That they were working for the Glendale Coal Company and they understood the conditions—that they were not to join the United Mine Workers. If they wanted to, though, they would have to cease their employment with the Glendale Coal Company.
Q. And you gave him to understand that you were simply enforcing your part of the contract by discharging them?
Mr. Gilchrist: He has not said that.
Mr. Hogg: Did I misrepresent you in any way there, Mr. Pickett? If I did, I certainly did not intend to.
Witness: I guess not.

Q. Well, were those men that had been discharged working for the Hitchman Company or the Glendale Company?

A. The Glendale Company.

Q. Well, now, you went on then, did you, to the mine after you finished that conversation? Was there anything else occurred at that conversation?

A. I do not remember of anything.

Q. Well, if there was anything of importance you would likely remember it. Now, when did you next see Mr. Hughes?

A. Well, I could not say just exactly the next time. I saw him so many different times that I cannot say just exactly when was the next time I saw him.

Q. When did you next talk with him, to your recollection?

A. I think it was the night he made the address to the men at Benwood.

Q. Now, where was that address delivered?

A. Just North of the Hitchman coal mine, along the pike.

Q. About how many men were there, do you recollect?

A. I do not know how many.

Q. What would you say, approximately?

A. Oh, there might have been twenty-five, or between twenty-five and fifty some place.

Q. And a good many of them were foreigners, weren't they?

A. Well, there were some of them.

Q. Was he speaking in English?

A. What I heard him say; yes, sir.

Q. Well, in that speech, as I understood you in your examination in chief, he was arguing with them on the advantages
375 they would derive by joining the union?

A. Yes, sir.

Q. And stated in that connection that this scale that they were then working on would be reduced after awhile?

A. If they didn't join the union.

Q. And what else did he say, that you recollect, bearing on the matter of the men and the work at the mine?

A. Well, that was about the subject all the way through—that he was just trying to induce the men to join the union.

Q. Well, did you have any conversation with him personally after that, prior to October 24th, 1907, before the suing out of this injunction and after he made that speech there?

A. I do not remember whether I did or not; I do not believe I did; I do not remember.

Q. If you did you would likely recollect it, wouldn't you?

A. Well, I might and I might not; he was there for several days.

Q. I thought you said he was there off and on—or that you saw him off and on there—for about two weeks?

A. I think possibly it was about two weeks but it may have been longer.

Q. And you think it was in the month of October?

A. I think it was but I am not positive about that—about the month.

Q. Well, you said it was in the fall. It was either in September or October, then?

A. Yes, sir.

Q. Were you there during the whole of the time that he was speaking to the men on the occasion you have just mentioned, or were you there only a part of the time?

A. I was not in hearing of him all the time, but most of the time.

Q. What time in the day was it that this meeting was held if you recollect?

A. Why, it was in the evening.

Q. On the side of the street or in the street or how?

A. The houses along the street sit up on a bank and coming up from the street there were steps—possibly four or five steps—and he was standing on the top step in front of a residence there.

Q. Do you know whose residence that was?

A. I do not remember who lived there now.

Q. It was not on the company's property, was it?

A. No, sir; it was not.

Q. It was on another person's property?

A. Yes, sir.

Q. And you do not recall the name, then, of the person who lived there at that time?

A. No, sir; I do not.

376 Q. Do you know whether it was a coal miner that lived there?

A. No, sir; it was not.

Q. Do you recall what the party did do that lived there? You say that he was not a coal miner.

A. No, sir; I do not."

End of cross examination.

Redirect examination:

Upon redirect examination the witness, Pickett, was asked the following questions and made the following answers:

"Q. In your direct examination, I understood you to say that Hughes had gotten a number of men to quit work at the Glendale mine?

Mr. Hogg: He didn't say that; he said they were discharged.

Mr. Gilchrist: No; he didn't say that.

The Court:

Q. How was that? Had Hughes gotten any number of men to quit at the Glendale and Hitchman mines?

A. Well, it was brought about by Mr. Hughes, I think. There was a meeting of the men the night before this near the B. & O. station at Glendale.

Q. Did any of them quit work?

A. Well, the// way it came about was this: The men were at the meeting the night before near the B. & O. station at Glendale,

and Mr. Hughes was present talking to them down at the B. & O. station, and I got the names of five of the men who were at this meeting, and I instructed the mine foreman to have these men remain on the outside of the mine the next morning until we could have a talk—I mean with these five particular men—and when the mine foreman told these men to remain on the outside of the mine—that we wanted to see them and have a talk with them—why, there was fifteen others (there was twenty altogether)—there was fifteen others who said they would stay out and see what we wanted. I was not present just exactly at this time but I was immediately after, and when I came up to these men they were sitting there on a pile of mine props and I told them, I says, 'From your actions last night and also this morning it seems to me as though you want to become members of the United Mine Workers,' and, I says,

377 'You understand that you cannot become members of the United Mine Workers and work for the Glendale Coal Company, but,' I says, 'we haven't any objections or we are not trying to hinder you from becoming members of the United Mine Workers of America, but you understand that you cannot be members of the United Mine Workers and work for the Glendale Company;' and one of the number—I do not remember exactly which one—says, 'Well, I suppose that means for us to get our tools out?' And I told him that was exactly what it meant, and I also told them as soon as their tools were outside of the mine their money would be ready for them."

(End of Redirect examination.)

B. C. Rowand.

Direct examination:

My name is B. C. Rowand; age, thirty-two; residence, McMechen; occupation, miner; has worked for the Hitchman Coal & Coke Company since 1903, with the exception of a few months; has worked in a good many capacities for the Hitchman Coal & Coke Company during that time—as a miner, mule driver, machine man, and as mine foreman; his present position at the Hitchman mine is check weighman; has been acting as check weighman there for six months; witness recalls the occasion of the 1906 strike at the Hitchman mine.

Upon further direct examination the witness was asked and answered questions as follows:

"Q. Please tell me, as nearly as you now recall, the circumstances surrounding the men continuing to work from April 1st, 1903, to April 16th, 1906?

A. Well, we were working under the United Mine Workers at that time, and when the 1st of April came—well, along the first of the year we sent a representative to Indianapolis, or wherever their convention was, (I think that was the place they met) and when he came back—he stayed up close to the first of April—and when he came back as one of the committee, Mr. Koch asked us to have our representative meet him with the scale, saying that he would be ready to sign it on the first day of April.

Q. You were one of the committee of the men at the mine?

A. Yes, sir; then when this man came back we met him
378 and took him to Mr. Koch's office and Mr. Koch asked him—(Interrupted).

Mr. Hogg: I do not suppose that conversation ought to go into the record. What occurred there is not competent.

Mr. Gilchrist: I was leading the witness to detail the facts.

Mr. Hogg: All right; go along, except that it makes so much record.

Mr. Gilchrist: Well, I would prefer to let the witness continue.

Witness (continuing): And Mr. Koch asked him for the scale and he says 'I haven't any.' That was the start of his then calling up Mr. Green and asking for permission to work until they got the scale. This was over the 'phone and he granted us permission to work until the board members met. I think it was the board members but I am not positive about that.

Mr. Hogg: The executive board?

A. Yes, sir. And then on the 15th day—I believe it was the 15th but I am not positive; it was a day or two before we quit work—they issued a card and we got a card that all miners was to come out on a strike until they did get a scale. Well, two or three days after this Mr. Watkins brought a card over and he explained to us—a committee of us—and then we had a convention and I was one of the men at the convention in Wheeling. When they sent a man down and ordered us out we took the matter up with Mr. Green and also with Mr. Lewis. I went to Mr. Lewis's house with another committee and asked him personally if he could not let us work down there pending a settlement, and he said, well, he didn't know; he said he would see about it; he said there were lots of them wanting to do that same thing; and I told him we had different conditions down there from what they had at some other places and that if we did not load this coal ourselves that they would get the coal some place else and put it right up over our own tipple, and I thought we had as much right to load that coal pending a settlement as somebody else, as they would have to bring it in and then have it hauled up over our tipple.

Q. Well, what, if anything, further occurred?

A. He did not give us permission to work, so when we
379 had that convention in Wheeling they sent a man down. We were up there at the convention four days and they sent a man down with us, and he came down and talked to the men and they all came out.

Q. Who was that man?

A. That man was Zalenka.

Q. Vice-President of the Sub-District?

A. Yes, sir.

Q. Well, was that subject of allowing you to continue work taken up in that convention?

A. No, sir; I do not believe it was—not to my recollection it was not. There was fifteen days that we worked. There was talk

of us working fifteen days and we got permission from Green to do it, and I know the President of the Local, Andy Watkins, then appointed one of our members on the scale committee and there was objection made to him serving on the scale committee because we had worked those fifteen days.

Q. And what was the result of that?

A. Well, the result was that Andy Watkins got up and rapped for order and said we would take that matter up after awhile, and there was never anything more said about it. They fixed it up themselves but I do not know how.

Q. What, if anything, did you do or say at that time when they refused to put the man on the committee?

A. Well, sir, I got up in the hall and stated if one of our members was not appointed on the committee—if he was not fit to serve on the committee—that I had no business in the hall and that I for one would not stay.

Q. Well, after the men were called out on strike did you attend that meeting that Zalenka had when he came down with you and the balance of the committee? Did you attend the meeting that he had with the men?

Witness: That Zalenka had?

Mr. Gilchrist: Yes, sir; the men came out the next day you said.

A. Oh, before they came out he came down and ordered us out—Mr. Zalenka did. Yes, sir; I attended most of those meetings but I do not know that I attended that particular one the next day.

Q. You quit work, did you, when the mine shut down by reason of the strike?

A. Yes, sir.

Q. And were you idle until the mine resumed work?

A. No, sir; I was not. I was not working for the Hitchman Coal & Coke Company, but I found employment some place else.

Q. Art you a married man?

A. Yes, sir.

Q. Well, what, if anything, do you know about the men resuming work non-union? Just state in your own way, as
380 nearly as you now recollect what took place and what was said about going to work?

A. Well, Mr. Hitchman called us in the office one day when Mr. Koch was away, and he told us—he talked with us about running non-union—about him not going to run union—and he said that he would fix up a scale—Well, he did not say he would fix it up but he said the company was ready to sign the 1903 scale and go to work, and he said Mr. Koch, when he came back would fix up that scale with the miners, and they fixed up everything satisfactorily and they went to work. There was lots of other little things that occurred there, but I do not know whether I can remember them or not.

—. Well, about the terms upon which you could go to work non-union in addition to the scale which would be agreed upon, what was said about it?

A. It was understood if we would go to work that he would pay us the scale price that the miners got in Ohio, and that we agreed not to be in the United Mine Workers of America; that we could go into a union of our own if we wanted to; that he had no objections if it was run right.

Q. Now, you say you have been a miner there and that you have served in other capacities also. What, if anything, have you observed during the course there of your labor as a miner, with respect to the practical result of mining coal on the modified run of mine basis as compared with the practical result to the miner of mining other kinds of coal under the union scale?

Witness: You mean the run of mine price?

Mr. Gilchrist: As modified by the agreement.

A. Well, our first scale that we had there, they had a price fixed on that, and then part of the miners became dissatisfied through this run of mine system and agreed to take an average of the weights. Well, the average weight did not give them as much as they got beforehand and therefore they went back, on the same principle, and took the run of mine system as it is now. If I am working in a coal mine I prefer all of my coal to be run of mine system.

Q. State approximately how much, when you were mining coal, you made, dependent upon your mining any one day, all run of mine coal or all screened coal or mixed? What would be the net result to you in dollars and cents, approximately?

A. Well, that would depend a right smart. You take
381 mixed coal and you have a certain part of your coal that is slack, and while you are running part of your coal to the screens and part of it run of mine—(interrupted).

The Court: It would depend on where the slack goes.

Witness (continuing): It would depend on where the slack went. If the slack went to the bins, why, you would be a gainer on screen coal.

The Court:

Q. You mean the bins holding the screen coal?

A. No, sir; the bin holds the run of mine; but if you take all of it to the screen and all of it to the run of mine, the run of mine coal will make you the most money. That is the way I always figure it out.

Q. And you say that is true under the modified run of mine basis—that that condition is true as the result of the application of the run of mine modified price?

A. Yes, sir."

Cross-examination:

Upon cross examination the witness, B. C. Rowand said by modified price witness understood it was the difference between the price—that is, this five sevenths—and the price that they paid, if witness understood the meaning of that phrase right; if witness understands the scale, all scales are based upon the pick basis.

The witness was asked the following question: "Then you would have no basis for machine coal, would you?" and replied: "Well, I never seen no basis for machine coal any more than—Well, I never seen any place that they had this up until it came up here."

Upon further cross examination the witness Rowand, said that he was not working for the Hitchman Coal & Coke Company when the company started to run its mine union in April, 1903; that when he started to work for the Hitchman Coal & Coke Company the mine was running union, the company was running union when witness came there; witness went to the Hitchman mine in August, 1903; and with the exception stated witness has been there since then; witness worked an entry at that time, and ran a machine, together, and got seventy-five cents a ton; got a flat rate; got thirty-four cents, he thinks it was for run of mine, at the time witness was working there in August, 1903.

382 Witness was asked and answered questions as follows:

"Q. Now, did you continue upon those rates as long as you ran non-union, down to April 1st, 1906, or April 16th or 12th, or whenever you quit in 1906, running union, did you continue on these rates?—continue on the same basis?

A. No, sir; we did not continue on the same basis.

Q. What were you getting in April, 1906, for screen coal at the time you were still running union and up to the time you quit?

Witness: You mean for those two years?

Mr. Hogg: Your term expired March 31st under the union contract and you continued running after that for sixteen days union?

A. Yes, sir.

Q. Now, what I want to know is this: What was your price per ton on the 31st of March, 1906?

A. In 1906 it was referred back and we got the same as we got in the 1905 scale.

Q. And what was that for screen coal?

A. I was working an entry at that time.

Q. What did you get a ton for screen coal in your mine in 1906? What were they paying there?

A. Do you want to know what the scale was and what we got in general or individually? You ask me what I was doing and I told you I was driving an entry.

Q. What I mean is, what was the price for mining screen coal per ton?

A. The price for mining screen coal in a room was 52½¢ as far as I remember. No; wait a moment; I am wrong there; It was 48¢, I believe it was; I am not positive but I think it was 48¢.

Q. Now, what was your flat rate for run of mine coal at that time?

A. We had no run of mine at that time.

Q. You had some, hadn't you?

A. We had an average.

Q. What was your flat rate?

A. We didn't have a flat rate.

Q. Well, what did you get a ton?

A. We had no tonnage at all for run of mine.

Q. How were you paid for run of mine coal?

Witness: At that time?

Mr. Hogg: Yes; in March, before you quit, while you were running union, you had one system which you adopted and kept it up. Now, how was that?

A. That system was adopted for two years; during 1904
383 and 1905, I believe it was. We worked two years there under what was called the average system. If you loaded whatever coal you had and it went to the screen, you got the same amount—whatever amount of cars you got going to the screen, and whatever those cars weighed, was averaged, making it so much per car. Every car then that went to the run of mine got the same as they did, whatever that average was. Do you understand that now?

Q. Well, then, there was no specific price per ton paid for run of mine?

A. No, sir; that was all dependent upon the loader. If he loaded small cars that day, why those cars weighed so much, and that was what his average was for that day. If he loaded big cars his average went the same, in proportion.

Q. Well, now, when you started to run non-union you pursued the same system, did you, in paying for the work to miners?

A. No, sir; we positively would not go to work that way any more.

Q. When you started up non-union?

A. Yes, sir.

Q. How did you adjust and pay for run of mine?

A. By referring back to the flat basis.

Q. The basis you had that was first adopted under the union system?

A. Yes, sir.

Q. Now, you have a flat rate now for run of mine?

A. Yes, sir.

Q. What do you get for that per ton?

A. We get 32½¢.

Q. Has that price been paid ever since you have been running non-urion?

A. No, sir; they adopted the Pittsburg run of mine basis for run of mine coal.

Q. When was that adopted?

A. It was when we went to work after the strike.

Q. And you have been running that way ever since?

A. Yes, sir.

Q. That is 32½¢ you say?

A. Yes, sir.

Q. And that is what you have been getting all the time for run of mine?

A. Yes, sir.

Q. What do you get per ton for screen coal?

A. Fifty-four cents.

Q. That is the same rate all through from the time you started to run non-union?

A. No, sir; we got—this last settlement we had we got our raise in proportion to the miners in Ohio.

Q. Just keeping up with them?

A. Yes, sir.

Q. In other words, you are practically getting what the union gets?

A. We are getting what the union gets and in some cases
384 we get more. We get more per yard for entry driving.

Q. What do you get for entry driving per yard?

A. Seventy cents for loading and twenty-seven cents for cutting—for the machine cutter.

Q. Do you know what the union scale is?

A. Twenty-five cents for machine and sixty-eight cents, I think it is, for the loader.

Redirect examination.

Upon redirect examination the witness was asked and answered: "Q. Explain what you mean by yardage?

A. Yardage is narrow work and they get the same amount per ton that wide work does and seventy cents per yard, running measure, extra, over the wide work.

(End of redirect examination.)

JOHN OLIVER.

Direct examination:

My name is John Oliver; age, thirty-two; residence, McMechen, West Virginia; occupation, miner; has been a miner about fifteen years; in a general way witness has worked all over West Virginia and part of the state of Ohio—has been all over this state and part of the state of Ohio; with the exception of one month has been working since 1903 for the Hitchman Coal & Coke Company; did not work at the Hitchman mine at the time the 1903 strike was on, came into the service after that strike was settled; at that time the Hitchman mine was union and witness was a member of the United Mine Workers; witness does not remember what the scale for run of mine coal was which was in force in 1903 when he was working at that mine—the adjustment of that question was made before witness started to work there; after witness started to work at the Hitchman mine in 1903, he worked for the remainder of the year 1903, and worked there until the strike of 1904, which occurred on April 20th; the occasion of the strike of 1904—the difficulty—as near as witness can remember it, was through the run of mine coal; when that strike
was settled the run of mine question was adjusted again and
385 on an average basis, witness thinks it was, as near as he can recollect; the mine ran on the average plan on run of mine until 1905 and then witness thinks they returned to the tonnage basis—that is, the basis that was in vogue in 1903 when witness started to work; from 1905, when the average plan was abandoned and the tonnage plan adopted as the method of arriving at the compensation to be paid for run of mine coal until March 31, 1906, the mine ran on a tonnage basis as to run of mine coal.

The witness was asked and answered the following questions:

"Q. Do you recollect the circumstance of the 1906 strike—the fact that there was a 1906 strike?

A. Yes, sir; I remember very well of there being a strike.

Q. Was there any discussion between the manager of the mine and the union officials, or between the employes of the mine and the union officials, that you know of, relative to the question of continuing work at the Hitchman mine pending the settling of a new scale between the Operators' Association in convention with the United Mine workers? If there were any conferences or communications on that subject between Mr. Koch and any of the union officials, or if there were any dealings between your men and the union officials on that subject, of which you have personal knowledge, please state what was done and what was said so far as you now recollect.

A. I was not present at any of them except the latter part of the meeting when we were called out on a strike; I was not present at all of that meeting; I was only present at a part of one meeting between the miners and one of the officials that called us out.

The Court:

Q. Well, what occurred there then?

A. About all I heard of was that they had a meeting and it was going on when I went to the hall. Mr. Zalenka was there and he was talking when I went in, and when he got through there was one of our men—I do not know who it was—asked him if we would not be permitted under certain conditions to work on, pending a settlement, and furnish this engine coal; and he says that we were not permitted to work under no conditions at all. That was about the only thing that I heard at that meeting.

Mr. Gilchrist:

Q. And the men at the mine struck the next day?

A. They did not go to work the next morning.

386 Q. And they remained on a strike until the mine resumed non-union, June 12th, 1906, did they?

A. Yes, sir.

Q. Are you a married man, Mr. Oliver?

A. Yes, sir.

Q. During that time what did you do for a living?

A. I did not do anything; I was not married then.

Q. Did you go to work at the mine again on June 12th, 1906?

A. Yes, sir.

Q. Have you worked at the mine ever since?

A. Except one month this last summer.

Q. You are working there now?

A. Yes, sir.

Q. What is your position just now?

A. Wireman is my present position.

Q. While you were working union at the Hitchman mine in 1903, and up until the disruption of the union in 1906, at that mine, was any of your money that you earned deducted and paid in to the union officials under the union rules and regulations?

A. Yes, sir.

Q. When a mine is running under union control and a strike occurs, what is the practice of the union with regard to paying what are termed 'benefits'?

A. They are supposed to pay three dollars a week, or were at that time.

Q. They are supposed to pay three dollars a week to each man?

A. To each and every one.

Q. While the strike is on?

A. Yes, sir.

Q. Do you recall whether you got any benefits during the time you were idle from April 16th to June 12th, 1906, when you resumed non-union?

A. I got three dollars for one week.

Q. Is that all you got?

A. That is all.

Q. Do you recall whether any of the union officials made any effort towards furnishing the men on strike with any other compensation or method of support?

A. Well, they came around and wanted to give them store orders.

Q. A store order?

A. Yes, sir.

Q. Upon what store or stores, if you recollect?

A. I do not recollect what stores.

Q. And a store order for how much?

A. Well, it just depended upon whether he was a married man or a single man.

Q. And if he was a married man, how much was it, if you recollect?

A. I do not recollect now what they offered.

Q. And if the man was a single man what was it, if you recollect?

A. Well, they offered me an order for three dollars; I do not know what they offered others.

Q. I understand from you, then, that there was no fixed hard and fast rule with regard to the store order proposition?

A. As far as I know about it there was not.

387 Q. The intention was to adjust that according to the necessities of the men, as far as you knew?

A. Yes, sir.

Q. Do you recollect whether any official of the union came to the mine and met any of them either in general gathering of greater or less proportion or by meeting them individually on this subject of store orders instead of money?

A. I was not present at any of them; it was individual with me.

Q. Do you know or can you recall just now who it was that proposed to give you a store order for three dollars instead of three dollars in cash?

A. Lee Rankin and John Zalenka.

Q. John Zalenka was the man, I believe you said, who called the men out on that strike?

A. Yes, sir.

Q. And what position, if any, did Lee Rankin hold at the time in the union?

A. He was secretary.

Q. Your money was paid in cash to the union, was it?

A. Yes, sir; I sent an order through the post office—a money order.

Q. And they gave you the sum of three dollars in cash and offered you a store order for three dollars?

A. Yes, sir.

Q. That is the extent of the assistance the union, as run by these defendants, furnished you during that strike which they called in April, 1906? Is that so?

A. Yes, sir.

Q. I believe I understood you to say that you refused to take the store order when Mr. Rankin offered it to you?

A. I did.

Q. What did you tell him if you can recall?

A. A. Well, I told him to go to the devil with his store order—that I didn't send him store orders.

Q. When did you next see Lee Rankin or have any business dealings with him, if you can now recall?

A. Well, sir, the only time that I met him after that, he came to my boarding house.

Q. Where were you boarding at that time?

A. I was boarding on the pike, right opposite Fourth street, in McMechen, West Virginia.

Q. And you say that Lee Rankin came to your boarding house?

A. Yes, sir.

Q. Was he by himself, or if any one was with him, who was it, if you now recall?

A. James Conoway was with him.

Q. What, if anything, was said to you by Lee Rankin on that occasion, if you now recollect?

A. He came there and asked me for the charter, seal and books of the Local. I told him the charter was in the hall and that he would have to go and get the keys from somebody else to get
388 that; and as far as the seal was concerned, he could have that —I would give it to him—but as far as the books and the money that was there were concerned, he could not have them.

Q. What position, if any, did you hold at the time of the strike and while the mine was idle, and you were a union man—what position, if any, did you hold in the Local?

A. I was recording secretary.

Q. Now, when Lee Rankin asked you to give him the charter, you told him that the charter was in the hall?

A. Yes, sir.

Q. You meant by that that it was hung up in the hall—the place of the meeting of the Local?

A. Yes, sir.

Q. And you told him that he could get the key from somebody else and get the charter himself, if he wanted it?

A. Yes, sir.

Q. And I understood you to say that you told him that you would give him the seal?
A. Yes, sir.
Q. What seal was meant?
A. The seal that stamped the papers of the United Mine Workers of America.
Q. That seal is one of the essential things used, is it, in the transactions of the United Mine Workers, to authenticate papers, and documents, and cards, and so forth?
A. Yes, sir.
Q. And does every Local have to have a seal?
A. Yes, sir.
Q. Well, did you give him the seal at that time?
A. Yes, sir.
Q. Now, when he asked you for the books and the money that belonged to the Local Union, which had been the Local Union of the United Mine Workers while the men were in the union, you say that you told him that you would not give him either the books or the money?
A. Yes, sir.
Q. What, if anything, did he say to you when you said that?
A. Well, he told me if I would not give them up that there was a way to make me give them up.
Q. He said that there was a way to make you give them up and that they would make you do it?
A. Yes, sir.
Q. Did they make you do it?
A. Not that I know of; I still have them.
Q. You still have the books?
A. Yes, sir.
Q. And the money—what was done with it?
A. It was used for writing an independent up.
Q. Just explain what you mean by that?
A. An independent order.
389 Q. The men employed at that mine then, as I understand you from that, kept the money that Mr. Lee Rankin demanded that you should turn over to the union, and the men used that in the formation of an independent order or association of their own, for that mine. Is that what I understand you to say?
A. Yes, sir.
Q. Is the independent organization still in existence?
A. No, sir.
Q. It is out of existence now?
A. Yes, sir.
Q. What method have the men employed at that mine adopted as the result of the independent organization formed there pursuant to the 1906 resumption, with respect to any money being checked off for any purposes of the men? Is any deduction made or do the men pay anything into a common fund?
A. Yes, sir.
Q. Just explain what that is, so far as you now recollect?

A. We have a check-off for our doctor; we pay him by the month. We also have a burial fund, as we call it, and the check weighman for the miners has a check-off for his salary.

Q. How does the check-off now in vogue compare in amount with the amount of the check-off that was taken from each man while the mine was running union?

A. It is about one-half less now.

Q. Did you visit T. L. Lewis at any time about the 1906 strike?

A. No, sir.

Q. Now, this money that is now checked off goes, as I understand you, for the individual benefit of the men who are employed at the Hitchman mine?

A. Yes, sir.

Q. And I understand you also that the money checked by the United Mine Workers went into a general fund of the United Mine Workers, and as a practical illustration of the working of that system you received—after having been ordered to strike in April, 1906,—the sum of three dollars, or one week's compensation, and and you received a tender of a store order for three dollars?

A. Yes, sir.

Q. And that that was all the benefit offered you, or received by you, during a strike called by these same men, and under which you were idle and without means of support from April 16th, 1906, to June 12th, 1906?

A. Yes, sir.

Q. I am not sure that you stated the time when Lee Rankin came to get the charter, the seal, the books and the money that belonged to the men at the Hitchman mine?

A. I could not recall the date.

Q. Well, can you fix it approximately, having reference to the resumption of work at the mine, non-union, in June, 1906?

390 A. I think it was about two months after we had gone to work."

Cross-examination:

Upon cross examination the witness, Oliver, said that the amount per month deducted as dues to the organization from the wages of witness while the mine was running union varied; it was a percentage of what the men made; sometimes it was two per cent. and sometimes it ran as high as four and a half per cent.; it was not less than two per cent. nor in any case more than four per cent. that witness recollects of.

The witness was asked and answered the following questions:

"Q. What were the circumstances under which he was charged 2%—about what would he be making per month?

A. Well, it just depended on the kind of work we had as to what we would make.

Q. What do you mean by the kind of work you had?

A. Whether it was steady work—every day—or not.

Q. Well, suppose you were working steadily—what was the 2% deduction? What was the amount that it made?

A. I could not say for a month because we have a two weeks' pay.

Q. Well, in two weeks what would be the deduction?

A. Well, at that time I was making from forty to fifty dollars every two weeks.

Q. And what was your deduction off of that?

A. It was a deduction of 2% on the dollar—from 2% to 4½%.

Q. What was the amount earned every two weeks upon which the deduction would be 4½%? Would it be about half that sum or what would it be?

A. I don't just understand the question.

Q. What would be the amount earned when the deduction would amount to 4½% in two weeks?

A. Well, we would not make as much when it would be 4½% as we would when it would be 2%.

The Court: Let me see if I understand you: The union generally sought to obtain a certain sum from the men, was that it?—something like a fixed sum—and it was agreed upon with you miners according to the amount that you earned, and if you made full time it would be about 2% and if you made half time it would be about four or four and a half per cent., is that it?

A. Yes, sir.

391 Mr. Hogg:

Q. That is, per month: If you made fifty dollars in two weeks you would pay one dollar for the two weeks, and for the next two weeks you would pay a dollar. Is that the way you would pay it every two weeks?

A. Yes, sir.

Q. So it would make about two dollars per month if you were earning one hundred a month?

A. Yes, sir.

Q. And if you earned half that it would be about two dollars? They would increase the per cent.?

A. Yes, sir.

Q. And endeavored in this way to make the amount paid by the various miners about the same. Is that right?

A. Yes, sir.

Q. When did you begin the system of making deductions for doctors' bills, funeral expenses and the salary of check weighman? When did that begin? Was it immediately after you started up non-union or had you been running non-union for some time?

A. The doctor—we hired him, I think, in 1903 or 1904; I am not sure which.

Q. Then you checked for the doctor while you were running union?

A. Yes, sir.

Q. And you paid so much a month and the doctor's services were rendered, if you were sick, without any additional charge?

A. Yes, sir.

Q. You just continued that system?

A. Yes, sir.
Q. And the check off for funeral expenses, constituting a general fund,—when was that instituted?
A. It was instituted before I came there but in a different way from what they are working it now.
Q. Did that exist while you were running union, also?
(Witness hesitates.)
The Court: In other words, Mr. Oliver, did you pay that while you were running non-union?
Mr. Hogg: For funeral expenses.

The Court:

Q. Did you have a check-off for funeral expenses while you were running union?
A. Yes, sir.
Q. Did you pay that in addition to the dues to the union or was it included in the dues to the union?
A. It was extra.

Mr. Hogg:

Q. Well, when you ran non-union did you also pay for the check weighman?
A. Yes, sir.
392 Q. When you were running union did you pay for the check weighman?
A. Yes, sir.
Q. You made no change in that?
A. No, sir.
Q. About what time did you make this independent organization or union? How long had you been running non-union when you made that—it was in 1906? Was it before you started to run non-union or after you started to run non-union?
A. It was just before we started up the time of the strike.
Q. And that was the union that you used this book for, and the money for, that you had from the old union?
A. I did not use the book for that; no.
Q. You got a new book for that?
A. Yes, sir.
Q. Well, how long did that new organization or that new union continue?
A. I do not know exactly—a year or so.
Q. Well, what is the check-off now for doctor's bill, funeral charges and check-weighman, per month? Is that regulated by a percentage of your earnings or is it a flat sum?
A. The check-weighman is a percentage.
Q. Do you recollect what that is?
A. I do not now.
Q. Was the sum that you paid for the doctor's services and funeral charges a flat sum?
A. Yes, sir.

Q. Every man paid a certain sum whether he earned much or little?

A. Yes, sir.

Q. Do you recollect how much that was per month, or every two weeks?

A. A married man pays one dollar per month for the doctor and a single man fifty cents.

Q. What was the charge for funeral purposes?

A. Well, we have a treasury that we hold five hundred dollars in for that purpose, and we take fifty cents off of each and every man when it gets below five hundred dollars.

Q. You keep a standing sum of five hundred dollars?

A. Yes, sir.

Q. Now, coming down to the strike of 1906: Who paid you the first three dollars in cash that you got after the strike began? Did you say?

A. I cannot recall his name right at the present time.

Q. How long had you been on a strike, if you recollect, when you received that?

A. Mr. Schemp was the man who paid me.

Q. Do you know where he then lived?

A. I do not know where he lived.

Q. Who came and proposed to give you the store orders?

A. Lee Rankin and John Zalenka.

393 Q. How long after you received the cash was it until they came and proposed to give you store orders?

A. About two weeks, I think.

Q. Did he assign any reason or say why he didn't offer you the money, the second time, instead of the store orders, as you now recall?

A. All I know of him saying was—he said they didn't have it—didn't have the money.

Q. Did he say if they had the money he would just as leave give you that as to give you store orders?

A. He didn't say anything about that.

Q. Do you recollect whether he named the store on which he would give you the orders?

A. He didn't name it to me.

(End of Cross Examination.)

WESLEY CORNS.

Direct examination:

My name is Wes. Corns; residence, McMechen, West Virginia; occupation, miner; has been a miner about twenty years; is a married man; states that he has worked a good while in Ohio—the first mining he ever did was in Ohio—and then he has worked the rest of the time in West Virginia—has worked some here in Barbour county, is now working at the Hitchman coal mine; has worked

at the Hitchman mine about nine years; was working there at the time of the 1903 strike; does not recall the reason for that strike, thinks there was a national strike at that time but does not remember it; does not remember about there being a controversy in 1903 at that mine respecting the payment for run of mine coal; slightly remembers the 1904 strike; does not recall the reason for that strike; believes it was a national strike in 1904, but couldn't say for sure; does not remember anything about what the basis of compensation was when the mine resumed work upon the settlement of the 1904 strike as to run of mine coal.

The witness was asked and answered the following questions:

"Q. Do you remember the occasion of the 1906 strike?

A. The national strike is all I remember. Everybody was called out—all miners—union miners.

Q. And that strike was to go into effect upon the expiration of the scale, was it?

A. Yes, sir.

394 Q. And the scale expired March 31, 1906?

A. Yes, sir.

Q. Do you remember whether anything was said or done by Mr. Koch in dealing with any of the officials of the United Mine Workers, relative to securing the consent of the officials for the men employed at the Hitchman mine to continue at work until the new scale might be agreed upon, about which there was at that time some controversy between the Operators' Association and the United Mine Workers?

A. Well, I do not just remember. I remember that Mr. Koch and Mr. Pickett also wanted the men to go on and work and they would pay the scale price—what the men would ask for—but the officials would not let them go in. Of course I was not on the committee, or nothing like that.

Q. As a matter of fact, do you or do you not know whether the men continued to work after April 1st, 1906?

A. They continued until about the 18th or 20th of April, I forget now which.

Q. Now, during that time what disposition was made of the coal that was mined?

A. Well, I could not tell you that; I do not remember.

Q. Well, for what purpose was the coal mined?

A. For the B. & O. engines, principally.

Q. Do you remember *whether* the shutting down of the mines from April 16th, 1906? Do you remember — any official of the United Mine Workers visited the mine about that period of time?

A. Yes, sir; I was told that there was one there and that he held a meeting.

Mr. Hogg:

Q. Do you know it of your own knowledge?

A. Well, I was met by a miner the next morning and he told me about it.

Mr. Gilchrist:

Q. Do you know whether or not there was any meeting of the miners on or about April 15th, 1906?

A. I know there was but I was not at the meeting.

Q. Did you live at McMechen at that time?

A. Yes, sir; I lived at the lower end of McMechen and a good piece away.

Q. What was your reason, if you now recall, for not attending that meeting?

A. Well, I was a good piece away and really did not know the meeting was going on until after it was over.

Q. Did you go to work the next morning—April 16th, 1906?

A. No, sir; I started to work and met some of the miners and they said there was no work—that we were called out and stopped—and I went back home.

395 Q. And you went back home. How long were you then idle?

A. About nine weeks, I think, as well as I can remember.

Q. While you were working at the Hitchman mine, while it was run union, was any money deducted from your earnings and paid in to the union as dues for demands from the union for money owing to your membership in it?

A. Yes, sir.

Q. Can you give in any sort of a brief way, approximately, about what that thing cost you per pay?

A. Well, as near as I can guess at it, it was $2.50 a pay.

Q. Under the system of the union, what did the union propose to do for a man who was a member of the union during a time when the men might be on strike?

A. They agreed to give three dollars a week benefit.

Q. During the nine weeks that you were on strike next ensuing April 16th, 1906, how much, if any, money was paid to you as strike benefits, by the union?

A. Nothing at all.

Q. Where were you during this strike?

A. Well, I was working a little outside—doing some outside work.

Q. And where did you live at that time?

A. I lived in McMechen.

Q. Did the union officials or any of them offer to pay you your benefits during that period of strike?

A. No, sir.

Q. No one offered to pay you one cent?

A. No, sir. I met one of the men and he told me that they were paying off one day up there in orders.

Q. In orders?

A. Orders on some store; I did not ask him what store. He told me I had better go up and get my order and I told him I didn't want an order on any store in McMechen, at all; so I did not go and did not get anything.

Q. Why didn't you want a store order?

A. Well, the main reason was that I had paid money into the union and I thought that I ought to be paid back with the same as I had paid them, and as I couldn't get money I didn't want any order.

Q. How much of a store order did you understand the union was going to give you?

A. Two dollars. That was the understanding I had of it.

Q. A store order for two dollars?

A. Yes, sir.

Q. And you refused to take that?

A. Yes, sir.

Q. You have said that you have a family. Are you the owner of any real estate?

A. Yes, sir; I own a small place.

Q. When, with reference to the time the 1906 strike was declared, did you buy that place?

A. I bought it just before the strike.

396 Q. What was the fact with respect to the amount of money you had paid on the purchase price? Had you the property entirely paid for or simply partly paid for?

A. It was only partly paid for.

Q. You resumed work June 12th, 1906, when the mine started up again, did you?

A. Yes, sir.

Q. And how have you been employed since that time?

A. As a machine man.

Q. In the Hitchman mine?

A. Yes, sir.

Q. Now, with respect to the property upon which you had made a partial payment at the time of the April strike, 1906: Do you own that property still?

A. Yes, sir.

Q. Do you remember of meeting a man by the name of Thomas Hughes some time in the fall of 1907?

A. Yes, sir; I met him once.

Q. Where did you meet him?

A. In front of the Western Supply Company's store at Benwood.

Q. And the Western Supply Company's store is where?

A. Well, it is located close to the Hitchman coal mine.

Q. Did you have any conversation with Thomas Hughes at that time?

A. Well, I believe there was about four of us standing there, and when he came up to us he asked us what we thought about going back into the organization, and I told him that he was only wasting time to talk that around there now; that the men were very well satisfied the way they were working, for awhile any how. That is all I said to him and walked away.

Q. Did you see him after that?

A. I saw him but I did not speak to him.

Q. Where did you see him?

A. I saw him passing along the street there."

Cross-examination:

Upon cross examination, the witness, Corns, said that he does not remember what the amount of advance on the price of coal mining was that the union demanded, as the occasion of the strike of 1906; there was some advance—but how much witness does not remember—thinks that was the occasion of the strike of 1906—the advance asked for—but does not just remember; witness says that Mr. Koch and Mr. Pickett wanted the men to go to work and that this advanced price would be paid and added "they told us that"; some of the committee told witness this; witness heard Mr. Koch and
Mr. Pickett also says this—that they were willing to pay the
397 advanced price if we would go ahead to work—they were talking to witness when they said that; witness does not remember a thing about whether this advanced price of 5.55% was to be simply on the basis that the Hitchman Company had theretofore mined run of mine coal for or whether it was to be based on the Hocking Valley scale; witness does not remember whether or not the union proposed in this advance the Hocking Valley scale as the scale for run of mine coal; the coal mined during the period elapsing between April 1 and April 16 was for the purpose of coaling engines; no commercial coal was mined that the witness knows of—not at that mine; witness did not earn anything during the time he was working during the strike, he was working on his own place—simply cleaning up the place—a piece of land the witness had bought.

Witness was asked and answered the following questions:

"Q. Now, you stated, if I understood you correctly, that the deductions made from your wages as due to the union amounted to $2.50 per day. Am I right in that?

A. That was the check-off—that was check off of mine for everything.

Q. Then this $2.50 per day included your dues to the union, doctor's bill, funeral expense fund and check-weighman?

A. We had no funeral expense fund at that time.

Q. Well, it included then everything except the funeral expense fund, did it?

A. Check-weighman.

Q. And doctor's bill?

A. And doctor's bill and dues to the union.

Q. That was what the $2.50 paid?

A. Sometimes it would be more than that if an extra assessment was made.

Q. You paid your dues on a percentage basis according to the amount that you earned a month, did you?

A. The dues?

Q. To the union.

Witness: To the national organization?

Mr. Hogg: To whoever you paid it to?

A. If I am not mistaken I think that was paid by the month—so much per month. Those dues were twenty-five cents per month.

Q. And that went to the national organization, did it?

A. Yes, sir.
Q. And then you paid the balance to the Local?
A. To the Local and the District.
Q. How much did you pay the Local?
A. I could not tell you that; I do not remember.
398 Q. Was that on a percentage basis of what you earned?
A. I think so; yes, sir.
Q. Not less than 2% nor more than 4½%, as stated by Mr. Oliver?
A. He could tell you more about that than I, for he was secretary.
Q. You think he was correct, then?
A. I do not know a thing about that.
Q. Well, you say you got nothing by way of benefits during the strike of 1906?
A. I got nothing; no, sir.
Q. Did you know of other men getting $3.00 in cash?
A. I did not know of any one.
Q. Who was the man that spoke to you about going and getting your order on the store?
A. I do not just remember who it was. It was some of the miners that worked there. I know that he worked at the mine.
Q. Some of the members of the Local Union?
A. Yes, sir.
Q. He had charge of that?
A. No.
Q. He was telling you that others were getting it?
A. Yes, sir; and that he had got an order himself.
Q. And he told you that you had better go and get your order?
A. Yes, sir.
Q. And you declined to take an order because you wanted money?
A. Yes, sir.
Q. Then the man that you met was not one of the defendants in this suit—either Lee Rankin or Hughes?
A. No, no.
Q. It was a member of the Local Union?
A. Yes, sir.
Q. Is that same man now working for the Hitchman Coal & Coke Company?
A. I could not tell; I just told you I do not remember who the man was, but I remember that he was a miner at that time.
Q. I believe you said that you met Thomas Hughes in the fall of 1907, in front of the Western Supply Company's house or store?
A. Yes, sir.
Q. Well, do you recollect about what time in the fall that was?
A. No, sir; I do not recollect; it was in September or October, I think.
Q. There were four of you together there?
A. Four and probably five.
Q. He asked you, as I understand from your examination in chief, what you thought about going back into the union?

A. Yes, sir.

Q. And you told him it was no use to talk to you about that for the present as you were satisfied?

A. Yes, sir.

399 Q. You think that is the substance of the conversation you had with him?

A. Yes, sir; that is about the substance of it.

Q. And then you walked away?

A. Yes, sir.

Q. Do you recall the names of the other men who were there with you in front of the Western Supply Company's store?

A. No, sir; I do not remember any of them. *of them.*

Q. Do you remember whether or not—or do you remember well enough to say what those men were doing—what their business was—about that time?

Witness: The men that were with me, do you mean?

Mr. Hogg: Yes.

A. They were miners there at the Hitchman mine.

Q. Do you recollect about what time of day it was that you were there and saw him on that occasion?

A. Well, I think it was pretty late in the evening, if I ain't mistaken.

Q. Before dark, was it?

A. Oh, yes, it was before dark.

Q. Do you know who is the owner of the Western Supply Company?

A. No, sir; I do not.

(End of Cross Examination.)

R. J. COTTS recalled.

Direct examination:

The witness Cotts being recalled, testified on direct examination as follows:

Q. Mr. Cotts, are you still bookkeeper for the Hitchman Coal & Coke Company and for the Glendale Coal Company?

A. I am, yes, sir.

Q. At the time you were on the stand prior to the last two adjournments you testified and an Exhibit No. 4 was filed, which purported to be a memorandum prepared by you from the books and related to the production or tonnage of coal mined during the period covered by Exhibit No. 4, by the Hitchman Coal & Coke Company, from its mine, which Exhibit No. 4 carried the subject down to and including the month of November, 1910. Have you since, at my request, prepared a supplemental statement along the same line?

A. Yes, sir, I have.

400 Q. And from the entries made by you in the books of the company?

A. Yes, sir.

Q. I hand you now a memorandum headed "Tonnage Hitchman Coal & Coke Company, year 1910," and I will ask you to look at it and state whether it supplements Exhibit No. 4 referred to, and give in your answer the footings?

A. This supplements the Exhibit No. 4 and the tonnage for December, 1910, on engines, was 13,085.60; commercial coal, 6,551.25 tons, making a total for the last quarter of 1910, engines 40,299.95 tons; commercial coal 31,440.70 tons. The total for the year 1910 was 152,362.35 tons of engine coal and 148,933.70 tons of commercial coal. For January, 1911, the engine coal was 12,007.05 tons; commercial coal 4,239 tons. For February, the engine coal was 10,887.70; commercial coal 4,469 tons, making a total for the two months of 1911, for engines, 22,894.75; commercial coal, 8,708.45.

This paper was offered and admitted in evidence marked "Cotts' Exhibit No. 7."

(Counsel for served defendants objects to the paper itself and to its contents.)

Upon further direct examination the witness said that the price per ton paid by the Baltimore & Ohio Railroad Company to the Hitchman Coal & Coke Company for this engine coal covered by this Exhibit No. 7 was $1.05 per ton; and that the approximate amount received per ton for the commercial coal represented on this same Exhibit No. 7 would average about a dollar per ton.

Upon further examination the witness testified as follows:

Q. Upon your former examination there was filed as your Exhibit No. 6 a list of men employed during the years 1908, 1909, and 1910, down to December 9th, by the Hitchman Coal & Coke Company, and along with that exhibit, and as part thereof the employment cards signed by the men whose names appeared on the list. Have you, at my request, since the two last adjournments of this case, prepared another list to supplement the list filed by you and known as Exhibit No. 6?

A. Yes, sir; I have.

Q. I hand you now a list and ask you whether that is the list prepared by you, and whether it is correct, and whether these are the employment cards which tally with and are referred to

401 in that list?

A. Yes, sir; this list is correct and these are the cards. Those are correct in so far as we could interpret the names—a majority of them.

This list and these cards to accompany it, are offered and admitted in evidence marked Cotts' Exhibit No. 8.

(Objected to by counsel for served defendants.)

The following questions were asked, answers given and proceedings had:

Q. On page 61 of the printed record in this cause as printed for use in the Circuit Court of Appeals, there appears in the affidavit of E. C. Pickett, the names of twenty-four men who quit on September 18th, 1907, and the time that each one entered the company's

service is stated. I have here and will hand you a copy of this record and I have here and also will hand you at the same time the original of the affidavit of E. C. Pickett, which is filed in the Hitchman case, and will ask you whether you prepared the list of names from any record of the company, and, if so, what, and whether you prepared the list of dates showing when these respective persons named entered the service of the Glendale Coal Company?

(Question objected to by counsel for served defendants; objection overruled; exception.)

A. I prepared this list of names from the pay-roll of the Glendale Coal Company; the dates the men entered the service were all taken from our pay-rolls—the pay-rolls of the Glendale Coal Company.

Q. Have you compared the list of names and the dates as given in the original affidavit of E. C. Pickett, referred to, with the names as printed in the record on page sixty-one?

A. Yes, sir; I have.

Q. Are they the same?

A. Yes, sir.

Cross-examination:

Upon cross examination the witness Cotts further testified as follows:

Q. Mr. Cotts, all you know in regard to these men having quit the service of the Glendale Coal Company, is that which you obtained from the pay-roll. Is that correct?

A. No, sir; I paid practically all of them off. I think I paid every one of them off when they left the service.

402 Q. Then with the added fact that you paid these men off, and what you saw on the pay-roll, is what you know of their having quit the service?

A. That is all; yes, sir.

Q. Do you know whether they were discharged by the company or not?

A. Not directly so; no, sir.

Q. You do not know of your own knowledge?

A. No, sir.

Q. But you know that they were in the employ at the time of the Glendale Coal Company?

A. Yes, sir.

Q. You say that the price per ton paid to the B. & O. Railroad Company for coal sold to it for fuel was $1.10?

A. No, sir; I said $1.05.

Q. Is there a written contract between the Hitchman Coal & Coke Company and the Baltimore & Ohio Railroad Company for the purchase of fuel coal for the engines of the B. & O. or not?

A. There isn't any—— (Interrupted.)

Q. The contract between the two companies is verbal or oral. Is that right?

A. I suppose so; yes, sir.

Q. By whom was the contract made, if you know?

A. I do not know.

Q. Well, do you know the time of the making of said contract or not?

A. No, sir, I do not.

Q. Now, the price per ton for commercial coal was a dollar, you say?

A. I say it averaged about a dollar.

Q. It averaged about a dollar, and this price was that which was obtained by selling to various customers?

A. Yes, sir.

Q. I will ask you who put the date on card 400 appearing in Exhibit 8, which was marked as a date "12/14/10"?

A. Why, the young lady formerly employed in our office made that memorandum.

Q. Did you see the parties whose names purport to be signed to card No. 400, sign their names thereto?

A. I could not answer that question.

Q. You could not answer that you did not see them?

A. I could not say positively; I may have seen them and I may not; I do not remember the circumstance.

(End of cross examination.)

403 E. C. PICKETT (recalled).

Direct examination:

The witness Pickett, being further examined testified as follows on direct examination:

"Q. You are still superintendent of the Hitchman Coal & Coke Company?

A. Yes, sir.

Q. You testified before, did you?

A. Yes, sir; I did.

Q. I will ask you to look at two lists of names of men purporting to be employes of the Hitchman Coal & Coke Company, which is attached to the affidavit of W. H. Koch filed in the case and which is printed in the Circuit Court of Appeals record on page 47, and which has the heading: 'We, the undersigned, are miners or mine workers employed by the Hitchman Coal & Coke Company. We are satisfied with our employment, with our wages and with our work, and would like to remain in the company's employ.' Please look at the original of each list and state what you know, if anything, about the signatures appearing on those lists?

A. I personally saw these men sign these papers.

Q. Were those men at that time in the employ of the Hitchman Coal & Coke Company, as the statement purports that they were?

A. Yes, sir; they were.

Q. I hand you now an affidavit made by you in the Hitchman case in which appears a list of men who are said to have quit work at the Glendale mine, September 18th, 1907, and opposite each name is given the time or date when the person entered the Glendale

Coal Company's service. I also hand you the printed record in the Hitchman case wherein the same matter appears on page 61. I wish you would look at this original affidavit and at the matter I have just referred to, and state whether those men are the men who quit work on the date mentioned?

A. Yes, sir; they are.

Q. Are those the men that you referred to in your former examination as having quit work when Thomas Hughes pursuaded them to join the union?

A. Yes, sir.

Q. Do you remember the B. & O. ice house near the Hitchman mine?

A. Yes, sir.

Q. Do you know what became of it?

A. It burned down.

Q. Can you tell me about the date it burned?

A. May 22nd, 1906.

Q. Do you remember the date when the Lorain Coal & Dock Company resumed work in 1906, after the strike?

A. I could not say positively as to the date but I think it was sometime between the 16th and 20th of May, 1906.

404 Q. Do you recall having employed any men for the Hitchman Coal & Coke Company at the time Thomas Hughes was about that mine?

A. Yes, sir; I employed men during that time.

Q. Do you recall whether any of the men you employed failed to report for work?

A. Yes, sir; there were some of them failed.

Q. Do you recall whether you saw Thomas Hughes in conversation with them at any time after your employment of the men and before the time they were to report for work?

A. Yes, sir; I remember one time, although I do not remember the date exactly, but I employed some men and they agreed to report for work later, and after leaving the mine they went out on the pike and I noticed them—or noticed Mr. Hughes talking to them—and these particular men never reported for work.

Q. What is the usual method, so far as you have observed it, of people in Wheeling reaching the Hitchman mine or reaching the Glendale mine?

A. By street cars.

Q. A street car line runs from Wheeling, and where does it pass with reference to the Hitchman mine?

A. Right in front of the mine, possibly 75 or 100 feet from the office.

Q. And does it continue on down the river?

A. Yes, sir.

Q. To Glendale?

A. Yes, sir.

Q. How far does it pass from the Glendale mine?

A. Why, possibly 100 feet from the pit-mouth; not more than that.

Q. And to what point does that street car line run?

A. It runs to Moundsville.

Q. I hand you now a printed card which reads as follows: 'Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6:30 P. M. at Nick Heil's Base Ball Grounds, for the purpose of discussing the principals of organization.

President Wm. Green will be present and all miners are cordially invited to attend.' Please look at this card and state what, if anything, you know about it?

A. I found this notice tacked on a telegraph or electric light pole, on the street, about 100 or 150 feet south of the Western Supply Company's store, just directly in front of the Hitchman mine, one morning, and I tore it down and kept it.

Q. I see on its face written in lead pencil the following 'E. C. Pickett Sept. 19th, 1907. Bridg.' Is that in your handwriting?

405 A. Yes, sir; and I put it there as a memorandum so I would remember which pole I took it off of. There was a pole right at the north end of the bridge that crosses McMechen's Run, and this notice was tacked on that pole.

Mr. Gilchrist: I offer this card in evidence to be marked Pickett's Exhibit No. 1.

Mr. Hogg: It is objected to in the usual way.

The Court: Let it be admitted.

Mr. Gilchrist:

Q. I hand you now another card which seems to be similar to your Exhibit No. 1, and I will read it: 'Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6:30 P. M., at Nick Heil's Base Ball Grounds, for the purpose of discussing the principals of organization. President Wm. Green will be present. All miners are cordially invited to attend.' Look at that card and state what, if anything, you know about it.

A. This card was taken down by me on the same date that the other one was, only on a pole which stood 100 or 150 feet north of the Western Supply Company's store and on the same side of the street that the other one was.

Q. This card has on it in pencil, "Hickman Sept. 19, 1907." In whose handwriting is that?

A. It is mine. This pole stood directly in front of a house in which there was a family by the name of Hickman lived. I put that on there so I could remember which pole I took this notice off of.

Q. And the date, September 19th, 1907, is the date you took it down?

A. Yes, sir.

Mr. Gilchrist: I now offer this card in evidence to be marked Pickett's Exhibit No. 2.

(Objected to by counsel for served defendants.)

The Court: Let it go in.

Mr. Gilchrist:

Q. Whereabouts is Nick Heil's Base Ball Ground?

A. It is twelve to fifteen hundred feet north of the Hitchman mine and right along the pike.

Q. And along the street car line?

A. Yes, sir.

Q. And in sight of the miners' houses?

A. Yes, sir.

Q. How do the miners' houses front with reference to the ball ground?

A. Well, the houses are in a row running east and west,
406 and they front to the north, and this ball ground is directly north of the houses.

(End of Direct Examination.)

Cross-examination:

On cross examination, the witness, Pickett, was asked and answered the following questions:

"Q. You say that the list of names of men who quit working for the Glendale Coal Company, appearing at page 61 of the printed record in this case contains the names of the same men to whom you referred as having quit work when you testified here before?

A. That list that I examined here? Yes, sir.

Q. Yes, sir; that is the one I am examining you on now; and in that examination before you stated the circumstances under which they quit?

A. Yes, sir.

Q. You stated this: that they had either become members of the United Mine Workers of America, or promised to do so, and you told them they could not work for the company. That is what you said?

A. I guess most of them had, at any rate.

Q. Well, that is the reason you did not continue them in your employ, I believe?

A. Well, these men that quit work on that day, just refused to go to work, as I stated before, because I instructed the mine foreman to have two or three of the men to remain on the outside until I had a talk with them.

Q. Well, what you stated on your former examination in regard to these men quitting, is true, isn't it?

A. Yes, sir.

Q. And you have no desire to change it?

A. No, sir.

Q. When did you say you employed some men to engage in work at the Hitchman mine about the time Hughes was in the vicinity of the mine? Or did you say when?

A. I did not say when; I said during the time he was there.

Q. Well, now, what year was that in?

A. It was in 1907.

Q. How many of these men were there?

A. Why, I do not remember; there was three or four of them.
Q. Had they yet signed the contract?
A. No, sir.
Q. They had not done that?
A. No, sir.
Q. The signing of the contract was a condition precedent to their employment, was it not?

A. Well, now, what I mean by employing these men is this:
407 When a man comes and makes application for work, if I want to employ him I tell him I will give him a job. When he comes and brings his tools and is ready to go to work I give him an order for his checks and he signs one of these cards before going to work. These men said they were going after their tools, and in the meantime Mr. Hughes met them on the pike. I do not know what he said to them, or anything about it, but I saw them talking to him and they never came back any more.

Q. All you know is, that when they left you they created the impression on your mind that they were going after their tools?
A. Yes, sir.
Q. But they never returned?
A. No, sir.
Q. And they were never in your employment?
A. No, sir; not any more than they asked for a job and I told them they could have it.
Q. I believe you say that the public in coming to and going from the Hitchman mine usually travel on the street railway line?
A. Yes, sir; usually.
Q. Well, that is a public conveyance?
A. Yes, sir.
Q. When you saw this notice on the telegraph or telephone pole, to use your language you "tore it down."
A. Yes, sir.
Q. And you took that to the office of the Hitchman Coal & Coke Company?
A. No, sir; I took it to my own residence.
Q. And preserved it?
A. Yes, sir.
Q. I suppose you informed some of the parties with whom you *you* were employed that you had torn them down? Didn't you inform any of the Hitchman people that you had torn it down?
A. I do not remember whether I did right at that time or not.
Q. You did afterwards, of course?
A. Yes, sir; I did afterwards.
Q. Well, you found the second notice on the pole in front of the supply company's store?
A. Not exactly in front; about 100 or 150 feet north, one of them was, and the other about the same distance south.
Q. And you tore that down?
A. Yes, sir.
Q. Did you see them put on the poles?
A. No, sir.

Q. And you do not know who put them on?
A. No, sir, I do not.
Q. Now, on page 47 of the printed record setting forth a list of the names of employes of the Hitchman Coal & Coke Company, you say that you saw every one of these men sign this statement?
A. Yes, sir, I did.
Q. Were they signed singly or in groups?
A. Singly.
Q. How did you happen to see each man sign?
A. Why, I just went around while they were working.
Q. Oh, you took the list yourself and went to the men?
A. Yes, sir.
Q. At whose instance did you do that?
A. Well, I hardly remember who did request me to do it; I don't remember.
Q. Does this list appearing on page 47 of the printed record of the appeal in this case, represent all the men then in the employ of the Hitchman Coal & Coke Company, or not?
A. No, sir; it does not.
Q. Do you recollect when it was that you took this list and went from man to man to get his signature?
A. No, sir; I do not remember the dates.
Q. What year was it?
A. Well, I think it was in 1907.
Q. Was it in the spring of the year or the fall of the year?
A. I do not remember.
Q. How long did it take you to get this list prepared and get it signed?
A. I do not remember exactly how long it took, but it didn't take very long.
Q. They were at that time mining coal for the company?
A. Part of them were and part of them were working at other work.
Q. On outside work?
A. Yes, sir; a few of them, and day men inside.
Q. After you obtained this list—having visited each man for the purpose—what did you do with it?
A. I returned it to the office.
Q. To the office of the Hitchman Coal & Coke Company?
A. Yes, sir.
Q. Now, for what purpose did you get this list up? What was your object in doing it?
A. Why, I wanted to see that the men were satisfied.
Q. Prior to the obtaining of this list had anybody expressed himself as being dissatisfied?
A. No, sir; not that I know of.
Q. Well, a number of these men are foreigners, judging from their names, are they not?
A. Yes, sir; some of them are.
Q. What is the predominant nationality among these men?

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A. Well, I do not know as to these men what their nationalities are, exactly.

409 Q. Are they Slavs?

A. Some of them are Slavs and some Polanders.

Q. And some Hungarians?

A. There might possibly be a few of them.

Q. Could they all speak English?

A. Yes, sir; I think every one of them can speak English so he can be understood.

Q. Do you know whether they can read or write English or not?

A. I do not know whether they can or not.

Q. I want to ask you whether each man signed his own name in his own proper hand, or did some one sign for him?

A. My recollection is that every man signed it himself. That is my recollection but I will not be positive that that is true.

Q. Well, what is your best recollection about it?

A. I think that each man signed it himself.

Q. Well, now, this Nick Heil Base Ball Ground is a place to which the general public resort for games?

A. Yes, sir; it was at that time.

Q. And it was a place for general public meetings?

A. I never knew of any public meeting before this one.

Q. Well, people went there?

A. They went there to play ball and to see the ball games.

Q. And it is a matter which the Hitchman Coal & Coke Company had no control over?

A. No, sir.

Q. What time did the men usually quit their work over there at the Hitchman mine?

A. Four o'clock.

Q. Then from that time on during the evening their time was their own?

A. Yes, sir.

(End of Cross examination.)

Redirect examination:

Upon redirect examination the witness Pickett, was asked and answered the following questions:

Q. Do you recollect what connection, if any, the preparation or obtaining of this list of names of satisfied employees had with relation to the attempt of Thomas Hughes to unionize the Hitchman mine?

A. Yes, sir; my recollection is that it was to find out if the men were satisfied or dissatisfied.

Q. You have said that you do not now definitely recall whether each man signed his name personally or not, but that the name of the man was signed in your presence?

A. Yes, sir.

410 Q. If in any instance the name of the employe as written on that list, or those lists, was written by some one other

than the person whose name appears, what have you to say as to the presence of the person, at the time, whose name was written there, and as to the presence of anybody else at the time of writing the name, and what, if anything, was said.

A. If there is a name on there signed by any other person, it was signed in the presence of the man whose name appears on that list, and by his request the other man signed it for him.

(End of redirect examination.)

WILLIAM M. DAUGHERTY.

Direct examination:

Upon direct examination the witness, Daugherty, said: My name is William M. Daugherty; age, thirty-five; occupation, coal miner; residence, McMechen, West Virginia; have been a coal miner about ten years; have in the main worked at Glendale, and at the Hitchman mine, with the exception of about a month that witness worked at Gipsey Grove; belonged to the United Mine Workers of America; does not belong to their organization now; is now working at the Hitchman—started to work there first the latter part of 1902; at that time the mine was run non-union—by non-union the witness means that the men were not organized at that time, and "organized" means organized by the United Mine Workers of America, and that means union; and unorganized means not organized by the United Mine Workers of America, and that means non-union.

Witness says that he has worked sometimes union and sometimes non-union; relatively speaking, witness has, taking it all together, worked a little bit more union than he has non-union, since he first started in the mines; the Hitchman mine was unionized in 1903.

The witness was then asked and answered the following questions:

Q. Do you recollect the circumstances surrounding that unionizing? I speak now with reference to the sending in by the United Mine Workers of America of anybody to agitate the ques-
411 tion of unionizing amongst the men?

A. Yes, sir; I recollect it.

Q. Well, state just as nearly as you now recall, what took place in the spring of 1903 just prior to and at the time of the unionizing of the mine.

A. Well, it seemed as if—well, I cannot recall the gentleman's name, but he came there and worked among the men and it seemed as if there was a majority of them wanted to organize, and they called a meeting and the superintendent was present, and he made a statement that he was satisfied for them to organize, himself, but he wanted them to live up to the organization—to the rules.

Q. Who was that superintendent that was there at that time?

A. W. H. Koch.

Q. Then what happened?

A. Well, they organized.

Q. And then what happened with respect to the operation of the mine?

A. Well, it was only a short time after they organized—I do not remember just how long—until we were called out on a strike.

Q. By whom?

A. By the officials of the United Mine Workers.

Q. Who were the officials of the Mine Workers' organization at that time, that you now recall, who had anything to do with that?

A. John Stevenson was district president of the district we were in.

Q. Well, who else were connected with the union as officers?

A. Well, I believe Worker was secretary at that time.

Q. Was Mr. T. L. Lewis one of the union officials at that time?

A. I believe he was vice-president of the national organization.

Q. Was Mr. Sullivan one of the officials?

A. I believe he held a position as an official but I forget just what position he held.

Q. And Mr. William Green—was he a union official, too?

A. Well, I do not know that he was in 1903.

Q. How about Mr. Zalenka? Was he an official?

A. I do not think he was in 1903. He may have been but not to my knowledge.

Q. Now, after the union was organized in 1903, what became of the organizer?

A. Well, I do not know what became of him. He left.

Q. The men were organized by one of the officials—Haskins, was it, or Stevenson?

A. Stevenson.

Q. About the first of April, 1903?

A. Yes, sir; along sometime before the first of April; I forget the exact date.

412 Q. And a strike occurred April 2nd, 1903?

A. As near as I can recollect it was the 2nd.

Q. And that was called by these union officials?

A. Yes, sir.

Q. Do you recall whether there was any difficulty between the company and the men employed by the company at that time, which caused the strike?

A. To the best of my recollection I think the strike was called —well, it was something in regard to run-of-mine coal.

Q. And that was the objection raised, was it, by the men who called the strike?

A. Yes, sir.

Q. Well, now, what was that objection, so far as you understood it from the officials who called the strike? You say it related to run-of-mine compensation?

A. Well, it was the difference between the percentage that the coal would make—run-of-mine and screen coal.

Q. Well, how was that settled?

A. The best of my recollection is that it was settled on an average basis.

Q. Through whose efforts?

A. Through the officials.
Q. Now, that average basis continued for some little time, did it?
A. Yes, sir; I cannot just recollect how long but it continued quite a while.
Q. As much as a year?
A. Well, I could not say whether it was a year. It was something along that way—about a year, I suppose—to the best of my recollection.
Q. Do you recollect the occasion of the 1906 strike?
A. Yes, sir.
Q. You were working for the Hitchman Company at that time, were you?
A. Yes, sir.
Q. And you were working union at that time at that mine?
A. Yes, sir.
Q. Do you recollect of the holding of a national convention in 1906?
A. Yes, sir.
Q. Where was that held?
A. At Indianapolis, I believe.
Q. This convention was of the United Mine Workers of America?
A. Yes, sir.
Q. These "locals" of the United Mine Workers of America send representatives, do they, to the conventions?
A. Yes, sir.
Q. And that makes up the convention?
A. Yes, sir.
Q. Did your local have any delegates at that convention?
A. We had a delegate at the national convention; yes, sir.
Q. At Indianapolis in 1906?
A. Yes, sir.
Q. Now, along toward the first of April, 1906, had the convention come to any settlement with the operators respecting a new scale?
413 A. Well, to the best of my recollection they adjourned without making a scale.
Q. And what became of your representative then?
A. He returned home.
Q. Without a scale?
A. Without a scale.
Q. Now, you were then, as union men, confronted with the situation of having the scale expire March 31st, 1906, and with having no new scale arranged, inasmuch as the convention had adjourned without formulating a new scale?
A. That was the position we were in.
Q. Now, do you recollect whether there was anything in the shape of negotiations between your "local," or the men employed at the mine, and the management of the mine respecting a continuance of work pending the adjustment of a new scale?
A. Yes, sir.

Q. State, as nearly as you can now recall, what occurred?

A. As near as I can recollect the manager called us at different times during the latter part of March and said he was ready to sign a scale, and wanted to sign any time it was presented, and did not want his mine closed.

Q. Well, what response did the men make to that overture of the manager of the mine?

A. The only response was that we had no scale to present.

Q. You mean by that that you were embarrassed by the situation and did not see your way clear to make any arrangement?

A. The convention adjourned without making a scale and of course we did not have any.

Q. Was any proposal made by the management of that mine to the men looking to their continuing work?

A. Yes, sir.

Q. As nearly as you now recall what was that suggestion or proposition?

A. Well, the manager agreed if we would continue filling the engine coal that he would pay the advance that was asked, and that he would give a bond in any amount that was required that he would go back and settle, if it was more than that, from the 1st of April up until there was a settlement made.

Q. Did you accept the proposition of a bond?

A. No.

Q. Did you take up with any of the officials of the United Mine Workers the question of whether you could, as union men, continue the work at that mine and load engine coal pending the adjustment of a new scale between the United Mine Workers and the operators of the country?

A. Yes, sir.

Q. Tell me, as nearly as you now recollect, what was done by the men on that subject and with whom they dealt as officials of
414 the United Mine Workers, and in what way?

A. Well, our representative and our officials of the "local" took it up with President Green.

Q. You mean William Green who is one of the defendants in this suit?

A. Yes, sir.

Q. Where was Green?

A. To the best of my recollection he was at Columbus when we were in consultation with him.

Q. By what means? By what method?

A. Why the method was to take care of the engine coal until there could be a settlement of some kind made.

Q. You misunderstood my question: If Green was in Columbus and the men were at the mine, then how was it done?

A. By telephone.

Q. Were you on this committee of the men that dealt with Mr. Koch and subsequently dealt with Mr. Green?

A. Yes, sir.

Q. Well, what did Green say, so far as you now recollect?

A. So far as I now recollect he said for us to take care of the engine coal until further notice from him.

Q. And then did the men do that?

A. Yes, sir.

Q. And they worked until April 16th?

A. Yes, sir; I think it was the 16th, to the best of my recollection.

Q. And during that time between April 1st and April 16th, 1906, was there *was* a convention held in Wheeling, of the United Mine Workers?

A. I think so, to the best of my recollection.

Q. Did your "local" have any representative at that convention?

A. Yes, sir.

Q. Were you there?

A. I was.

Q. Were you a delegate?

A. I was.

Q. Do you recall whether there was anything said or done by the convention, or by the presiding officer, relative to the representatives of the Hitchman "local"?

A. I do.

Q. Well, now, tell us what that was as nearly as you now recollect?

A. Well, the convention convened and started to do business. They elected their officers. We had a man on the scale committee from our mine. They made objections to our man and claimed he was working unfairly.

Q. That is, he was "scabbing"--is that what you mean by that?

A. That is what I mean. They put our man off of the scale committee and the delegates from the Hitchman mine wanted to withdraw from the convention but they would not agree to it, so we staid in the convention.

415 Q. And the convention adjourned then, did it?

A. The convention adjourned without an agreement.

Q. Did they have any sort of action at the convention relative to operators who might be desirous of fixing up with the United Mine Workers' officials and signing a scale and getting to work again?

A. Yes, sir.

Q. Tell me, as nearly as you now recollect, what that was?

A. As near as I can recollect when they adjourned they adjourned with the understanding that any operator, or number of operators, that wished to meet with the United Mine Workers' officials and delegates—that they were to immediately call a convention to formulate a scale that would not be under the prices of 1903.

Q. Well, did any operator in Sub-District 5 of District 6 have a convention called, that you now recollect?

A. Yes, sir.

Q. Was it based upon the action of that convention?

A. Yes, sir.

Q. Well, what operator, do you remember?

A. W. H. Koch.

Q. He called one or had one called?

A. Yes, sir.

Q. Well, did he get it?
A. No, sir.
Q. Do you recollect whether the Lorain Coal & Dock Company people had a convention called?
A. Yes, sir.
Q. Well, did they have one called or not?
A. They did.
Q. Under this same action of this convention?
A. I suppose it was. There was no other business, to our knowing, between that time and the time of theirs.
Q. Was that along about the time of this convention?
A. Yes, sir; but this was before the time that Mr. Koch wanted a convention.
Q. But the Lorain Coal & Dock Company convention that was called was after this convention that you spoke of had adjourned?
A. Yes, sir.
Q. Well, what was the result of that convention?
A. The result was that they fixed up a scale and the Lorain Coal & Dock Company went to work.
Q. That was sometime about the middle of May, 1906?
A. Along about that time, somewheres; I cannot just recall the date.
Q. Who was the presiding officer of that convention that you attended at which your delegates were looked upon as "scabs"?
A. Andy Watkins.
Q. Is this the same Andrew Watkins who is one of the defendants in this suit?
A. I suppose it is the same man.
416 Q. Do you know the man?
A. Yes, sir; when I see him.
Q. Is he here?
A. I have not seen him here.
Q. Now, after that convention adjourned and your delegates went home, what did you do next? I speak now with regard to any dealings you may have had with Mr. Koch or with any representative of the United Mine Workers, particularly Thomas L. Lewis.
A. Well, we made a trip to Mr. Lewis's house, at Bridgeport,—I along with the rest of the committee—and we explained the situation to him as best we could and asked him to let us take care of the engine coal until some kind of a settlement could be made. He said no; that we could not load a lump of coal.
Q. What was his position at that time in the United Mine Workers of America?
A. To the best of my knowledge he was Vice-President.
Q. Vice President of the national organization? And where did he live? You say at Bridgeport?
A. At Bridgeport; yes, sir.
Q. Is he a coal miner, that you know of?
A. Only from hearsay. He says he is a coal miner and I suppose he is.
Q. Did you ever know of his working in a coal mine?

A. No, sir.
Q. So far as you know he has always been an official of some kind?
A. In my time; yes, sir.
Q. Well, when the men at your mine were confronted with this situation, and were stalled, and perplexed to know whether to continue work or not, as you have stated, did you have any meeting of your men at the mine?
A. Yes, sir. Well, not at the mine but close to the mine.
Q. Did any of these officials attend?
A. Yes, sir.
Q. If you now recollect, who attended? Who was it?
A. To the best of my recollection it was John Zalenka.
Q. Otherwise known as Zalenka?
A. Yes, sir.
Q. That is the same person who is one of the defendants in this suit?
A. I believe so.
Q. Do you know that man?
A. Yes, sir.
Q. Is he here?
A. I haven't seen him.
Q. Look around in the court room and see if you see him?
A. I believe that is the man over there.

(Referring to a man sitting alone about midway of the court room.)

Q. You recognize that man, do you?
A. I think I do.
Q. Is that the man who attended that meeting?
A. I think that is the man back there in the court room.
417 Q. How did he come to attend that meeting?
A. Well, I do not know exactly how he came to attend it.
Q. What part did he take in the meeting?
A. Well, he spoke to the men.
Q. His name is a foreign name. Does he speak a foreign language?
A. Yes, sir; he did that day.
Q. Do you know what language he spoke?
A. No; I do not.
Q. Did he talk English as well as a foreign language?
A. Yes, sir; he talked some English.
Q. Did you hear what he said in English?
A. Well, I heard some things he said but I just forget what they were now.
Q. Well, substantial-y, what was it about?
A. The best of my recollection is that it was a call for the men to go out on a strike.
Q. What position, if any, did he hold in the United Mine Workers?
A. He was Vice-President of the Sub-District, I believe.
Q. Vice-President of Sub-District 5 of District 6?
A. Yes, sir.

Q. And do you know what he said to the other men when he talked in this foreign tongue?

A. No, sir; I do not.

Q. At what time of day, relatively speaking, was that meeting held?

A. I do not just recollect what time of day it was; I could not say.

Q. Was it in the morning, afternoon or evening?

A. To the best of my knowledge it was sometime in the afternoon.

Q. Do you know how long the meeting continued?

A. I do not just recollect; I suppose half an hour or something like that.

Q. Were there many men there?

A. There was quite a crowd; yes, sir.

Q. Was there much discussion amongst the men about the proposition to strike?

A. Well, there was considerable talk among them; I do not recollect and could not tell for I had no way of knowing; they were talking mostly in a foreign tongue.

Q. Did you take part in any discussion in the English tongue?

A. I may have taken some part in it; I do not just recollect.

Q. What was your attitude with reference to working, or going on a strike, in accordance with Zalenka's proposition?

A. Well, my attitude was to take care of the engine coal; that is what I was trying to do.

418 Q. Well, then, the next day after that meeting adjourned what happened with respect to the mine? Was it in operation or not?

A. The next day we were out on a strike, to the best of my knowledge.

Q. Called by this man Zalenka?

A. I cannot say it was called by him, but he was at the meeting and the next day they didn't work.

Q. Well, he was the medium that you dealt with?

A. Yes, sir.

Q. What position, if any, did you hold at that time in the "local"? I mean the "local" that the United Mine Workers had at the Hitchman mine?

A. I believe I was president of the organization at that time.

Q. Did you see or talk with Thomas L. Lewis after they shut down?

A. No, sir.

Q. Are you a married man?

A. Yes, sir.

Q. Were you then?

A. Yes, sir.

Q. Have you any property, or realty, I mean?

A. Yes, sir.

Q. Did you have then?

A. No, not at that time.

Q. Now, during the time that the mine was idle from April 16th, 1906, to June 12th, 1906, when it started up non-union, where were you?

A. I was in Benwood and McMechen.
Q. Were you working?
A. No, sir.
Q. During the time that the mine was run union and you were working for the Hitchman Company, did the union get the check-off from you?
A. Not from me; they got it from the secretary.
Q. But you did not understand me; I mean off of your wages?
A. Yes, sir; off of my wages.
Q. And that was paid out of your wages every pay, was it?
A. Yes, sir; it was checked off.
Q. The union purports to aid men who are involved in strike, does it not?
A. Yes, sir.
Q. How soon after a strike is called, or a strike is on, if sanctioned by these officials, does the money become due to the miner?
A. Well, to the best of my recollection after the second week we were out at that time, I believe we were to draw benefits.
Q. Can you draw benefits if you strike of your own accord, or do you have to first get the consent of the officials who have authority over you in the organization, before they will pay you anything?
A. Well, according to the rules as I understood them at that time, you had to get the consent of the officials before you called a strike.
419 Q. So that you might be thoroughly dissatisfied with your employer, and your conditions of labor, and might determine to strike as between yourselves and your employer, and yet unless the union officials—that is, these higher men in official position—consent to it or approve of it, you would get no benefit. Is that the situation?
A. I believe that is the situation.
Q. But if you are entirely satisfied with your employer and if your employer wants you to continue work and if you want to continue work, you may be required to strike by your officials, or else be branded as a "scab"?
A. Yes, sir; I believe that is right.
Q. Now, in this instance, in 1906, I gather from your testimony that the men wanted to work and the employer wanted to have them work?
A. Well, it appears as if the majority of them wanted to work; they wanted the consent of the officials to take care of the engine coal, but it seemed as if they could not get it, and when they could not, they came out as they were ordered.
Q. So the officials, then, acting through this man Zalenka, required you and your associates who were members of the local union at the Hitchman mine at that time, to quit work or else be branded as "scabs"?
A. Yes, sir.
Q. And you all quit?
A. We all quit.

Q. Well, what did the union do then after the lapse of a couple of weeks with reference to supporting the men they had ordered to go out on strike? You say benefits were due at the end of two weks.

A. At the end of the third week, if I understand the third week; I believe at the end of the third week, or something like that; I do not just recall just the exact time, but they came down and paid us a week's benefit.

Q. How much was that?

A. Three dollars.

Q. Did you get three dollars?

A. Yes, sir.

Q. Well, now, at the end of the next week did you get three dollars?

A. No, sir.

Q. What did you get?

A. I didn't get anything.

Q. Why?

A. Well, I have never been able to understand why I didn't.

Q. You mean by that that these officials had control of the money and would not pay it over?

A. Why, if they had any money they would not, but I believe they claimed they didn't have the money to pay it with. They came down a time or two and gave some of them orders on a store.

420 Q. An order on a store for how much?

A. I believe it was a dollar a week.

Q. For a man of family it was a dollar a week?

A. Yes, sir.

Q. To support him and his family?

A. Yes, sir.

Q. How much would that man ordinarily have made in that week, under the usual conditions in the mine, had he been at work?

Witness: You mean taking the average man?

Mr. Gilchrist: Yes, sir; I mean generally.

A. Twelve to fifteen dollars a week.

Q. So that as a result of being ordered out by these officials against their will, and to save their face, as it were, as union men, these officials gave three dollars in one week and thereafter proposed to the men to give them one dollar a week in a store order, whereas these same men if working would have each made from twelve to fifteen dollars a week?

A. Yes, sir.

Q. Who paid you the first and only three dollars?

A. Well, to the best of my recollection it was Lane Schimpf.

Q. And who is he?

A. I believe he was a board member, if I recollect right.

Q. A "board member"? What is that?

A. I mean one of the board of the district.

Q. One of the high officials but under still higher ones?

A. Yes, sir.

Q. Now, when the men came to get their dollar store orders, who was it that came down to the mine, if anybody did?

A. Well, Lee Rankin came down for one.

Q. That is the same Lee Rankin that is one of the defendants in this case?

A. I believe he is.

Q. Did you see Mr. Zalenka there?

A. Well, there was some one with him, but I do not recollect who it was—whether it was Mr. Zelenka or some other person. Mr. Rankin I know was there.

Q. Did the men accept these orders as a general proposition, or did they decline them?

A. They took a vote on it and voted to a man not to accept them, but part of the men did accept them afterwards.

Q. They were in need, I suppose?

A. I suppose so.

Q. You did not take any, you say?

A. No, I did not.

Q. What became of the engine coal proposition at the Hitchman mine after the union leaders shut the mine down?

421 A. Well, they filled it from other places. They brought it there and dumped it out of the cars into the bank cars, and run it around on the tipple and filled the bin.

Q. Do you know where that coal came from in whole or in part?

A. Well, it came from different points. Some of it came from Fairmont and it was generally understood after the Lorain Coal & Dock Company went to work, that quite a lot of it came from there.

Q. From the Lorain Coal & Dock Company?

A. Yes, sir.

Q. That company operates where?

A. Near Bridgeport.

Q. Well, that is where Lewis lives, isn't it?

A. I believe it is.

The Court: Pardon me a moment, I want to ask a question.

Q. Where did this organization get its money from? Did you contribute to it?

A. Yes, sir.

Q. Under what arrangement and what amount did you miners contribute?

A. Well, there was a certain per cent. came off of our earnings.

Q. That is, you paid a certain per cent. of your earnings into the hands of the association?

A. Yes, sir.

Q. Do you remember what that per cent. was?

A. No; I do not know.

Q. You do not know what it would average a week or a month?

A. Well, it varied; there was different percentages.

Mr. Gilchrist:

Q. What would be an ordinary pay for you while you were working union at that mine?

A. Well, as an average, sixty or seventy-five dollars when they were working in full.

Q. You mean that sixty or seventy-five dollars would represent the net amount coming to you after the deduction or before the deduction for the United Mine Workers?

A. Well, before; I did not count the deduction; I gave you the full amount that was on the pay, and then that deduction was taken off.

Q. Then on a pay of sixty or seventy dollars—suppose it was sixty dollars instead of seventy dollars—on a pay of say, sixty dollars what would be the deduction ordinarily *be* as nearly as you can recall?

A. Well, they had different things there to deduct for; they had a death claim, and different things, and it would run from a dollar to two dollars and a half.

422 Q. You mean the amount they withdrew might vary according as they might call on each person to contribute more at one time than at another?

A. Yes, sir.

Q. That was a part of the operation of the union as run by these higher officials, was it?

A. A part of it was and part of it was used in an operation that was run by the officials of the "local."

Q. And as these officials higher up needed more money for any purpose, they called for more money and the men paid more money?

A. Yes, sir; there would be an assessment in a case like that.

Q. How were those assessments with respect to frequency while you were a member of the organization?

A. Well, there was not very many extra assessments while I was a member of the organization at the Hitchman mine.

Q. Not while you were at the Hitchman?

A. No.

Q. Now, the assessments that you would make as a "local"—what were those assessments made for?

A. For death benefit and sick benefit.

Q. Immediately for the benefit of the men of the "local"?

A. Yes, sir.

Q. And the other assessments and other charges were for the benefit of the organization?

A. Yes, sir.

Q. Or the higher officials; it didn't come back to you at the "local"?

A. No.

Q. And that is the way the organization as a national body gets its money, is it?

A. Yes, sir.

Q. First through the dues and then through the assessments and other charges that the higher bodies may call for and which the "local" submits to?

A. Yes, sir.

Q. Now, out of this fund that is accumulated or is supposed to be accumulated by those officials in the management of the organization, through these dues and through these assessments—out of this fund it is supposed that the men at the "local" will be protected through the payment of benefits during a strike provided the union officials higher up recognize the strike. Is that right?

A. Yes, sir.

Q. And that is the way, then, that the three dollars came to be paid you. Well, that would hardly always be the way; you were offered a store order and I do not exactly understand about that store order. Who paid the store order in the end?

A. The United Mine Workers' officials paid the store order, or that is my understanding of it.

Q. The union officials then did not just simply guarantee the payment of a dollar and ask the man to get a dollar's worth
423 of credit at the store?

A. Well, they gave him an order to the store for a dollar.

Q. And it is your understanding that the dollar would eventually be paid by the larger organization?

A. Yes, sir.

Q. You have said that part of this coal that was served to the engines of the B. & O. during the strike, came from the Lorain Coal & Dock Company's mines over at Bridgeport?

A. I said that that was the general understanding among the men.

Q. The men looked into that, did they?

A. I believe they did.

Q. Now, was the Lorain Coal & Dock Company working its mines on the same basis as the Hitchman men wanted to work on?

A. Well, from the understanding I had from a few of the men who worked there at that time, they were receiving the same scale of wages that we quit at.

(The understanding of the witness is objected to by counsel for served defendants.)

Q. So the net effect then, was, if this coal came from the Lorain Coal & Dock Company's union mine, that these officials were keeping the men at the Hitchman mine from working and were not paying them benefits by pleading poverty, and the coal was being mined by other union men in Ohio, at Mr. Lewis's home, and shipped over to the Hitchman mine and then fed to the engines by the Hitchman people while you men in the union remained idle, all under the jurisdiction of the same officials; is that the net effect of the thing?

A. Well, I could not say that it was; the only thing I can say is that it was generally understood among the men that that was where the coal was coming from.

The Court:

Q. How far was the Lorain Company's mine from the Hitchman mine?

A. I guess it is something like eight or ten miles.
Q. On the other side of the Ohio River?
A. Yes, sir; on the other side of the Ohio River.

Mr. Gilchrist:

Q. How many mines has the Lorain Coal & Dock Company opened near there?
A. I do not know.
Q. How many did it have in 1906, that you recall?
A. I do not remember.
Q. Was the Wheeling Creek mine one of them?
A. The Wheeling Creek mine was one.
424 Q. Was the Crescent mine one?
A. I do not know.
Q. You recollect, though, that the Wheeling Creek mine was one?
A. Yes, sir.
Q. In 1907 you resided where?
A. At McMechen.
Q. Did you have any meeting there at any time or under any circumstances with a man by the name of Thomas Hughes?
A. Yes, sir.
Q. Well, state as nearly as you now recollect, how you came to meet him and what he had to say for himself?
A. Well, I heard a knock on the door one evening and I went to the door and there was a gentleman on the porch who introduced himself as Mr. Hughes, an organizer of the United Mine Workers, and he wanted to talk organization to me. I told him that I didn't care to talk organization at all. In the position I was in I told him that I didn't care to take any hand in it whatever. Mr. Hughes asked me if I owned my property. I told him I had bought it and was trying to pay for it; and he said if I became a member of the organization that they would get me a job at another place but it might not suit me as well as the one I had. He also advised me before he went away that I was right in not taking any hand in it.
Q. Did you see Mr. Hughes after that?
A. Yes, sir.
Q. Well, under what circumstances?
A. He called a meeting one evening.
Q. Mr. Hughes called a meeting?
A. Yes, sir.
Q. Of what?
A. Of the men at the Hitchman mine; and he made a speech.
Q. Were you there?
A. Yes, sir.
Q. Well, tell us as nearly as you now recollect, what he said?
A. He said quite a few things. He said that he had taken it up with the mayor of Benwood, and the mayor of Benwood had told him that there had been better men than "Bill Daugherty" hung.
Q. Hughes said that in his speech and you heard him?
A. Yes, sir.
Q. Well, did you see Mr. Hughes after that speech?

A. Yes, sir.

Q. Under what circumstances?

A. Well, during that time the mayor had found it out and his brother came down and told me Hughes had come up to see the mayor—(interrupted).

(Objected to by counsel for served defendants.)

The Court: Don't tell what anybody told you about any conversation some one else had with him. You can state what
425 information you had and what action you took upon it. That is really the correct way.

Mr. Gilchrist:

Q. Give the net results without stating what your brother said the mayor stated?

A. Well, the next time I saw Hughes I told him that the mayor and chief of police both told me that if he came over there and bothered me any more to let them know; that he had wilfully lied about the statement he had made; and to let them know and they would lock him up.

Q. And what did Hughes say to that?

A. He just laughed.

Q. Now, in the speech that he made in which he made this remark about you, what was the general character of his remarks relative to the men and the mine?

A. Well, what I heard of it, was, (I did not hear all of his speech) that the men had better organize; if they didn't the company would cut their wages and they would be compelled to take the reduction.

Q. Why would they be compelled to take it? Couldn't they work some place else?

A. He claimed not; that they did not belong to the United Mine Workers.

Q. Do I understand you to say, then, that he intimated to these men that unless they got into the union, that if they got out of work at the Hitchman they could not get any work at any union mine?

A. At any union mine; that was the understanding I had.

Q. What is the status of the organization of the United Mine Workers, geographically speaking, in the locality of the Hitchman mine? To be a little plainer, is Ohio union territory and that part of West Virginia non-union territory?

A. Yes, sir.

Q. So that the effect of his talk would be that unless the men living there at that mine would join the union, then if they got out of a job they would have to go elsewhere in West Virginia?

A. Yes, sir; besides a union mine.

Q. How many mines are there about Wheeling?

A. Well, there are quite a number of them; I do not know just how many.

Q. Four or five?

A. Yes, sir; something like that, I suppose.

Q. The Hitchman and the Glendale and the Richland, and the Mound Coal Company, at Moundsville, and the Elm Grove, make five. Over in Ohio what is the situation with regard to the coal mines right across the river from Benwood?

426 Witness: You mean are they organized?

Mr. Gilchrist: Yes; are they organized and are mines frequently found or not?

A. Yes, sir.

Q. You mean they are organized and there are a good many mines?

A. They are organized and there is quite a number of mines.

Q. Before Hughes came to your house did this man Zelenka have any talk with you relative to the men at the mine going into the union again?

A. Yes, sir.

Q. Tell us the circumstances of that conversation, where it took place, and substantially, as you now recollect, what it was?

A. I met Mr. Zelenka one evening. He had just got off of the car, I believe, and we had a talk. He told me he would like to get us back in the organization. I told him that we were not treated right when we were in the organization. He said he would admit there had been mistakes made but they would like to get us back in the organization.

Q. Where was that talk? You say he got off of a street car.

A. That occurred right above the Hitchman company's office in the street.

Q. How long was Zelenka there on that occasion?

A. I do not recollect just how long; he was there a short time when I saw him but he may have staid longer.

Q. Did you see him talk with any one else before or after the time he talked with you?

A. Well, there were three or four of us there when he was talking. He was addressing us all—one the same as the rest of us.

Q. And then two or three weeks afterwards Hughes appeared?

A. Yes, sir.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Daugherty, said that his experience as a miner extended over something like about eleven years; that all of that period has been expended in mining with the Glendale and Hitchman companies, with the exception of about one month; that he has followed the work as a miner longer as a member of the union than when he was not a member of the union—a little longer, if any difference; witness was connected with

427 the United Mine Workers in 1906—up to the time in that year that the Hitchman Coal & Coke Company started up its mine non-union; witness was handed "Plaintiff's Documentary Exhibit No. 1," purporting to be the constitution of the United Mine

Workers of America, and upon being asked to examine it and state whether that is a copy of the constitution that he worked under, so far as the National organization was concerned, replied that he thinks that has been modified since he was a member of the organization; asked to state in what respect it has been modified, witness says it was modified in regard to the transfer card, for one thing; that modification relates to section 5, article 7; to the best of witness's recollection the transfer card in 1906 was not filled out like the transfer card in 1907; witness does not know in what other respect the constitution of the National organization has been modified —can not designate any other changes; so far as witness knows there have been no other changes in the constitution since 1906, as shown by Plaintiff's Documentary Exhibit No. 1 put in by the Hitchman Coal & Coke Company—witness believes not—not that he knows of; witness is handed Plaintiff's Documentary Exhibit No. 2, purporting to be a copy of the constitution of district 6, United Mine Workers of America, and is asked if that is the district to which his local belonged, and replied that to the best of his recollection his local belonged to Sub-District 5 of district 6; witness is asked if Plaintiff's Documentary Exhibit No. 2, which purports to be a copy of the constitution containing all amendments up to the date of January 12th, 1907, was the constitution of that district during that year, 1906, and replied that so far as he knows it is, and that his local was working under that constitution; witness was handed Plaintiff's Documentary Exhibit No. 3, which purports to be a copy of the constitution of the United Mine Workers of America, Sub-District 5 of district 6, and is asked to state if that is a copy of the constitution of Sub-District 5 of district 6 at the time he was a member of the organization in 1906, and replied that "Well, as far as I know I guess it is"; the local situated in 1906 at the Hitchman mine had a constitution for its government; that constitution was printed; witness guesses that that constitution was furnished his local by the officers of Sub-District 5 of district 6, but does not know that it was furnished by the officers; thinks the secretary furnished it; witness was president of his local in 1906, he believes; witness's local could do such things in carrying out the purposes of the organization as were not in conflict with the constitution of Sub-District 5 of district 6, or the National constitution; among other things that the witness did as a member of the local, along with the other members of that local, was to pay dues; and being asked if those dues were payable at the time he received his pay for his wages, witness replied: "They were checked off of our pay"; and further said: "We were paid every two weeks but we paid our dues by the month;" witness does not recollect the percentage that he paid during the time that he was a member of that local—there were different things; the regular monthly dues were twenty-five cents a month.

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The witness was then asked and answered the following questions:

"Q. Well, then, you paid an assessment for the purpose of supporting a relief fund, did you not?

A. Yes, sir.
Q. Now, was not that one-half of one per cent., in your district?
A. Part of the time; yes, sir.
Q. What was it the balance of the time?
A. Well, I recollect when it was ten per cent.
Q. When was it ten per cent.?
A. I believe it was in 1902.
Q. Well, do you remember whether that assessment was more than once, or not, at ten per cent.?
A. It was only once that I paid it; I paid it at different times but it was only on for one period at a time.
Q. How many payments at ten per cent. did you make in 1902?
A. I do not just recollect. I was working at the Glendale mine at that time.
Q. Was that the year in which the anthracite strike was on in Pennsylvania, or not?
A. I believe that was before, to the best of my recollection.
Q. Do you recollect the year in which the anthracite strike obtained in Pennsylvania or not?
A. No; I do not recollect.
Q. Then you cannot say whether you paid ten per — once or twice or three times, can you?
A. I can say that I paid it as much as three times, if not four.
Q. But you do not know what that assessment of ten per cent. was for, do you?
A. It was for striking miners, was the understanding we had.
Q. Well, now, where were they on a strike?
A. I do not know whether it was anthracite or not.
Q. It may have been then while the anthracite strike was on for aught you know?
A. I could not say.

429 Q. Do you know what the extent of the strikes were at that time, within the jurisdiction of the United Mine Workers?

A. No, sir.
Q. Then you paid dues to the United Mine Workers of twenty-five cents a month while you were working, as I understand?
A. Yes, sir.
Q. When you were on a strike those dues were not payable, were they?
A. No, sir.
Q. And then you paid an assessment of a certain per cent. for the relief fund. Is that right?
A. Yes, sir.
Q. And those were the things that you paid to the national organization?
A. And then there was a capitation tax.
Q. A capitation tax? What was that for?—membership, was it not?
A. I do not recollect what it was.
Q. Do you recollect the amount of it?

A. Ten cents, I believe.
Q. How often was that paid?
A. Every month.
Q. Was that paid to the national organization?
A. Yes, sir.
Q. Well, was not that for the support of the "Mine Workers Journal"?
A. I could not say.
Q. Well, your "local" received a copy of the "Mine Workers Journal" didn't it?
A. I believe so.
Q. You did not pay any subscription price like taking a newspaper, did you, for taking the "Mine Workers Journal"?
A. No; I believe not.
Q. That was furnished by the secretary of the national organization?
A. I could not say.
Q Anyhow it was furnished to you by some officer?
A. It was furnished to the "local"; I did not get it.
Q. Now, then, in addition to these payments you had an accident fund and a death fund?
A. Yes, sir.
Q. That you paid to your local officers, as I understand it, so that when a man was injured in an accident happening at the mines, this fund thus created was used to aid him in his support and in nursing him and caring for him. Is that right?
A. Yes, sir.
Q. Then, in the death fund this money that you contributed was for the purpose of defraying the funeral expenses of the deceased. Is that right?
A. Yes, sir.
Q. And if there was any surplus left over you donated that to the widow and children, did you?
A. Yes, sir.
Q. That was a part of the system of your organization?
A. Yes, sir.
Q. And it is largely a part of the work of the organization?
A. Yes, sir.
430 Q. And that is a matter entirely in the control of the local union, I suppose, is it?—the death fund and accident fund?
A. It was at that time.
Q. I mean at that time. You haven't been a member since 1906, have you?
A. No, sir.
Q. And you are not undertaking to say whether it has been changed since then?
A. No.
Q. You haven't heard of any change in that respect?
A. No.
Q. Now, then, coming down to the matter of what constitutes a union mine and what constitutes a non-union mine: A union mine

is operated by members of the United Mine Workers of America, is it not?

A. Yes, sir.

Q. The district or sub-district to which the local belongs makes an arrangement or an agreement with an operator to work at a certain scale for a certain period of time under a rate that is fixed by the United Mine Workers and agreed to by the operators. Is that the way of it?

A. Yes, sir.

Q. And it is understood that that agreement is to control, on the part of the miners, as to the price to be paid, and it is to continue in force during the time that the scale runs, and that the operator is to pay that to the miners during that period. Is that correct?

A. Yes, sir.

Q. Then, if a member of the Mine Workers' organization that is working under the union has a grievance, that is investigated by a committee appointed by your own body, and that grievance is taken up with the operator and if it can be disposed of in that way, it is settled in that way. Is that right?

A. Yes, sir.

Q. Then, if you cannot agree in that respect, or either party is dissatisfied, then you have a right to appeal to some higher officer for a settlement, and that runs through your contracts from year to year. Is that right?

A. Yes, sir; I guess so.

Q. Now, then, if the operator has a grievance or cause of complaint against the men who are working for him, or any one of them, he can have his grievance settled in the same way that the grievance of the men is settled. Is that right?

A. Yes, sir.

Q. He has a right to appeal to the officers just the same as the men have. Now, when you worked under the union system, or in a unionized mine, that was the course to be pursued. Is that right?

A. Yes, sir.

Q. Then the mine workers under the unionized mine have
431 a right as a rule to be satisfied with their checkweighman. Is that correct?

A. Yes, sir.

Q. Then the United Mine Workers, when they operate or work for a mine, have a voice or a right to say something about the size and method of the screens that the coal shall pass through and over, have they not?

A. Yes, sir.

Q. And that is designed to be uniform throughout the district where the conditions are the same?

A. Yes, sir.

Q. In other words, it is the purpose of the United Mine Workers to equalize the opportunities among the miners so as to give them equal opportunities if it can be done, and not discriminate in favor of one man as against another where the conditions are the same. Is that correct?

A. That is according to their constitution.

Q. Well, is that the theory of the organization—the purpose of the organization?

A. Yes, sir; that is the purpose of it.

Q. Now, in some instances it may not work out practically the same. Is that right?

A. Yes, sir.

Q. Well, that would be largely owing to the difference, possibly, in conditions that could hardly be met? Is that correct?

A. Yes, sir.

Q. Now, that is in part what is done when the mine is run union, as I understand? Am I right about that?

A. Yes, sir.

Q. Well, now, have I omitted anything that characterizes the operation of a mine when it is being run union, that you think of and that you could state there for me, because I do not know about these things likely as well as you do. If there is anything I have omitted I will ask you to state it, if you please?

A. Well, I do not know as I can; there are different conditions that prevail at pretty nearly all mines.

Q. Well, those conditions, of course, have to be met in order to work out equally?

A. Yes, sir.

Q. When a mine is run non-union what does that mean? What do you understand by that, Mr. Daugherty?

A. Well, I have not worked at very many non-union mines. The one I am working at now is run on the same basis that it was when the United Mine Workers were in power there.

Q. Is it a non-union mine?

A. Yes, sir.

Q. Now, you say that it was run pretty nearly on the same basis, did you say, as the others?

A. Yes, sir.

Q. What do you mean by saying "It is run pretty nearly on the same basis as the others"?

A. I mean that we get the same price for our labor; we have the same conditions that are met in the same way; we have
432 a committee and if we have any grievance we take it up under the same style as we did when we were in the United Mine Workers.

Q. You are practically continuing the same operations that you had when you were a part of the United Mine Workers?

A. Yes, sir.

Q. Then, is there any complaint to you people from the company on account of continuing that system?

A. Not to my knowledge.

Q. Now, if you are continuing just as you did before what difference can you find in the matter of running non-union and running union in the conditions and methods of doing business at the Hitchman mine?

A. Well, one method is, since we have been running non-union w ehave never had any trouble of any kind and the mine has never betn stopped.

Q. You mean when you have been running non-union you have run continuously?

A. Yes, sir.

Q. And when you ran union you had some strikes?

A. Yes, sir.

Q. Is that practically the only difference between the two conditions—the one that prevailed when you had the union and the one that prevails when you have no union?

A. Well, there may be some other little difference.

Q. There may be some other little difference. Now, what would you say that consists in?

A. Well, it consists in this: That whenever we run out of an agreement we have the power to make our own agreement and go ahead and work. As it was before we had to wait for the officials to make it.

Q. You meet now and among yourselves you make an agreement. Haven't you been running at practically the same price all the time?

A. Yes, sir.

Q. Then you have had no agreement to make as to your scale of wages since you started to run non-union? Is that right?

A. Yes, sir; there have been agreements made since then.

Q. Was the scale lowered or raised?

A. Well, the scale was—whatever the United Mine Workers' scale paid that is what we got.

Q. Then it was consented to by the operator and he was just conforming to the scale of the United Mine Workers?

A. He was just to pay the scale, yes, sir; whatever it was.

Q. And then also as to the conditions prescribed by the United Mine Workers?

A. Yes, sir.

Q. About the only difference now and when you ran union
433 is that you don't have the advice of the officers of the United Mine Workers, whereas before you did have it. Is that right?

A. That is right.

Q. Is it not a fact that the officers of the United Mine Workers are experienced coal men and have had a good deal of experience in mines both as visitors to mines and as inspectors of mines and as workers in mines? For instance: Take Mr. Sullivan and Mr. Lewis and Mr. Mitchell and that class of men. Aren't they all experienced coal men?

A. Well, I can only answer that from what I have heard of them; I do not know it.

Q. My understanding is that you had a talk with Mr. Green and Mr. Hughes and Mr. Zelenka. Is that right?

A. I had a talk with Mr. Hughes and Mr. Zelenka; I did not have any talk with Mr. Green.

Q. You talked with Mr. Zelenka when there were no other officers or persons authorized to organize with him, did you?

A. I do not recollect but I believe there was a fellow with him.
Q. But you do not know whether he was a member of the organization or not—the other man?
A. No, I do not know that.
Q. When was that first conversation that you had with Mr. Zelenka?
A. I cannot just recollect.
Q. What year was it?
A. It was in the last of 1907, to the best of my recollection.
Q. Well, did you have one or two conversations with him?
A. One.
Q. And he wanted you to reconsider the matter and join the union again, did he?
A. Yes, sir.
Q. And you told him that you did not want to talk union to him. Is that right?
A. Yes, sir.
Q. And you did not?
A. No, not very much.
Q. Nor he to you?
A. No, sir.
Q. And that was the end of the matter practically?
A. Yes, sir.
Q. Well, then, you say you saw Hughes. How many times did you see him?
A. I saw him at different times.
Q. How many times did you talk with him?
A. I suppose five or six times.
Q. Was it when he was alone?
A. I have talked with him when he was alone and when he was in company with other men.
Q. Were those other men members of the United Mine Workers, or not?
A. No, sir.
434 Q. But so far as the members of the United Mine Workers were concerned, he was alone?
A. Yes, sir; I believe so.
Q. Well, now, when did you first talk with him?
A. As near as I can recollect it was in the last of 1907.
Q. That was the first you talked with him?
A. Yes, sir.
Q. What did he say to you in that conversation?
A. Well, he came to my house and introduced himself as a representative of the United Mine Workers.
Q. And wanted you to join the union there, did he?
A. Yes, sir.
Q. And then is when you told him you would not do it? Or practically, in effect, that is what you told him?
A. Yes, sir.
Q. And he agreed with you it was all right?
A. He agreed with me that I was better off by not taking any hand in it at all.

Q. And he did not insist on it any further?
A. Not there; no.
Q. When was the next occasion that you saw him?
A. He was around there every day until we had the meeting.
Q. Did he ever talk with you again about your becoming a member of the union?
A. Well, I do not know that he talked to me any more than he did to the rest; he talked to all of them that he would meet; he talked in my presence.
Q. Well, did they all answer about like you did?
A. I cannot say.
Q. Well, so far as you recollect?
A. So far as I recollect a few of them did, I know, but I cannot say as to all.
Q. You do not know of anybody that he succeeded in inducing to join the union, so far as your knowledge is concerned?
A. Not at that mine, I do not; no, sir.
Q. At the Hitchman, you mean?
A. At the Hitchman; that is what I mean.
Q. You cannot say that any one else outside of Hughes and Zelenka solicited you to join, can you?
A. No, I believe not.
Q. Mr. Daugherty, what did you get a ton for run-of mine coal when you started up in 1906?
A. I cannot tell you.
Q. Do you know what you get now?
A. No, I do not; I know what a machine man gets but I do not know what a loader gets.
Q. What do you get for screened coal?
A. We get 11.6 for cutting.
Q. Do you put out more run-of-mine coal than you do
435 screened coal?
A. Well, when the mine is not working in full they do.
Q. What do you mean by when it is not running in full?
A. Well, when they are running slack with orders.
Q. Do you find that the case right frequently—running slack with orders?
A. Well, it has been for awhile; yes, sir.
Q. What is the loading and cutting price for run-of-mine coal there now—machine work?
A. I cannot tell you the loading price but I can tell you the cutting price.
Q. And what is that?
A. It is 7½.
Q. And the loading price you do not know?
A. No, I do not.
Q. Do you know the size of the screen you use for commercial coal?
A. I did know and I believe it is an inch and—well, I do not know, but it is the same form as we had it before.
Q. Is the screen at the Hitchman the same that it is at the Glendale and Richland, or not ?
A. I cannot say."

Redirect examination:

On re-direct examination the witness was asked and answered the following questions:

"Q. Mr. Daugherty, counsel for the defense handed you on cross-examination the constitution of the International Union United Mine Workers of America, marked 'Plaintiff's Documentary Exhibit No. 1,' revision 1907, and asked you to look at it and say whether it was the same in its printed form here as it was when you belonged to the United Mine Workers' organization in 1906. I find in looking at the book that it contains forty-two pages. Your reply to Mr. Hogg was based upon what sort of an examination of this book?

A. I just merely looked at it and saw that it was the same in form.

Q. Do you know as a matter of fact whether this is like what you operated under or not?

A. No, sir; I do not.

Q. He also handed you the Constitution of District No. 6, United Mine Workers of America, marked 'Plaintiff's Documentary Exhibit No. 2,' and also marked 'Containing all amendments to date. January 12, 1907,' and he asked you a similar question as to whether that was the same constitution that you were operating under in 1906. Upon looking at the book I find that it contains twenty closely printed pages. Your answer was briefly made and I will ask you upon what examination you answered?

436 A. I Just merely looked at it.

Q. As a matter of fact, you do not know the difference, if there is any?

A. No, sir; I do not.

Q. And you did not take time to examine it?

A. No, sir; I did not.

Q. Would you know if you were to take time to compare it with the constitution of 1906?

A. No; I do not believe I would.

Q. And that same remark applies to the International Constitution—the 42-page book?

A. Yes, sir.

Q. You were also handed a pamphlet marked, 'Preamble and Manual Constitution United Mine Workers of America, Sub-District 5 of District 6. Revision 1907,' marked 'Plaintiff's Documentary Exhibit No. 3,' and you were asked if that book contains the same matter as was in the constitution of the United Mine Workers of Sub-District 5 of District 6 of 1906, when you belonged to the United Mine Workers. Upon looking at that book I find it is made up of sixteen pages of closely printed matter. What sort of an examination did you make of that book before making your reply?

A. I just looked at it and noticed the form of it was all; I saw it was the same form.

Q. You mean the physical form of it?

A. Yes, sir.

Q. You mean, then, the physical form of these other two also?
A. Yes, sir.
Q. You mean it just looked like those?
A. It looked like them.
Q. As a matter of fact you would not know whether that was the constitution of 1906 unless you had the 1906 constitution to compare it with?
A. No, sir; I would not.
Q. You were asked something about a union card or a transfer card. What is that? What is a union card or transfer card? What is meant by that?
A. It means that when you go from one place to another, if you are a united mine worker, you have to take a card with you. Your local makes you out a card to take wherever you go, and you present it to the officer of the other local when you get employment.
Q. Do you mean that the organization keeps a sort of tab on every man that belongs to it, and if he works in one mine he has got to get a card and take it and surrender it to another mine if he goes to work in another place?
A. Yes, sir; a union mine.
Q. Is that the system all over the country?
A. Yes, sir.
Q. Well, if you should happen to lose your card you could
437 not get a job, then, could you?
A. Well, you could get a card if you were known; you could get another card, I suppose.
Q. There is a way of getting another card, isn't there, by paying something for it?
A. I do not know if you would have to pay anything for it if you were to lose your card.
Q. If you do not present the old card then what happens?
A. They make you pay for a new one.
Q. Well, in that way, it is possible by careful bookkeeping to keep tab on every man throughout the United States, isn't it?
A. If they are members of the United Mine Workers; yes, sir.
Q. You were asked a number of general questions about the methods of the United Mine Workers and what their purposes were, so far as you understood them, when you were a member of that organization. While you were a member of the organization did you find any difference between the theory and the practice of the union?—that is, between its professions and what it did?
A. No; I cannot say that I did.
Q. Now, you were asked something about the screens and I understood you to say that the screens were the same as they were before, but counsel did not permit you to complete your answer. I would like to have you finish it. What do you mean by 'before'?
A. When we were in the United Mine Workers."

Recross-examination:

Upon re-cross examination the witness was asked and answered the following questions:

"Q. Mr. Daugherty, you stated that you just looked at the physical form of these pamphlets containing the constitution of the national organization and of Sub-District 6 and of District 5, and based your answer on that examination?

A. Yes, sir.

Q. I want to ask you if you did not take the pamphlet when you were answering my questions in regard to it, and turn the leaves over and look at them, and look at the contents inside of the pamphlet, before you answered my question?

A. I turned it over and saw it was in the same form and I said that was it, with probably some modifications.

Q. Then I asked you to specify the modifications and didn't you again look at the contents of the pamphlet?

A. At one; yes, sir.

Q. Well, when you were president of the local didn't you read these constitutions yourself?

A. Yes, sir.

438 Q. And you were an active officer there in the 'local' were you not?

A. Yes, sir.

Q. And you were tolerably familiar with the constitutions of these organizations, were you not?

A. I was at that time.

Q. Well, now, will you take those, with the consent of the court, and examine them to-night, and report any differences that you find in these constitutions in 1907, as compared with what they were in 1906, when you were president of your 'local'?

A. I could not do that without I had one of the 1906 to compare it with."

(End of re-cross examination.)

J. W. Hart.

Direct examination:

Upon direct examination the witness Hart says that he is tipple foreman at the Glendale Coal Works and has been employed there since July 1st, 1910, and prior to that he was employed at the Hitchman Coal & Coke Company; worked at the Hitchman Coal & Coke Company's mine since 1901; was practically carpentering all the time he was working at the Hitchman Coal & Coke Company's mine; is not a member of the United Mine Workers of America; was a member at one time—that was when he was working at the Hitchman works; is not a miner; joined the United Mine Workers at the Hitchman mine; was not working at carpentering then but was digging coal or loading rather at that time; witness was loading coal at that time and joined the union when the mine was unionized in 1903—when it was first unionized; witness remained in the union until the men went out on a strike and he then gathered up his tools and left; that was in 1903 witness reckons if he is not

mistaken; witness joined the union in 1903 but does not just remember when the strike was; the men came on strike and witness never went back until everything was all over with. Well, it was practically two years; witness cannot tell when he went back—it was the last of January or the first day—five years ago; then witness worked there until July 1st, 1910,—witness recollects a man by the name of Thomas Hughes; talked to him in the carpenter shop at the Hitchman Coal & Coke Company; witness cannot fix that date—it was the same time that he was trying to organize the place;
439 witness was in the shop when Hughes came in; witness had never met him before and did not know who he was; Hughes broached the subject of organizing the mine; he wanted to know why witness did not join the organization and witness remarked to him in this way "Why would I give up my position where I am getting more money than you would afford me in the organization"; that the scale would not afford witness as much money as he was getting; witness was working as a carpenter then at that time; witness was asked if carpenters belong to the United Mine Workers of America and replied that Hughes showed him the scale to that effect; that is, Hughes told him—Hughes didn't show him, but Hughes told him there was a scale to that effect for carpenters and carpenters' helpers; at that time if a carpenter worked at a coal mine he had to belong to the union if it was a union mine; after witness told Hughes that, Hughes did not stay around there in the shop very long; witness had no use for Hughes; witness was asked what he said that caused Hughes to go out and replied "I simply told him that I did not want to have anything to do with it"; witness says that Hughes then went out in front—out on the pike—witness saw him twice after that that witness knows of; witness heard Hughes make a speech on the Nick Heil ball ground, the meeting was on Friday witness believes, in the evening time; witness does not know William Green; well this Friday evening Hughes held a meeting in the ball park and witness went there, he saw a good many people there, they were miners mostly from Benwood and McMechen and when witness says from Benwood he means the Hitchman mine; witness does not know whether he could put in words the things that he recalls that Hughes said; witness says that Hughes said some very slandering things about some people in that neighborhood; he brought out some names that were connected with the Hitchman Coal & Coke Company; witness recalls that Hughes mentioned Daugherty's name, Jim Jarrett's name and Mr. Pickett's; Mr. Pickett was superintendent of the Hitchman mine; in the course of his speech Hughes tried to make it appear that it was the right thing to join the union in Hughes' belief; he could not say whether Hughes made any comment upon the nerve of the men that were working at the Hitchman mine; Hughes did not comment upon the nerve of witness.

At this point in his direct examination the following questions were asked and answers given:

Q. Did he say anything about the men at the mine be-
440 ing afraid to join the union for fear of losing their jobs?
A. Yes, sir.

Q. Well, now what was it he did say, as nearly as you can recollect, on that particular point?

A. Well, he made mention that they were afraid to join the union for fear of losing their jobs; that was just the proposition that was talked.

Q. How long after this did Hughes leave?

A. Well, I do not mind of ever seeing him any more after that evening."

Upon further direct examination the witness was asked why it is, if he knows, that a carpenter working at a union mine is required to join the United Mine Workers of America, and said that he could not tell as for that at all because he never was connected with it in that part of the business; that when he belonged he was a miner.

Cross-examination:

Q. Now, you say that you saw Hughes up there about the time he was trying to organize the place, using your language. Now, Mr. Hart, when you say he was trying to organize the place, do you mean that he was there inviting the men to become members of the United Mine Workers?

A. He was.

Q. That is what you mean by your expression that he was trying to organize the place?

A. Yes, sir; he did.

Q. That is what I understood you to say, but what I want to get at is this: In your examination in chief in answer to questions put to you by Mr. Gilchrist you stated you saw Hughes up there when he (Hughes) was trying to organize the place. I am using your language—"trying to organize the place." Now, what do you mean when you say he was there "trying to organize the place?" Do you mean by that simply that he was there talking to the men and trying to induce them to become members of the union?

A. What else would it be.

Q. I am asking you if that is it?

A. Well, ain't that proper?

Q. That is not the question: I am trying to find out if that is what you meant? You certainly can answer if that is what you mean or not.

A. Well, you heard me answer his questions.

Q. Certainly, I did; and now I am trying to get at what you mean by saying that he was "trying to organize the place"?

A. Well, he was trying to organize the place.

441 Q. But I am trying to find out what you mean by that—"trying to organize the place"?

A. He tried to organize the place and did not succeed in doing it.

The Court:

Q. What do you mean by organizing?

A. It is a body of men gathered together for the purpose—(interrupted)——

Q. You mean he was trying to organize them in a United Mine Workers Union?
A. That was his object.

Mr. Hogg:

Q. By that you mean that he was inviting the men there to become members of the union—trying to get them to come into the union?
A. Myself personally.
Q. Is that all your answer referred to—just yourself personally?
A. Yes, sir; I know that definitely.
Q. Then do you not know about his trying to organize anybody else?
A. His course of talk on the ball ground was to that effect, you know.
Q. He was there alone except the people who were there to hear him?
A. I do not know as to that, sir.
Q. Did you see anybody with him?
A. There was lots of people there but I could not tell whether they were directly with him or not.
Q. Was he doing the talking and these people there listening to him?
A. They were.
Q. And he was advising those who went there. Did you go there for one?
A. I did.
Q. How did you happen to go there?
A. I went there of my own accord.
Q. What for?
A. To hear him.
Q. To hear what he had to say? Do you know what the others went for?
A. I suppose for the same object.
Q. Now, you all listened to his talk there?
A. Yes, sir.
Q. What did you listen for?
A. Well, I wanted to hear what he had to say.
Q. You had a curiosity to hear him?
A. I had a curiosity to hear him the same as I would have to go and hear a preacher.
Q. When you went there you had no intention of joining the union, had you?
A. Not in the least.
Q. You went out of curiosity and just to hear him?
A. I went to hear what he had to say.
Q. How long did he talk there?
A. I would be safe in saying that he talked twenty minutes.
Q. Did he make a right nice talk there?
A. He is a pretty shrewd talker.
442 Q. Smooth and persuasive?

A. Well, part of it was.

Q. He spoke kindly of everybody, I suppose, except those few people you mentioned? He talked kindly to the men?

A. I do not know whether you would call it kindly or not; I would not.

Q. Did you get mad at what he said?

A. I did not have any occasion to get mad.

Q. Well, do you know of anybody that did?

A. I could not say as to that, sir.

Q. Did he manifest a high temper and bad blood?

A. I could not say as for that.

Q. You say he made some scandalous remarks?

A. He did.

Q. What do you mean by the term "scandalous"? What am I to understand you mean by that?

A. Well, putting it short, if I myself would make somebody out as a dog, that would be scandalous, wouldn't it?

Q. Yes. Well, now, what did he say that would make a man out a dog that you recollect of, and of whom was he speaking?

A. He was speaking of those parties that I mentioned.

Q. Well, that was Daugherty—Was that the same meeting that Mr. Daugherty spoke of in his testimony?

A. I could not say.

Q. What was it that he said about Mr. Daugherty?

A. Well, he said so many things that I cannot just recall them all.

Q. You do not recollect, then, just exactly what he did say. Now, another one, was Mr. Jarrett. Was it Jim Jarrett?

A. Yes, sir; Jim Jarrett.

Q. What business was he engaged in at that time?

A. I ain't right sure whether he was a machine man or inside day man; I could not say as to that.

Q. What was the trouble about Jim Jarret, so far as he was concerned?

A. Jim seemed to be one of the committee.

Q. What committee do you refer to?

A. This miners' committee that they had been dealing with.

Q. Well, do you recollect what he said about Jim?

A. Not exactly; no.

Q. Do you recollect what he said about the other man? What was his name?

A. Pickett.

Q. Pickett, yes. Do you recollect what he said about Pickett?

A. Nothing only that he made Mr. Pickett out as a bad man.

443 Q. Well now those are the only ones that you recollect?

A. Those are the only ones.

Q. What time in the day was this?

A. It was in the evening.

Q. Well, as I understand, nobody after that joined the union—after that meeting, I mean?

A. Not that I know of.

Q. Well, if there was anybody working around the Hitchman Coal & Coke Company that joined after that meeting, you would have likely known it—that quit their work?

A. No, sir; not that I know of.

Q. If they did you do not know it?

A. If they did I do not know it.

Q. Well, if anybody had quit work by reason of anything said in that speech, you would have likely heard it or known something about it, wouldn't you?

A. I do not know as I would.

Q. Well, now, he tried to make out to you when he came to you that it would be a good thing to join the union, as I understand? He tried to make that appear to you?

A. Why, sure he did.

Q. And you told him it would be no good to you because you were getting more at that time than the union scale provided or gave?

A. Yes, sir.

Q. Well, that was a fact, was it?

A. It was a fact.

Q. What were you getting at that time?

A. That is between me and the company.

Q. Don't you recollect what you were getting?

A. Yes, sir; I know exactly what I got.

Q. Well, don't you want to tell the court what you got?

A. That is between me and the company.

Q. Do you know what the miners were paying—what the United Mine Workers were paying?

A. I know what he said they were paid; I do not know what they were paid.

The Court: Do you want him to answer that question? If it is material you can have it.

Mr. Hogg: Yes, I would like to have him answer it.

The Court: Mr. Witness, you will have to answer what they were paying you at that time.

A. Thirty cents an hour.

Mr. Hogg:

Q. What did he say the others were paying?

A. He said they were paying $2.36 for eight hours.

444 Q. And how many hours did you work?

A. Nine hours.

Q. Now, Mr. Gilchrist asked if the speech made by Mr. Hughes impressed your nerves, or affected your nerves, or something to that amount?

Mr. Gilchrist: I did not ask him that at all.

Mr. Hogg:

Q. I believe you said that that speech made no impression on

your nerves, in answer to a question Mr. Gilchrist asked you. Is that right?

A. I said that it didn't make any impression on my *en*rves.

Q. And he asked you if it made any impression on anybody else's?

A. I did not see anybody getting boisterous about it.

Q. Nor affected about it?

A. Nor affected in any way.

ALBERT JARRETT.

Direct examination:

My name is Albert Jarrett; age 38; residence, McMechen, West Virginia; occupation, coal miner; now employed at the Hitchman coal mine; has been employed there about eight years, witness believes; is a machine man now; has worked at the Glendale mine and at the Mound Coal Company's mine near Moundsville; recalls the occasion of the 1906 strike of the United Mine Workers of America, that is, the national strike—remembers the strike; recalls that there was a strike at the Hitchman mine at or about that time; upon being asked whether he recalls anything was said or done either by the men or the management of the mine dealing together or any of those parties dealing with the United Mine Workers of America with reference to continuing work at the Hitchman mine pending a final adjustment of the national scale between the United Mine Workers of America as an organization and the operators who were in convention with them, witness replied that he does not remember much about that; that he did not attend very many of those meetings; that he remembered that they had a good deal of talk around among themselves, but he does not remember much about it; witness says that he thinks the Hitchman mine continued to run after the first of April, 1906, for a while, and then the men were called out on a strike; during the time they were mining coal after April 1st, 1906, and before they were called out on strike in April, 1906, witness thinks just engine coal was mined; and
445 after having worked in that modified way in mining engine coal they were called out eventually about April 16th—somewhere along about then; the men were not permitted to load even engine coal; witness worked at the Hitchman mine for about eight or nine years, something like that as near as he can recollect; witness was a member of the United Mine Workers at one time; is not a member of the United Mine Workers now; during the time that he was a member of the United Mine Workers some of his money was checked off and paid to the national organization; does not think he could give some general idea of about what proportion of his earnings was paid over to the United Mine Workers—that would depend somewhat on the assessments that might be made during the time and it would depend on how much witness made—so that it would be a variable amount; witness regarded what he had to pay as a right smart little bit in proportion to his wages for the benefits that he received; witness is a single man; during the time witness was on strike in 1906 he was entitled to some benefits—did not receive

any—does not know why he did not get any—was not offered any money—and witness added: "I was offered—I believe they called it a store check"; witness did not read the store order; he looked at it in the gentleman's hand and told him he did not want it; witness does not know how it read but the man who offered it to him said it was a store order, witness believes; the man who offered witness the store order did not state what it would accomplish for witness; witness understood that if he took that order he would be charged up with the receipt of that order as the receipt of so much money; that that order was to take the place of money; does not know what store it was on; was offered a store order just once; this store order was for three dollars; upon being asked why he did not want the store order witness said: "Well, I told him I could not pay my board with it and I did not want it"; witness was boarding and could not use a store order; as the result of that strike which was called or enforced by the union officials on or about April 16th, 1906, witness was idle at that time as nearly as he can recollect eight or nine weeks —to June 12th, 1906, witness thinks; at that time the mine resumed operation—not under the control of the United Mine Workers; witness helped to organize an independent union at the Hitchman mine; it was called The Independent Mine Workers of West Virginia, and had a charter from the state of West Virginia.

446 At this point the following questions were asked and answers given and proceedings had:

Q. I will show you and ask you to look at and identify if you can the charter of the Independent Mine Workers of West Virginia, as it is printed in the published report of the Secretary of State of the State of West Virginia March 4th, 1905, to March 1st, 1907, printed at Charleston in 1907, and after you read it I will ask you whether that is the organization that you have referred to?

(Witness here handed book and reads from the report referred to.)

A. Yes, sir; this is the same charter.

Mr. Gilchrist: This report of the Secretary of State, page 567, showing the organization of the Independent Mine Workers of West Virginia, I now offer in evidence to be marked Albert Jarrett's Exhibit No. 1, and I will read from the report of the Secretary of State as it is printed, as follows:

Independent Mine Workers of West Virginia.

(Resident.)

Charter issued June 25, 1906; charter continues perpetually. Principal office, Moundsville, West Virginia.

Purposes.

The object and purposes for which this corporation is formed are as follows:

First. To organize a district association to be known as "Inde-

pendent Mine Workers of West Virginia," to be composed of representatives and members of the several local unions.

Second. To unite the employees of the several coal mines in the counties of Hancock, Brooke, Ohio and Marshall by organizing local unions of the mine workers and employees of the several mines in the said counties in the state of West Virginia.

447 Third. To promote the interests of the members of the district association and the local unions, render aid and assistance to the members entitled to the same, and to procure employment for worthy and capable workmen.

Fourth. To enact all needful laws for the government of said association, but all laws, rules, regulations, and privileges affecting local unions, other than fixing the scale of prices for labor for mining coal, shall be controlled and determined by the local unions so affected thereby.

Fifth. This corporation, and local unions organized hereunder, shall have power to collect fees, dues and assessments from the members thereof, and to expend the same for the maintenance of said association, and local unions; the local unions organized hereunder to have authority to pay accident and death benefits by reason of accident to or death of a member thereof; or a member of his family, as may be provided in the by-laws of the local union of said association of which he is a member.

Sixth. The said district association shall have authority to establish from time to time, a scale of wages for labor and mining coal for the said local unions organized hereunder.

Capital stock authorized $50.00; par value shares $1.00; subscribed $50.00; paid in $5.00.

Stockholders.

The names, post office addresses, and the number of shares of stock subscribed for by each are as follows:

J. W. Guthrie	Moundsville, W. Va.	10 shares.
James Hickman	McMechen, W. Va.	10 shares.
Albert Jarrett	McMechen, W. Va.	10 shares.
Pete Bartoni	McMechen, W. Va.	10 shares.
B. C. Rowand	McMechen, W. Va.	10 shares.
Total number of shares		50

Q. Now, after the Hitchman mine resumed operation, June 12th, 1906, you continued working there under this independent organization, as I understand you?

A. Yes, sir.

Upon further direct examination the witness, Albert Jarrett, said that he remembers having seen a man by the name of Thomas

448 Hughes about the Hitchman mine, and that he saw Mr. Zelenka about the Hitchman mine before he saw Thomas Hughes about there; witness says Mr. Zelenka sits in the court room

here—he is the gentleman back there—"Yes, sir; that is him"; when Zelenka came to the mine at that time there was some gentleman with him, but witness does not know who it was; witness did not observe what, if anything, Zelenka did while he was there—saw him talk with some of the miners there but does not remember who they were or how many there were; these were miners of the Hitchman Company; witness does not remember just how long it was in the measure of days after Zelenka went away until he saw Hughes about the mine; witness never heard Zelenka talk, does not know whether he is a foreigner, thinks he never talked to him; when Hughes came around the Hitchman mine witness saw him talk to some of the miners there—was all ever witness saw him do; witness does not know that Hughes made any speeches or held any meetings—witness did not attend any meetings; during the first sixteen days, or from April 1st to April 16th, 1906, the only kind of coal that was mined at the Hitchman mine was what was termed engine coal, witness thinks that is right; engine coal is coal that is put into the bin, and from the bin it is loaded into engines which run under or near the bin; in a sense engine coal is emergency fuel—it has to be supplied regularly—that is right; that is the way the concession came about in allowing the engine coal to be mined but restricted to cut out entirely the commercial coal during the first sixteen days of April, 1906; after the union officials shut down the mine and refused to allow even engine coal to be loaded April 16th, 1906, the engines were supplied there, but witness does not know where they got the coal—he does know that the coal was supplied—it was brought in railroad cars and loaded into the bank cars and run up over the tipple; witness did not learn positively where that coal was from or any portion of it; witness did not make any investigation; no committee of miners made any investigation; witness was not a member of the committee; from the appearance of that coal witness thinks it was number eight vein, what he saw was number eight vein, it was not Fairmont coal that witness saw; around Wheeling number eight vein is mined over at Bridgeport on Wheeling Creek, at Elm Grove, and witness thinks across the river from McMechen; the character of the coal is distinct and can easily be determined by a person who is familiar with coal, witness thinks; witness does
449 not know where the mines of the Lorain Coal & Dock Company are, believes he does not know where any one of them is; does not know to whom the Wheeling Creek mine belongs; has heard of the Wheeling Creek mine; has heard of the Crescent mine across there too; if these are mines of the Lorain Coal & Dock Company witness does not know that to be a fact.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Albert Jarrett, was asked and answered questions as follows:

Q. Mr. Jarrett, at the time that these orders were given to you you understood that they were to secure groceries, provisions, or whatever you wanted out of the store?

A. No, sir; I did not understand it that way.
Q. What did you understand the order to be for?
A. I did not know what it was for.
Q. Suppose it had been for money? Why did you refuse it if you did not know what it was for?
A. Well, it did not look like money to me.
Q. Well, did you know it was not an order for money?
A. No; I did not.
Q. Didn't you say a moment ago that store orders would not pay your board bill?
A. Yes, sir.
Q. Then you must have understood that it was an order to the store for goods and not for money?
A. Well, that is what I thought it was; yes, sir.
Q. Well, you satisfied yourself that it was not for anything else before you refused it?
A. Yes, sir.
Q. The reason you refused it then was because you wanted money to pay your board with?
A. Yes, sir.
Q. And you could not use a store order which called for goods at a store with which to pay your board?
A. No, sir.
Q. Did you ask your landlady where you were boarding, or your landlord, or whoever you were boarding with, whether or not they would take that order?
A. No, sir; I did not.
Q. You did not stop to inquire?
A. No, sir; I did not.

(End of Cross Examination.)

450 JAMES JARRETT.

Direct examination:

My name is James Jarrett; age, thirty-six; residence, McMechen, West Virginia; occupation, miner; has been a miner about ten years; mainly worked at the Hitchman mine; has worked at the Hitchman mine about nine years, as near as witness remembers; is not a member of the United Mine Workers of America; was once a member of that organization, and while a member of that order witness worked at the Hitchman mine; witness recalls the occasion when the Hitchman mine was unionized in 1903; the immediate occasion for the agitation of the subject of organization in that mine amongst the men was due to the fact that there was an organizer there in the mine; the organizer was there as one of the miners; after the mine was organized that man did not continue working there; witness does not know what became of that man, supposes he left; witness recalls the 1906 strike and the circumstances surrounding the continuing of mining at the Hitchman mine between April 1st and April 16th, 1906.

The following questions were asked and answers given:

Q. Was that the result of any dealings between the management of the mine and the men, or of the men and the management of the mine and the union, or the men at the mine and the union officials? State as nearly as you can, in a general way, what you now recollect about it?

A. Well, as near as I recollect, the management of the mine asked the men to work until there was a scale made. He asked the miners to work and supply coal for the engine trade until there was a new scale made, and he agreed to pay—to go back to the first of April and pay whatever the new scale called for. That is, unless it was a reduction; and in case it was a reduction he would pay the men the present price he was paying then; and if there was an advance he would go back to the first of April and pay them the back money that the new scale called for.

Q. Well, was there any communication had with Mr. Green?

A. Yes, sir.

Q. I mean Mr. Green, one of the United Mine Workers' officials of Columbus?

A. Yes, sir.

Q. Do you know what he said to the men?

A. Well, we got a communication by telephone from Mr. Green, giving us permission to go ahead and load enough coal to supply the engines; or that was my understanding.

Q. And you worked, then, that way?

A. Yes, sir.

451 Q. Well, how did you come to strike?

A. We came to strike by the orders of Mr. Zelenka.

Q. Mr. Zelenka, the gentleman who sits here in the audience?

A. Yes, sir.

Q. Did you see him at the mine when the strike was ordered?

A. I did not see him at the mine but I saw him near there.

Q. What was he doing there?

A. Holding a meeting.

Q. Did you attend the meeting?

A. Well, when I went to the hall where the meeting was in session it was almost over with. I just got there in time to learn that he had ordered the men to quit work, and they quit.

Q. And you quit along with the balance of the men?

A. Yes, sir.

Q. What did Mr. Zelenka then do?

A. I don't know.

Q. Was he there the next day that you recall?

A. I do not recall that he was.

Upon further direct examination the witness, James Jarrett, said that during the time he worked at the Hitchman mine as a member of the United Mine Workers, and during the time that the mine was under the jurisdiction and control of that organization, some of his earnings at the mine were turned over to the national organization, or these officials; that in the general plan of the United Mine Workers, as witness understood it when he was a member, the purpose of

collecting money from the men by check-off and turning it into the organization, aside from the payment of the salaries of the officials was put into a general fund to pay miners' benefits when they were on a strike, and that those benefits are payable only when a strike is ordered by the officials, or where a strike has not been ordered, then where a strike having been brought about is approved by the officials; in a case where benefits are payable under that method witness would have been entitled to receive benefits, witness supposes, after two weeks; the Hitchman mine was idle from April 16th, 1906, to June 12th, 1906, when it started up without having anything to do with the United Mine Workers; witness got from the United Mine Workers during that period of time three dollars benefits; was not offered any more money than three dollars; was told there wasn't any more money to pay benefits with; witness at that time was a married man; witness always thought that the United Mine Workers organization was a right big body; it has locals throughout the United States in various localities; could not say as to the number; whether two or three hundred thousand men
452 belong to it, but there is a large number of members, up in the thousands. The witness was then asked and answered questions as follows:

Q. So they told you, then, that the money was all gone?

A. The man that paid me the three dollars' benefit told me that he could not pay any more benefits until there was some money collected in. As near as I recollect that is the statement he made to me.

Q. So the thing had gone dry?

A. It was a dry one.

Q. Did the defendant Rankin come down there during that time, that you recall?

A. Yes, sir.

Q. What, if anything, did he do when he was there, that you saw or know?

A. Well, he came down there and demanded the local's charter and also the money that was in the hands of the treasurer of the local.

Q. Did you hold any official position with the United Mine Workers' local at the Hitchman mine at that time?

A. Yes, sir.

Q. I mean during the time immediately following the strike of April 16th, 1906?

A. Yes, sir.

Q. Now, did Mr. Rankin come to see you?

A. Yes, sir.

Q. What position did you hold?

A. Financial secretary.

Q. You were the financial secretary of the local union of the United Mine Workers of America at the Hitchman mine?

A. Yes, sir.

Q. And Mr. Rankin came to see you at what time and under what circumstances, as nearly as you now recall?

Witness: Do you mean what time in the day?
Mr. Gilchrist: Yes.
A. Well, it was in the evening when I saw Mr. Rankin.
Q. Where did you see him?
A. I saw him just opposite the Hitchman mine there, on the pike.
Q. Did you approach him or did he approach you?
A. He approached me.
Q. Do you recall what he said?
A. Well, he stated his business down there and what he came after—the charter and the money that the local had there.
Q. What, if anything did you say to him?
A. I told him he could have the charter but he could not have the money.
Q. What did he say to that?
A. He said that the United Mine Workers had a perfect
453 right to take the money that the local had in their treasury at that time.
Q. Well, now, did the conversation stop just there?
A. He explained to me that if the money was turned over to the United Mine Workers that they would hold it, and if we decided to go back in the United Mine Workers at some future time that the money would be given back to that local; and I told him I thought we were capable of keeping our own money and that I did not think they were entitled to it,—that they did not pay it in there and, furthermore, that they were not entitled to it and I was not going to let him have it, and I didn't.
Q. Did he make any threats about what he would do if you did not turn over the money?
A. Well, no; not about the money; he didn't make any threats about it.
Q. Well, did he make any threats about anything else that you recall?
A. We had an argument and he got mad, but I do not know that he threatened anybody.
Q. In the summer of 1907 what was your business at the Hitchman mine? What were you employed at?
A. I was checkweighman.
Q. Do you remember of seeing William Green and Andrew Watkins and John Zelenka about the Hitchman mine in 1907?
A. I do not believe I remember seeing him there.
Q. Did you see a man by the name of Thomas Hughes about there?
A. Yes, sir.
Q. Was that in the fall of 1907?
A. Yes, sir; as nearly as I recollect that was about the time.
Q. Did you have any talk with him?
A. No, sir.
Q. Do you know what he was there for?
A. Yes, sir.
Q. What was it?
A. To get the Hitchman miners back into the organization o the United Mine Workers.

Q. To organize the mine?
A. Yes, sir.
Q. Do you know whether he made any addresses to the miners?
A. Yes, sir.
Q. Did you attend any of them?
A. No, sir.
Q. Did you see him address any of the men?
A. Yes, sir; I saw him start to address a crowd of them.
Q. Was that at one of his called meetings?
A. Yes, sir.
Q. What day of the week was it, as you remember now?
A. It was on a Sunday.
Q. Was it in the morning, in the afternoon or in the evening?
A. Well, it was in the evening or late in the afternoon.
Q. Did you stay to hear what he had to say?
A. No, sir.

454 Q. Did you see any notices of any kind posted up about the place during the time Thomas Hughes was about the Hitchman mine trying to organize it?

A. I do not remember that I did.
Q. If there were any you have forgotten it?
A. Yes, sir.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, James Jarrett, said that the Hitchman mine was first organized on a union basis in 1903—as nearly as witness recollects that was the time; there was a representative there from the United Mine Workers to install a local; he was not the one that witness spoke of in his direct examination as having gone away after the local was installed; the one that had gone away had been working in the mine; witness recalls who it was that represented the United Mine Workers' organization and came there to install the local, witness remembers him, it was John Stevenson; there was a joint convention or an annual convention of the miners at Indianapolis in January, 1906, every local in the country was supposed to be represented; witness's local was represented; witness was not one of the delegates; witness says that if he remembers correctly, his local's delegate in that convention on 1906 was James Conoway, there was just one of them; witness thinks that a majority of the miners in that convention declared for the scale of 1903—thinks that is what they demanded; as near as witness remembers the scale of 1903 was better for the miners than the scale that was adopted in 1904; there had been a reduction in 1904.

Witness was then asked and answered questions as follows:

Q. And that was called and named the equivalent scale, in 1904, and ran up to 1906? One was called the scale of 1903 and the other the equivalent scale, a name given to it by the miners?
A. I do not remember that.
Q. You do not recollect that?

A. No, sir.

Q. Well, anyhow, in 1906 the operators refused to accept the scale of 1903 in Ohio, or in District 6, of which your local was a part?—the scale of 1903?

A. Yes, sir; I believe so.

Q. And that was the reason of the strike?

A. Yes, sir.

Q. And pending the adoption of a scale the strike went on for some months in District 6, throughout Ohio, or do you know about that?

A. Well, I do not want to answer anything I am not positive about.

455 Q. What is your recollection on that subject, Mr. Jarrett?

A. As nearly as I recall, that was the contention.

Q. And if the operator signed the scale that the miners wanted restored, of 1903, he could operate; otherwise he could not. That is what I want to know.

A. Yes, sir.

Q. Now, then, the men were willing—that is, the operators—to go on with the equivalent scale, as I understand it, and if the scale of 1903 was restored they would make up for the difference. Is that right?

A. I believe that it is.

Q. Now, when the question of your going on with the scale known as the equivalent scale came up, you got permission from Mr. Green, one of the officers, to get out enough coal to supply the engines?

A. Yes sir.

Q. And you continued on that scale until about the 16th of April?

A. Yes, sir.

Q. Now, then, you say that about the 16th Mr. Zelenka came down?

A. Yes, sir.

Q. Did you talk to Zelenka or not?

A. No, sir; I did not.

Q. Did he talk any in your presence, that you recall?

A. Well, I do not remember that he did.

Q. There was a meeting held at which the miners attended after he came down?

A. Yes, sir.

Q. And you got there about the time the meeting closed?

A. Yes, sir.

Q. And of course you cannot say what occurred in the meeting?

A. I cannot.

Q. Now, coming down to the matter of collecting money: You paid dues of twenty-five cents a month while a member of the United Mine Workers to the national organization?

A. Yes, sir.

Q. And then your assessments under the regular rule were one-half of one per cent. of your earnings?

A. That is correct as near as I recollect.

Q. The twenty-five cents was to be devoted to the keeping up of the organization and the one-half of one per cent. was for the benefit fund, was it not, under the national organization?

A. Yes, sir; that is my understanding.

Q. And you consented, of course, to the company taking this money from you out of your wages after you became a member of the organization?

A. Yes, sir.

Q. And you were paid your money regularly by the company after the assessment and dues were deducted?

A. Yes, sir.

Q. Then you had a fund that you provided yourselves
456 which belonged to the local, known as an accident fund, didn't you?

A. It was known as a funeral fund, is what I knew it by.

Q. Then didn't you have one known as an accident fund, also, so that if a person got hurt he would get something—a sick benefit?

A. I do not think there was a fund for that purpose.

Q. You do not think there was anything outside of the funeral fund?

A. That was what this check-off was made for—for the funeral fund.

Q. That was a matter that the local instituted on its own account?

A. Yes, sir.

Q. And that, of course, was not against the rules and regulations of the national organization, was it?

A. No, sir.

Q. Nor against the constitution of District 6, or Sub-District 5?

A. No, sir.

Q. Now, you spoke about Rankin coming down there—Lee Rankin. Did you see him?

A. Yes, sir.

Q. Was this conversation that you had with Lee Rankin, which you have detailed in your examination in chief, after you had quit the United Mine Workers?

A. Yes, sir.

Q. That was probably when—in 1907?

A. Yes, sir. Well, no; I believe that was in 1906.

Q. If it was in 1906, about what time in 1906 would you say it was?

A. Well, I cannot give you the exact date of it but I can give you something near.

Q. Well, that will be sufficient.

A. It was sometime in the month of July.

Q. When he came there in July, 1906, you agreed to surrender the charter?

A. Yes, sir; so far as I was personally concerned myself.

Q. You were not averse to it?

A. No, sir.

Q. And the reason of that was that you had ceased to be a member of the United Mine Workers?

A. That was the reason.

Q. Now, he went away without the charter, did he, or did he get it?

A. I could not say.

Q. Had you or not yet organized the Independent organization when Lee Rankin came down?

A. We had not.

Q. How soon after he came did you organize it?

A. I do not know.

Q. According to the record which I have here, filed as "Albert Jarrett's Exhibit No. 1," you obtained your charter on June 25th, 1906. Is that right?

A. I do not know whether it is right or wrong.

457 Q. Please take the paper again and examine it.

(Witness is here handed the Secretary of State's report containing the charter as heretofore copied into this record.)

Witness: Take the paper again? I have never had the paper before.

Q. Well, just read that charter in that book. Is that the same charter that was obtained by J. W. Guthrie, James Hickman, Albert Jarrett and others, for the local at the Hitchman mine of which you are a member? Is that the same charter?

A. As near as I recollect it is.

Q. When did you see Thomas Hughes at the Hitchman mine? Was it after June 6th, 1906?

A. I cannot give you a definite answer as to that.

Q. What year was it in?

A. I am not certain as to that.

Q. Well, what do you think about it? What is your best recollection?

A. It was 1906 or 1907.

Q. I believe you stated that you did not talk with him?

A. That is what I stated.

Q. Did he talk any in your presence, or hearing, or not?

A. He never talked in my hearing.

Q. Then you did not hear him when he addressed the miners?

A. I did not.

Q. Of your own personal knowledge you do not know, then, what he came to the Hitchman mine for?

Witness: Of my own personal knowledge?

Mr. Hogg: Yes, if you neither talked with him nor heard him talk.

A. Well, of my personal knowledge I do not know; no.

Q. Now, was this the first time—the time of seeing Thomas Hughes—after you started to run non-union at the Hitchman—I mean that is the time that he addressed the miners and that you did not talk to him or hear him personally?

A. I do not know whether it was the first time I saw him or not; I saw him at different times; I do not remember whether that was the first time or the second.

Q. The first time where did you see him? Where was he with reference to the mine? Was it on this Sunday that you saw him?

A. No, sir; I saw him before that.

Q. Did you or did you not say there was any one with him when you saw him?

458 Witness: Any one with him?

Mr. Hogg: Yes; any person with him when you saw him?

A. Yes, sir; there were generally persons with him each time that I saw him, and I saw him on different occasions talking to the miners around there.

Q. Well, I mean any persons from a distance—strangers to the operators?

A. No, sir.

Q. Then he was really by himself when he came to the mine?

A. Yes, sir.

Q. I believe you are employed now at the Hitchman mine, are you?

A. Yes, sir.

Q. What work are you engaged at there now?

A. Checkweighman.

Q. How long have you been checkweighman there?

A. About one month.

Q. Are you still operating and holding meetings under the charter obtained from the Secretary of State of this State?

A. No, sir.

Q. How many times did your local meet under that charter?

A. I do not remember.

Q. When did you discontinue your meetings under that charter?

A. I could not say.

Q. As much as a year or so ago?

A. I do not remember.

Q. You have no recollection as to the time, then, when you quit?

A. I have not.

Q. Do you recollect who was the last president of your local there under the charter?

A. I do not believe that I do.

Q. Were you acquainted with J. W. Guthrie in 1906?

A. Yes, sir.

Q. Did you see him with Hughes or not?

A. I did not.

Q. Were you acquainted with James Hickman?

A. Yes, sir.

Q. Is Albert Jarrett a relative of yours?

A. Yes, sir.

Q. What relation is he to you?

A. He is a brother.

Q. Are you acquainted with Pete Bartoni?

A. Yes, sir.

Q. Or B. C. Rowand?

A. Yes, sir.

Q. Well, did you notice these men that I have mentioned assisting Hughes in any way, or going around with him?

A. I did not.

Q. Nor you did not?

A. No, sir; I did not.

(End of cross examination.)

459 J. C. McKINLEY (recalled).

Direct examination:

Upon direct examination the witness, J. C. McKinley, recalled, said that he has a copy of the present scale, has it here among some papers and can get it—witness produces paper; witness testified on a former day in this case; witness is handed a small book which has on the title page, "Official Mining Scale of Association of Pittsburg Vein Operators, for their mines in Belmont, Harrison and Jefferson counties, Ohio, and the United Mine Workers of America. Adopted May 19, 1910. In effect April 1, 1910, and ending March 31, 1912," and is asked to state what it is, if he knows, and where he got it, and replied that it is the official mining scale made by the Association of Pittsburg Vein Operators, of eastern Ohio, and the United Mine Workers, to govern the mining of coal in eastern Ohio, for the period of time from April 1, 1910, to March 31, 1912; witness got that book from the secretary of the Pittsburg Vein Operators' Association; that scale is now in use in mines in Sub-District 5 of District 6, United Mine Workers; the *coal* at the present time for run of mine under this scale is five-sevenths; five-sevenths is the correct proportion, not seven-ninths; the scale price for run of mine under this scale is five-sevenths of ninety-five cents, or 67.85; with relation to past time the same has been in operation since April 1, 1910; witness says the five-sevenths has been the proportion for a great many years; witness would say that it was in effect in 1903, and that that proportion of five-sevenths has been in effect continuously from 1903 down to the present time—it has been in effect continuously during that time in eastern Ohio—by that witness means in Sub-District 5 of District 6, and that includes under the United Mine Workers' organization the northern Panhandle of West Virginia; witness says that five-sevenths has been the fraction in application by the United Mine Workers since 1903, and before; since 1902.

At this point the following took place:

Mr. Gilchrist: I now offer in evidence this official mining scale for the two years indicated on its face—April 1, 1910, to March 31, 1912,—to be marked "McKinley's Exhibit No. 9."

Mr. Hogg: We object to it for reasons to be given upon the final hearing.

460 Upon further direct examination the witness, McKinley, recalled, said that his business is that of a coal operator; has been engaged in the business since 1899; has resided mostly during that time from 1899 to the present time in Wheeling, West Virginia.

At this point witness was asked the following question: "Where, mostly, have you been interested in mining operations?" and replied: "Our first mining operations were on the West Virginia side, in the northern Panhandle, but our main operations were in eastern Ohio, in Belmont county."

Upon further direct examination the witness, McKinley, recalled, said that he was interested in three mines in the northern Panhandle of West Virginia, one of them the Wheeling Steam Coal Company was located in East Wheeling and was a small mine practically in

the city limits—this mine was worked out and abandoned in about 1905 or 1907, witness thinks; another of the three mines was the Mound Coal Company located at Moundsville, West Virginia, on the Baltimore & Ohio Railroad on a switch from the B. & O. main line —which mine witness is still operating—it is not being run under the jurisdiction and control of the United Mine Workers of America; it has not been run under their jurisdiction and control since about 1908, witness believes; the third of the three mines in the Panhandle district that witness was connected with is the Richland mine which is located just north of Wheeling about three miles—witness is still operating that mine; it is not operated under the jurisdiction and control of the United Mine Workers of America; it has not been operated under that organization since 1906; in Belmont county, Ohio, witness was interested in the Franklin, of the Raven Coal Company; the Delora mine and the Eleanor mine, of the Highland Coal Company; and the Kelley mine of the Shannon Coal Company; the Franklin mine is seven miles west of Bellaire, Ohio, on the main line division of the Baltimore & Ohio Railroad; the Delora mine is nine miles west of Bellaire on the main line division of the Baltimore & Ohio Railroad; the Eleanor mine is ten miles west of Bellaire on the same road, and the Kelley mine is about twelve miles north of Martins Ferry on the Pennsylvania line; the first three named mines in Ohio are on the main line of the Baltimore & Ohio Railroad west of Bellaire and within a distance of ten or twelve miles, and the Kelley mine is north of Martins Ferry in Jefferson county, Ohio; so witness was interested in one mine in Jefferson county, Ohio, and in three mines in Belmont county, Ohio; witness cannot say when the Franklin mine was
461 opened; he and those interested with him purchased it the latter part of the year 1905; the Delora mine was opened about 1903, and witness and those associated with him purchased it about the middle of 1905; the Eleanor mine was started in 1903 or 1904, and we continued operation in 1907, witness believes; witness does not know when the Kelley mine was opened; he and those associated with him purchased it in 1907; so between the years 1905 and 1907—both years, inclusive—witness acquired these four mines or interests in these four mines, which were already developed mines either in whole or in part; no one of these four was a mine which witness opened up from its inception.

At this point the following questions were asked, answers given and proceeding had:

Q. As to the Franklin mine; how did you operate that mine? Was it done under the jurisdiction and control of the United Mine Workers?

A. It was; decidedly so.

Mr. Hogg: We object to the operation of outside mines by the Mine Workers. It has nothing to do with this case. If you go into that, they can show that thousands are doing it.

The Court: I cannot yet quite understand the connection with the theory of the plaintiff, but I will allow the evidence to go in sub-

ject to being ruled out if proper connection is not shown. I will admit the evidence subject to being ruled out hereafter.

(Exception by counsel for served defendants.)

Mr. Gilchrist:

Q. Now, going to the Delora mine: Was that run under the jurisdiction and control of that same organization?

A. It was run under the jurisdiction of the United Mine Workers.

Q. Now, the Kelley mine: How was that run?

A. The same.

Q. Are you interested now in the Franklin mine?

A. We own the property.

Q. Do you now operate it?

A. No, sir; we have leased it.

Q. Are you now interested in the Delora mine?

A. No, sir; we have sold that property.

Q. Are you now interested in the Eleanor mine?

A. No, sir; we have sold that also.

462 Q. Are you now interested in the Kelley mine?

A. We own the property but it is being operated under lease.

Q. With the interests such as you have described you had in these different mines, did you have much occasion to become acquainted with these men who were the officers in active charge of the United Mine Workers of America?

Mr. Hogg: What do you mean by "these officers?"—these defendants?

Mr. Gilchrist: I will make it the defendants.

Mr. Hogg: Well, I object to that question.

The Court: It will depend upon whether or not the question leads up to further disclosure that these men were defendants, or any of them. I will overrule the objection and the witness can answer the question.

(Exception by counsel for served defendants.)

A. I did.

Mr. Gilchrist:

Q. Who were the men in charge at the time you were speaking of, that you became acquainted with?

A. From Mr. John Mitchell, national president, clear down to the local secretaries at the mine.

Q. During the course of your dealings with the officers of the United Mine Workers, you dealt with some who are not now in office as officers of the United Mine Workers, I suppose, didn't you?

A. I did; yes, sir.

Q. Can you name some of those?

A. Mr. John Mitchell, of course; Mr. T. L. Lewis is still in office and will be until the first of April; and I think all of the others are still connected with the organization, that I can think of at the present time at least.

Q. Did you ever have any dealings with T. L. Lewis, the defendant?

A. Yes, sir.
Q. With William Green?
A. Yes, sir; frequently.
Q. With Andrew Watkins?
A. Yes, sir.
Q. With John Zelenka?
A. Yes, sir.
Q. You know him, do you?
A. Very well.
Q. Is he here?
A. He is, indeed.
Q. With Mr. Rankin, the defendant?
A. Yes, sir.
Q. With Mr. Sullivan?
A. Yes, sir.

463 Q. You know him, do you?
A. He was the first United Mine Worker officer that we ever dealt with.
Q. He is here, is he?
A. Yes, sir.
Q. Do you know George W. Savage?
A. Yes, sir.
Q. How long, approximately, do you think you have known and dealt with the defendants, Lewis, Green, Sullivan, Watkins, Rankin, Savage and Zelenka?
A. I have known Mr. Sullivan about ten or eleven years; Mr. Lewis and Mitchell and Green and Watkins and some of the others mentioned I have known from five to eight years.
Q. And as an operator of coal mines in the eastern Ohio district, and in the Panhandle District of West Virginia—all known as being within Sub-District 5 of District 6—have you had off and on with what frequency, business dealings with these men I have last asked you about?
A. Beginning with 1901 we have had, you might say, continuous dealings with these defendants, as we were operating union mines, and coming in contact with them from time to time.
Q. The United Mine Workers of America is a body national in character, is it not?
A. It is.
Q. Can you briefly tell me the system of its organization, subdivisions, &c.?
A. It has a national organization which covers all of the United States and a part of Canada. I believe they have at times used the term "International Organization." This organization is then subdivided into a large number of districts. A district sometimes comprises a state and sometimes it comprises a part of a state. The national organization has its president, vice-president, secretary and executive board, and the district organization has very much the same organization, and the district organization is further sub-divided into sub-district organizations, each with their various corps of officers, and the sub-district organization is divided into "locals"—

one mine to a local, or sometimes, in case of small mines, two will join together and form one local. The locals have their president, their secretary and their executive committee, or mine committee, as they term it. Each one of these bodies, from the international down to the local, has the power to levy assessments.

Q. And the up-keep of the national organization is managed how?

A. That is by assessments on the members.

Q. And by dues?

A. Dues and assessments. By assessments I meant dues and assessments.

Q. Now, in the method of operation of the organizations, do they have conventions?

A. They do.

464 Q. National conventions?

A. National conventions; yes, sir.

Q. District conventions?

A. Yes, sir.

Q. Sub-District conventions?

A. Yes, sir.

Q. And at these national conventions the question of a scale of wages is discussed, is it?

A. It is.

Q. And so far as the United Mine Workers are concerned, as a national body, at such national conventions the scale is fixed?

A. Yes, sir. A little explanation, possibly, is due here; a scale is fixed for three or four states, which is used as the base for the entire national organization.

Q. Now, the coal mining industry is an extensive one in the United States, is it?

A. One or the largest.

Q. Are you acquainted with the general distribution of the bituminous coal fields throughout the United States?

A. Yes, sir.

Q. Generally speaking where are those veins of coal located?

A. In central Pennsylvania, western Pennsylvania, almost all over West Virginia, in the eastern half of Ohio, in Indiana, Illinois, Michigan, Iowa, Arkansas, Kansas, and some in Texas and Colorado and some in Utah.

Q. Now, in these parts of the United States where the bituminous coal is found, is it mined as a general proposition?

A. Yes, sir.

Q. To a greater or less extent?

A. To a greater or less extent; yes, sir.

Q. And all these districts which you have spoken of, of the United Mine Workers, are districts that coincide, to a certain extent, either with the state lines or with some geographical or geological boundary?

A. Yes, sir.

Q. And the sub-districts are then within the boundary of the district?

A. Yes, sir.

Q. Do you know about the magnitude of the United Mine Workers as a body, throughout the United States?

A. Yes, sir.

Q. About what is its membership?

A. About 300,000.

Q. Do you know in a general way where the bulk of the membership is?

A. Yes, sir.

Q. Please state where it is, as you now recall?

A. The majority of their membership is in Western Pennsylvania, Ohio, Indiana and Illinois, and Iowa has quite a large membership.

Q. How about the southern states, in the United States, such as West Virginia and Alabama?

A. Well, I forgot Alabama in mentioning the states which
465 have large coal production. West Virginia and Alabama are the only two states with any very large production of coal which are working non-union.

Q. By "non-union" what do you mean?

A. I mean that they are not under the jurisdiction of the United Mine Workers of America, or an affiliated organization.

Q. The term "union" has been used a great deal and is a matter of common knowledge to every body connected with the coal business. That term is intended to convey what idea, so far as you understand it?

A. The term "union" when applied to mining, means the United Mine Workers, and a union mine is a mine that is under their jurisdiction and so recognized.

Q. And the contrary is to be understood as to the meaning of non-union, is it?

A. Non-union or open shop; it is termed both ways.

Q. So that the term "union" is in a sense an arrogation by the United Mine Workers as descriptive of their organization, and the word "non-union" is a term in a sense descriptive of contempt on their part as applied to a man who is not connected with their organization. Is that the accepted term and meaning of these two words?

A. Yes, sir; they term a union mine as one over which they have absolute control, and a non-union mine as one which is worked open shop, or in which the United Mine Workers are not recognized.

Q. The United Mine Workers, as a body, is a part of the American Federation of Labor, is it not?

A. I believe so; yes, sir.

Q. And the largest single labor organization connected with the American Federation of Labor, in voting power?

A. I cannot say as to that.

Q. It may be so?

A. It may be so.

Q. In the sections of country throughout the United States where coal is mined there are operators who operate union and other operators who operate non-union. Is that so?

A. Yes, sir.

Q. What is the general situation in regard to the mines that are operated in the states of Ohio, Indiana, Illinois and the major portion of the coal producing area of Pennsylvania, as to being run under the jurisdiction and control of the United Mine Workers of America?

A. It is the boast of the United Mine Workers—and I almost believe it to be a fact—that the entire coal industry in the states of Ohio, Indiana and Illinois, is operated closed shop, and unless a man belongs to the United Mine Workers he will not hold a job in
466 or about those mines. The situation in Pennsylvania is somewhat different, as only a part of Pennsylvania is under the jurisdiction of the United Mine Workers.

Q. Are you in position to answer as to Iowa?

A. The greater part of Iowa, if not all, is under the jurisdiction of the United Mine Workers.

Q. And Kansas?

A. The same is true in Kansas.

Q. And Arkansas.

A. Yes, sir.

Q. And Texas?

A. I cannot say as to Texas.

Q. How about Kentucky?

A. Kentucky is divided.

Q. And Tennessee?

A. Tennessee is divided.

Q. And West Virginia?

A. West Virginia is almost entirely non-union with the exception of one small district.

Q. Where?

A. The Kanawha field.

Q. Alabama?

A. Alabama is, I believe, entirely non-union.

Q. Has it at any time been union?

A. A great part of it was union at one time.

Q. About how long ago?

A. About three or four years ago.

Q. Now, in these sections of the United States where operations are conducted union, what is the method of dealing between the operators and the United Mine Workers? You have stated that the United Mine Workers in a state or in a part of a state are designated as a district of the United Mine Workers, and then sub-divided into sub-districts; they therefore are in position to deal as a body; is there any parallel condition or corresponding condition in those states, where the United Mine Workers control operations, between or amongst the operators themselves?

A. There is no national organization of operators. There are some more or less effective organizations in some states, and in some sub-districts there are effective working organizations of operators.

Q. On this subject what is the condition in Ohio?

A. There is a kind of state organization of operators which does not amount to much. The Hocking Valley operators, I believe, have more or less of an organization, but the eastern Ohio operators—

operating in the Pittsburg seam of eastern Ohio—have a very fine organization.

Q. What is the organization called?

A. The Pittsburg Vein Operators Association of Eastern Ohio, I believe is the full title.

Q. You have mentioned the Pittsburg vein or No. 8. What, in a general way, do you mean by that?

A. That is that part of the great Pittsburg vein of coal that
467 extends into and overlies three or four counties, comprising the southeastern part of Ohio. In Ohio it is known in geological circles as the No. 8 vein.

Q. Does that vein of coal extend into any part of the northern Panhandle of West Virginia?

A. Yes, sir.

Q. Is that the vein of coal that is generally mined in the northern Panhandle of West Virginia?

A. It is.

Q. Is there any other vein of coal mined there extensively, to your knowledge?

A. Not extensively. There are one or two small mines. There is one at New Cumberland, West Virginia, in No. 7 vein, and there is one mine that is being operated in the No. 6 vein in the northern Panhandle of West Virginia.

Q. And where is that?

A. That is opposite Steubenville.

Q. The vein of coal, then, that is operated at the Richland mine, at the Mound mine, at the Glendale mine and at the Hitchman mine is the same vein of coal that is operated in eastern Ohio?

A. Yes, sir.

Q. What have you to say with respect to the operating conditions of those mines on the two sides of the river in the same vein?

A. They are practically the same. Both have practically the same physical conditions to contend with on both sides of the river.

Q. Do you know whether it is due to the existence of that identity of vein, and conditions in the coal vein, that the northern Panhandle of West Virginia figures under the United Mine Workers of America as a part of Sub-District 5 of District 6, which is geographically otherwise confined to the state of Ohio?

A. Sub-District 5 covers the northern Panhandle of West Virginia because the mining conditions, they say, are identical with those of eastern Ohio.

Q. During the time that you were operating mines in eastern Ohio did you or did you not have any connection with the Pittsburg Vein Operators Association?

A. I was a member of that association for many years.

Q. Were you ever an officer of that association?

A. Yes, sir; I was vice-president of that association.

Q. For how long?

A. Oh, four or five years; I do not remember exactly but it was quite a number of years.

Q. Did that organization have an office in Wheeling?
A. It did.
Q. Where?
A. In the Schmulbach building—in the same building in which my office is located.
468 Q. And on the same floor?
A. On the same floor, part of the time.
Q. And near by it, or not?
A. Right around the corner.
Q. You mean around the hallway?
A. Yes, sir; right around the hallway.
Q. The Schmulbach building is an office building is it?
A. It is an office building in Wheeling, West Virginia.
Q. Is it a large building?
A. Twelve stories.

Q. You have stated that these national conventions of the United Mine Workers, so far as they could do so, determined upon a scale of wages to be paid in mining, throughout the United States, based upon a scale which they would fix as binding in a certain locality, and which would serve as a basis, or gauge, to govern the others. Now, you have also stated that there were in different sections of the country where coal is mined under the jurisdiction of the United Mine Workers, operators' associations. Did these operators' associations, or did they and the individual operators have conventions or not?

A. The method of procedure was this: The United Mine Workers would call a national convention, usually to meet at Indianapolis. They would remain in session sometimes two or three weeks; but usually about two weeks after their call, a call was issued for the operators of western Pennsylvania, Ohio, Indiana and Illinois to meet at the same place that the miners were meeting and at a date usually about between ten and fifteen days after the date which the miners had set for their convention, and the operators—each individual operator in this section—was invited to attend this conference. They usually went there—probably five or six hundred operators; sometimes that many and sometimes only three or four hundred—and each state would form—if they didn't have a state organization—they would form a temporary organization and they would meet separately and they would meet together and then they would meet jointly with the United Mine Workers in negotiating what they termed a scale of wages.

Q. Did you ever attend any of these conventions?
A. A great many of them, sir.

Q. Conventions of the operators alone and then conventions where the operators in convention were meeting with the United Mine Workers nationally in convention?

A. Yes, sir, both; and also on one or two occasions I have attended the miners' national convention as a visitor. As their conventions are open, I have gone in and listened to their conventions held by themselves.

469 Q. Do you now recall what national conventions of the United Mine Workers' organization you attended where you were in attendance as a coal operator?

A. I have attended each convention as an operator, with possibly one exception, since 1902.

Mr. Hogg:

Q. Do you mean each one of the United Mine Workers' conventions?

A. No, sir; each one of the joint conventions and the conventions of operators.

Mr. Gilchrist:

Q. What has been your experience with respect to the conventions held in districts or sub-districts between the operators—either in convention as an association or as individuals—and the United Mine Workers in convention as districts or in convention as sub-districts?

A. For several years I have attended all of the sub-district conventions which formulated the scale of wages to govern in the Pittsburg vein of eastern Ohio.

Q. As a result of your observation and experience as an operator, in attendance upon these joint conventions—national, district, or sub-district—have or have you not acquired a knowledge of the principles of the Uninted Mine Workers and their methods and practices?

A. Through attending these conventions and my acquaintance with the officials I have a pretty thorough knowledge of this organization and its methods.

Q. It is a matter of common knowledge, with which I suppose you are thoroughly familiar, that there are what are termed "unions" or "labor organizations" in the various craft?

A. Yes, sir; I know that to be the case.

Q. I believe you said that you had been in the coal operating business since 1898 or 1899?

A. Since 1899, I believe.

Q. About a mine there are a good many different kinds of men employed. I mean men who belong, technically, to different crafts, —at least to more than one?

A. Yes, sir.

Q. For instance, there are carpenters, are there, about a mine?

A. Yes, sir.

Q. They would belong to the carpenters' union would they, naturally?

A. Ordinarily yes.

Q. And there would be electricians, possibly?

A. Yes, sir.

Q. And machinists?

A. Yes, sir.

Q. And engineers?

A. Yes, sir.

Q. And firemen?

A. Yes, sir.

470 Q. Do you know of any others?

A. Blacksmiths.

Q. Now, those men belonging to those trades, are they or are they not required to sever their connection with the particular trades' union they belong to, indicative of their employment, and if they are employed about a mine where the United Mine Workers control it, are they permitted to remain in their own organization or are they required to join the United Mine Workers?

A. I do not think they are allowed to stay in their own organization; but the carpenters and blacksmiths, at least, are compelled to join the United Mine Workers' association. The United Mine Workers have claimed the right of jurisdiction over the firemen and engineers and electricians; but I believe the operators have—in fact, I know that the operators have retained control of the firemen and engineers, but I do not know as to the electricians, and could not say as to them.

Q. What is the condition on that subject in Sub-District 5 of District 6?

A. Up until September 1st, 1903, the United Mine Workers, although they had claimed it, were never given any jurisdiction over the firemen and engineers; but during the fall of 1903 the question was raised vigorously by the United Mine Workers. The late Senator Hanna was in politics at that time, and quite influential in this coal district, and he got the operators to concede the control of the firemen and engineers, to a certain extent, to the United Mine Workers. After Senator Hanna's death the operators refused to allow the Mine Workers control of the firemen and engineers and put the status of those two classes of labor back where it was before September 1st, 1903.

Q. As a result of your observations and experience in these conventions, and hearing the discussions pro and con between the persons attending them as delegates and participating in the conventions, do you know why the United Mine Workers aim to make a man leave his own union, indicative of his employment, and join the United Mine Workers, which is a body that otherwise is not indicative of his employment?

A. Their contention is that they must control all men employed in and about the mines.

Q. In the "Plaintiff's Documentary Exhibit No. 3" on page 10, section 3, of article 1, I find this language: "All men are eligible and must be members of the U. M. W. of A. who work in and around the mines." Is that your understanding of the purpose of that organization as arrived at from your experience in these conventions, supported by your observations and the constitutional provi-

471 sions I have just shown you?

A. Yes, sir; that is their aim and they strive for that continually.

Q. Are they a conciliatory or an aggressive body in the carrying out of their purposes as indicated by that constitutional provision?

A. They are certainly very aggressive and perhaps, at times, conciliatory, if by conciliatory you mean persuasive.

Q. If they are an aggressive body how are their doctrines propagated, in the main, and how are their operations extended over territory otherwise not subject to their jurisdiction and control?

A. They have several methods of extending their jurisdiction.

Q. What are they?

A. I think probably their first method is to ask the operator to compel his men to join the union. If the employer refuses, they go about organizing his mine in several ways. One way is to go openly to the men and ask them to join the union. If this is not practicable, or if the operator refuses to allow persons to go upon the ground, they will send what they term "organizers" to work secretly with the men. These men may go singly or they may go in numbers; and these organizers may go there and even work for the operator as employes. Some of their officials have told me—(Interrupted).

Mr. Hogg: Stop a moment: If it was one of the defendants, we would like to know it so we can see whether this is subject to exception or not. Don't give declarations unless it was from one of the defendants.

The Court: I do not know about that. They are speaking now, generally, of the operations of this association as an association, to show its methods and plans. This evidence may apply to another theory of the case that will be admissible generally to show these methods, and that knowledge might come from any of their officials or heads. Mr. McKinley may state to whom he refers.

Mr. Hogg: How does he know or we know that they are members of the association unless we have the names of these men to show? We are certainly not trying this case in the dark? They may not be members. He may think they are members and may testify in the utmost good faith, but they may not be. They may be actually enemies of the organization and pretending that they are
472 friendly, and he ought not to be allowed to speak of them unless he remembers them.

The Court: If he remembers them he can name them.

Witness (continuing): I had a very close acquaintanceship with Mr. Patrick McBryde, who was at one time their national secretary-treasurer, or something of that kind, I believe; and I think he was in charge of the organization of West Virginia at one time, or at least he did a great deal of work down here. He explained their methods to me—of course, as an individual; it was just between us. I afterwards tested this out by asking other United Mine Workers about it—just incidentally made use of my knowledge—and I found the information he had given me was true and correct. He told me of these methods of organizing; and of course the question of their sending in organizers is a matter of common knowledge with every operator, and we know that they spend thousands of dollars each year for that purpose; but the method of organizing that they tried in West Virginia and which they claimed was the only method that would ever succeed, was the blocks of four system.

That is, they have an organizer to go in and get four men to join the organization. He would be the only one who would know those four, and those four would only know four others—each one of the four. They work the endless chain system on it. And he said that was the only way West Virginia ever could be organized, because then one man can never give away to the company more than four others, and thereby have them discharged. That and the sending in of organizers to work in a mine, I think are their principal methods—that is, to send organizers into a mine to get employment there and gradually work up dissension amongst the rest of the employes.

Q. You have spoken of the method of going to the operator first; then, in case of declination, of sending an organizer to work openly, and then, on a failure of that, of sending in an organizer, or more than one, to work in the mine unknown to the operator. If men were sent into the mine to work under this last method is it your understanding that they would be, at the same time, in the pay of the organization?

A. Yes, sir.

Q. So they would be in effect paid spies upon the operator?

A. They would; and not only spies but active agents of the organization.

Q. Now, supposing all of these methods should have been tried, or supposing none of them have been tried, did they have a
473 method of sending in any number of men to work who were members of their oganization and enough to leaven the whole lot?

A. They did; and not only that, but they would send these men in the mine to work and neither the other employes or the employer would know that they were direct agents of the United Mine Workers. And also there is another method that they use at times, and that is, getting a great many men together, and getting a band, and going to a mine and compelling them to join the organization.

Q. They get what?

A. A band of music and march and countermarch.

Q. Of course, that last method you have spoken of would be one that the operator would soon be apprised of?

A. Yes, sir; that is rather open warfare.

Q. The method of sending in a number of men to work secretly is more of an under-hand or under-ground method, is it?

A. Yes, sir.

Q. Now, as a general proposition, supposing the organization to have adopted the method you described just prior to speaking of the band, what is usually the operator's first intimation of the situation?

A. When there is enough of these men to close down a mine, or cripple it so that the operation is practically suspended, is his first intimation, as a general thing, that this work has been going on.

Q. That is, he is told he must unionize or if he don't he will be shut down?

A. Either that or sometimes he is shut down before he is told; but usually he is told first that he must unionize, and then if he does not, they shut him down.

Q. This other method would be very unfair warfare, would it not—to shut a man down without telling him?

A. Well, some of us don't think it is fair to shut him down after telling him.

Q. It would be unfair in a fair organization, would it not?

A. Yes, sir; I think it would.

Q. And a man who don't work under the jurisdiction and control of the United Mine Workers is unfair, is he not?

A. Yes, sir; from their standpoint.

Q. That is, that is their claim?

A. That is their claim; yes, sir.

Q. So that a union man is a fair man and non-union man is an unfair man?

A. Either non-union or open shop is looked upon as unfair by the United Mine Workers.

The Court:

Q. What do you mean by that, Mr. McKinley? Unfair how?

A. Well, "unfair" is just putting in a polite word that
474 they call a "scab" or "black sheep."

Q. Do they deny a man's right to labor?

A. They deny his right to labor independently of the United Mine Workers for they cannot control him.

Q. Is it any mark of disgrace in their eye, not to belong to the organization?

A. Yes, sir; any man that is connected with the mining industry they feel that he is rather disgraced if he don't belong to the United Mine Workers.

Q. Do they deny him the right to work at a mine where they have a union?

A. They do; and not only that, but further, I believe that their constitution, or at least their by-laws, provide that if a man comes into West Virginia, say from Ohio and works, and ever goes back into Ohio, he is to be fined twenty-five or fifty dollars.

Q. For what?

A. For working in West Virginia. Before he can go back to work in Ohio, or work in Ohio, he is fined; and not only that, but they expect the operator to take that fine off the man before they let him work.

Q. Take it out of his wages?

A. Take it out of his wages; yes, sir.

Mr. Gilchrist:

Q. Along this line of thought, do the United Mine Workers, of your knowledge, have a card system?

A. They have.

Q. I wish you would explain that.

A. When a man joins the United Mine Workers he is given a card—a membership card—that has on it a number and his name and address, where he joined and some other details. That card is not transferable and revokable. If a man is known to disobey the

rules of the organization they revoke that card. In many instances I have seen—or in some instances, rather, I have seen in their official journal an advertisement stating that so and so, holding card — and so, and I think in one or two instances—I will not be certain how many—that he worked in Alabama or he has worked in West Virginia; is not a good union man; look out for him. That is published broadcast over the states and the journal is supposed to be taken by all the United Mine Workers in the organization. That is one system of their cards. Another thing is that if their cards are issued, and in good standing, and a mine goes on a strike, I have known them to endorse on those cards, "Please accept this man as this mine is out on a strike," and some such notation as this: "Send him to another mine where the United Mine Workers' secretary will assist in getting him a job." If you want further information about these cards, I will say that we had an occa-
475 sion come up one time where the charter was taken away from the men because they violated the national, state and district officials' orders, and before that charter was taken away, the secretary called in a lot of the fellows and says: "Here, let me endorse your cards before the charter goes away as they are going to make you non-union because you disobeyed their orders. Now, I will fix your card up so you can get a position any place." I saw some of these cards fixed up that way.

The Court:

Q. Right in that connection Mr. Gilchrist read from the constitution that all men were eligible?

A. Yes, sir.

Q. Do they reserve the right to expel their membership and then boycott them in the way you speak of?

A. Yes, sir; they do, indeed; and they have a system of requiring initiation which acts as a fine, as well as levying direct fines themselves.

Mr. Gilchrist:

Q. As a result of this system of the cards is it the aim, as you understand it, of the organization to have absolute track of every man who joins the organization?

A. Yes, sir.

Q. Do you know whether, in actual practice, the organization purports to be able to supply labor if an operator contracts with the union officials to run his mine union?

A. No, sir; they do not.

Q. Do they purport to control the men that the operator may employ?

A. Yes, sir.

Q. So that if an operator were not running under the United Mine Workers of America, the practical result of unionizing his mine would be that his men would become subject to the control and direction of the United — Workers upon signing the scale with the union, and he would, through the check-off, be obliged to put up

money in the hands of these same officials to keep the national organization going?

A. The effect would be that after the mine was organized no man could go to work for him unless he produced a card issued by the United Mine Workers, or paid or agreed to pay their initiation fee of ten dollars, or whatever it might be. That works an extra hardship. At times the local union will make a rule arbitrarily stating that no man can go into a mine unless he has a card or pays ten dollars initiation in advance. I have seen three hundred men stop work because twenty new men did not have two hundred
476 dollars to put up before they could enter the mine.

The Court:

Q. You say they are a secret organization. Do they charge an initiation fee?

A. Yes, sir; and the company must take it upon themselves to guarantee this ten dollars or the mine cannot resume work, and they will send these men away.

Q. Suppose a man does not work out the ten dollars?

A. Then the company loses it. I have known that to be the case in our own practical experience.

Q. On signing the scale with the United Mine Workers' officials, I understand you, then, that the net result is not that the officials guarantee the employer labor, but he has still to gather his labor from the labor market, restricted, however, to those who have union cards.

A. Union cards or willing to pay the initiation fee to join the United Mine Workers.

Q. That is, that they must either have union cards or they must be willing to deposit ten dollars and join the union?

A. Ten dollars; and I believe in some cases they have made that as high as fifty dollars.

Q. Is that arbitrarily done, or how?

A. It is done by the conventions and governing bodies of the organization.

Q. Do the United Mine Workers as an organization exercise any sort of control over the operators of a mine where the mine is run what is called "union"?

A. They do, indeed.

Q. How?

A. If a man is discharged and he has the friendship which amounts to the backing of his "local," I might say, practically without any fear of contradiction, that it is an impossibility to discharge that man for practically any offense that he may commit.

Q. Suppose he be worthless and not half a man, do they insist on retaining him?

A. Certainly, sir, certainly. He is a man and they insist on it. I will give you an instance of this, if the court please, from our own personal experience, and I give it because it was backed up by the entire state officials of the United Mine Workers. Two men were discharged for a flagrant violation of the mine law, endangering their own lives and the lives of the men in the mine. There was abso-

lutely no question about it. The next day or the day following the officials of the organization came to the mine and said that those men must be re-instated; that they should not be discharged. They were told that the men had been warned time after time that they must obey the law and they paid absolutely no attention to it
477 whatever. The organization shut the mine down, throwing between two and three hundred men idle.

The Court:

Q. On account of the discharge of those men?

A. On account of the discharge of those two men—discharged for violating the law. The company then, in order to put themselves right, went before a justice of the peace and had the men arrested for violating the law. The justice bound them over to the common pleas court, I believe it is called, in Ohio. The local organization, on the instruction of the state president, went on their bond for three hundred dollars apiece, and the mine remained idle because those two men were not allowed to resume work.

Q. You say the mine was allowed to remain idle. Do you mean they called all their union men out of the mine?

A. They did; indeed.

Q. And would not let them work?

A. And would not let them work.

Q. Because of the discharge of those two men who were breaking the law?

A. Yes, sir. The operators' association then took it up and appointed a committee and the miners appointed a committee to investigate it. The case was submitted to those six men and without a shadow of doubt the men were found guilty. The operator's representatives signed the report but the miners' representatives said, "No; we won't sign it, because it will be used against them at the trial." The mine continued idle and finally, after three weeks of idleness, or such a matter—in a very busy season when we needed the coal—a compromise was effected whereby the men—we were to use our influence and have the jail sentence remitted and the men were to go back to work. In other words, we surrendered to the organization and asked the court to remit the jail sentence, and they pleaded guilty and the miners' organization paid all the costs in the case before the court, and we had to take the men back.

Mr. Gilchirst:

Q. At what mine was that?

A. That was at the Delora mine of the Highland Coal Company.

Q. And that mine is situated in Belmont county, Ohio, in a section where you say the United Mine Workers are supreme in their authority?

A. Yes, sir; they are.

Q. And they proved supreme in that instance, did they?

A. They did.

Q. You mentioned that they regulated the question of working overtime. What regulation have they on that subject?

78 A. They will not allow a man to work overtime, they state, except in case of emergency, but they are the judge and the ury. If a man works overtime, whereby he may save the company oney or make the company money—(interrupted).

The Court:

Q. What do you mean by "overtime?" Doesn't a man have the ght to work as long as he wants to?

A. No, sir; only eight hours per day.

Q. That is fixed by the statute in Ohio?

A. No, sir; by the United Mine Workers.

Q. What right have they to fix it?

A. The right of might; and if a man works more than forty-eight ours a week he must lay off, although he may be a man in a responsible position, such as handling coal, handling out coal with a otor and a great many other men depending upon his labor; yet f he has worked forty-eight hours two hours before quitting time on aturday, he must stop; he cannot continue those other two hours. f he does he is fined from two and a half dollars to five dollars, and hey turn that fine into the office to be charged against his wages and urned over to the secretary of the organization.

Mr. Gilchirst:

Q. In the "Plaintiff's Documentary Exhibit No. 3," which ontains the constitution of the United Mine Workers of Amerca, Sub-District 5 of District 6, I find on page 15, article 9, ection 2, this language: "That a fine of ten dollars in each case, here it can be proven that a member of our union leaves his district or West Virginia, or any other unfair mine, and remains one month r more without depositing a transfer card, and returns without givng a satisfactory account of why he has not deposited his transfer ard; and a fine to be collected by the local union where he is workng." You spoke awhile ago of their fining men for working at an nfair mine, or in West Virginia. Is that done under a provision of he constitution similar to this?

A. Yes, sir; I think that is the provision of the constitution under vhich they fine them, or a similar one.

Q. I notice that this says: "without giving satisfactory account of vhy he has not deposited his transfer card." That means satisfactory to the officials, does it?

A. Yes, sir.

Q. They are the judge and the arbiters?

A. Yes, sir.

Q. Now, in the same pamphlet—"Plaintiff's Documentary Exhibit No. 3,"—on page 15, article 9, section 3, I find this language:

479 "Any member of our organization working in or around a mine, working on idle days, or extra time, in violation of our constitution or agreements, shall be fined $2.50 for each offense." You spoke a moment ago about the men being restricted and not allowed to work overtime although the management of the mines might very greatly need their services outside of the hours

fixed by the United Mine Workers. In instances of that kind was such action taken pursuant to some such provision of the constitution as this?

A. Yes, sir.

Q. Now, I notice it says "working on idle days." What do you understand by that?

A. That means on a day when there are no railroad cars that an operator cannot have any of his men go in and load coal, or prepare coal, no matter how badly he may need it the next day; or to load railroad cars; no one is allowed to work on what they term "idle days."

Q. To illustrate: Suppose I were engaged in operating a coal mine and had an order for coal to be shipped and delivered by a stipulated time. Suppose, also, the time was close and there was a shortage of cars on a given day; but suppose, further, that I had ample men employed and had ample mine cars, sufficient for filling and speedily loading the order that I might want to fill the next day in order to get the coal to its destination at the time fixed for delivery—time being the essence of the contract in the sale of the coal; and then suppose, further, that on the day upon which I expected to have that shipment made, and a train to haul the loaded cars left in the evening, no railroad cars were furnished to me, and as a consequence, if the mine had no other business—and assuming that it hadn't—the mine would be shut down that day, do you mean to say that the application of this proposition contained in this section 3 of article 10 would result in my inability to have my men work and load all of those cars which I could put into the mine and thus be ready to load rapidly the next morning, and ship my coal, provided the railroad furnished transportation?

A. No, sir; you could not load those cars—not unless there were railroad cars there.

Q. You mean I could not have my men—whom I might be perfectly willing to pay—continue to work for me and mine that coal in order that I might comply with my contract with the purchaser of my coal?

A. No, sir; not unless you have in many cases, a stipulated number of railroad cars above the tipple, they won't work at all—they are not allowed to work.

The Court:

Q. Suppose the railroad gets cars but does not deliver you cars in the morning in time for the working day, they will let
480 them go to work then, won't they?

A. No, sir; absolutely not.

Q. You have a stand-off the whole day?

A. We have a stand-off the whole day. If the cars are in the yard and are not placed above the tipple, they will not go to work, even if they know the engine will be there in thirty minutes or an hour.

Q. Won't they work half a day?

A. No, sir; they won't go in unless the cars are above the tipple, in many instances thirty minutes before starting time.

Q. Is that the rule of this organization?

A. Yes, sir.

Q. And a requirement of it?

A. Yes, sir; right in their own constitution; if there are no cars there before starting time—at least it is a requirement of the "locals"—if there are no cars there before starting time they won't go in until they are ready. In that connection here is a comparison we can make which we know to be true: The men working under the United Mine Workers in dull seasons work half time or say three days a week or something like that. When a man works three days a week he usually works alternate days—say Mondays, Wednesdays and Fridays. A mine working in Ohio, under the jurisdiction of the United Mine Workers, will only load about two and a half days' production. In other words, for half the time you only get efficiency out of your men of about forty per cent. A mine working on the other side of the river, in West Virginia, which works three days a week, will get sixty per cent. efficiency instead of forty per cent., simply because on an idle day a man will go in and clean up his stone and be ready to load coal the next morning. Under the jurisdiction of the United Mine Workers he cannot go in and prepare to load coal the next day. There is a good deal of preparation necessary in the Pittsburg coal, such as loading stone, cleaning up and so on.

Q. Can you work the men in getting out slate and "gob"?

A. You can work day men on the track.

Q. And on the outside?

A. Yes, sir; they will allow that, but they will not allow men whose duty it is to clean up stone and get it away for the following day—they won't allow them to work.

Mr. Gilchirst:

Q. In "Plaintiff's Documentary Exhibit No. 2," which purports to be the constitution of District No. 6, United Mine Workers of America, on page 16, article 8, section 2, I find this language: "When it becomes necessary for the district president to close a mine, or when a mine or mines from some other legiti-
481 mate cause has been forced to close down, said officers may if they deem it wise, close every other mine in the District, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated." Construing this in the light of the English language, it would seem that this organization contemplates the closing of a mine by the district president whenever it becomes necessary. In applying this section who is the judge of when it becomes necessary so far as you have observed the application of this rule in practice?

A. The District President of the United Mine Workers of America.

Q. You mean, then, that he arbitrarily may say, "This mine must be closed"?

A. I think that their custom is to consult each other, but his word, of course, is what goes with the United Mine Workers.

Q. His dictum is final?

A. Yes, sir.

Q. Now, it passes on and says: "Or when a mine or mines from some other legitimate cause has been forced to close down." That means, does it, the act of the operator, or does it mean the act of the men employed, or the act of some other official, or what does it mean in practice?

A. It means, in practice, that if there is a difference of opinion between an operator and the organization, that if the operator does not surrender they will take it upon themselves to close other mines belonging to that operator, or attempt to close other mines which are probably not owned by that operator but where possibly he is in charge of the operation.

Q. Passing to another provision it says—granting a condition where the mine has been closed down either by the president of the district or from some other legitimate cause—the section contains language indicating that the district president may distribute the idle men into any other mine or mines in the district in which the closed mine may be situated. Upon what principle of non-interference with the employer is that provision of that section to be defended, if you know?

At this point counsel for the served defendants interposed an objection, which, upon being argued by counsel for the served defendants and by counsel for plaintiff, was by the court overruled, and the record shows the following entry:

"(Exception by counsel for served defendants.)"

At this point the court took a recess until March 16th, 1911, at 10 o'clock a. m. and the record shows the following entry:

482 "Pending the transcribing by the stenographer of the testimony of J. C. McKinley up to the taking of the foregoing recess, the witness was excused from the stand until the afternoon session of March 17th, when he was recalled by Mr. Gilchrist for further direct examination, and testified as follows:"

Direct examination of J. C. McKINLEY, Continued:

Q. The last question asked you when you were formerly on the stand was this: "Passing to another provision it says—granting a condition where the mine has been closed down either by the president of the district or from some other legitimate cause—the section contains language indicating that the district president may distribute the idle men into any other mine or mines in the district in which the closed mine may be situated. Upon what principle of non-interference with the employer is that provision of that section to be defended, if you know?

A. I do not believe that I can state upon what principle of non-interference it is to be defended.

Q. The members of the United Mine Workers in Western Pennsylvania, Ohio, Indiana, and Illinois, constituting the bulk of the membership of the United Mine Workers in the United States, together with the members of the organization in other states where they have "locals," meet in national convention, I believe you said?

A. Yes, sir.

Q. And they design to contract with the operators who form associations in what states?

A. In the states of Ohio, Indiana, western Pennsylvania and Illinois, when Illinois will join.

Q. When Illinois will join? Illinois did join for awhile, did it?

A. Yes, sir; for a number of years.

Q. At the present time is Illinois in or out of the joint convention arrangement?

A. Illinois is out of the joint convention arrangement.

Q. So that the scales are now fixed up between the United Mine Workers of America, as a national body, meeting in convention, with the operators, who form a convention,—and then deal with the United Mine Workers, in convention with operators, being those in the states of western Pennsylvania, Ohio, and Indiana. Is that correct?

A. Yes, sir.

Q. You have said that in the states of western Pennsylvania, Ohio and Indiana, operations were conducted union, exclusively, with the exception of some part of western Pennsylvania?

A. Yes, sir.

483 Q. When a scale is agreed upon by the United Mine Workers, in convention, and the operators, in convention, from these states—they being the only ones that deal with the conventions as a body—how are arrangements made for mining in those states of western Pennsylvania, Ohio and Indiana, where the particular operator does not belong to the operators' association, if there is such a condition in any of those states?

A. The operators, in national convention, have uniformly refused to discuss or consider what they term "local conditions," but agree upon a base rate of wages and hours. Then the matter is referred back to the sub-district and district conventions for a settlement of what they term "internal differences"—that is, minor differences that occur between one district and one locality and another.

Q. Is the result of that arrangement between the United Mine Workers and the Operators' Association of these states, that the mine owner, who is a member of the association, signs the scale agreed upon, and the mine owner who is not a member of the association—if there be such an one in that section—signs the same scale or else does not operate union?

A. He is compelled to adopt the same scale.

Q. Passing to a state where there are non-union mines, what is the result of the unionizing of a non-union mine with respect to the scale that the unionized mine then has to pay?

A. The operator must pay the union scale at a union mine or his mine will be closed down.

Q. Then he is obliged to pay the scale of wages the fixing of which in amount, he has not had any hand in. Is that the situation?

A. That is true.

Q. When a scale is made by the national organization and this association of coal operators of Western Pennsylvania, Ohio and Indiana, which they assume to make for the governing of coal men throughout the entire United States, how long is that scale to run?

A. It is usually for two years.

Q. When was the last scale made, that you know of?

A. In 1910.

Q. Were you at the last joint convention?

A. I was there a day or two. I did not spend much time at that convention.

Q. And where and when was that held?

A. That was held at Cincinnati in April, I believe. Anyhow, it was held at Cincinnati in the spring of 1910.

Q. March 8-29, 1910. Is that it?

A. That is about the time but I would not say definitely that those are the dates.

Q. As a result of your observation and experience in at-
484 tending these joint conferences of the United Mine Workers and the Operators' Association, for many years past, do you know whether there is any demand on the part of the Operators' Association that the non-union fields should be unionized?

(Question objected to by counsel for the served defendants.)

The Court: He may answer it and I will hold the objection.

A. Yes, sir.

Q. What, if anything, do you know on that subject?

A. At every joint meeting for the last few years the miners have asked for an increase in wages. The operators have uniformly resisted this increase and have cited the fact that the competition from West Virginia is so keen that they are not able to pay more wages, and that the Mine Workers are not treating them fairly by not organizing West Virginia, and allowing this West Virginia coal to come into competition with them, and yet come back, year after year, and ask for an increase in wages. The organization officials usually reply by stating that they have spent thousands of dollars in West Virginia and are using every effort to carry out this plan of organization.

Q. If you understood why the operators who enter these joint conventions with these United Mine Workers, desire to have the non-union fields unionized, I wish you would state why that is the desire, if you know?

A. The United Mine Workers have raised the wages in the central *com*field—(interrupted).

Q. What is that?

A. Western Pennsylvania, Ohio, Indiana and Illinois—until they have placed the operators at a decided disadvantage, and yet from year to year they are able to force increases in wages, and the operators claim their only relief is for the miners to organize the State of West Virginia, which is the principal competitor, or else secure a reduction in freight rates.

Q. A reduction in freight rates from where?

A. From the union operated mines or from mines operated under the control of the United Mine Workers of America.

Q. And that would apply principally in the State of Ohio—(interrupted).

A. Ohio, Indiana, Illinois and western Pennsylvania.

Q. How do wages paid in West Virginia—excluding the northern Panhandle district of West Virginia—at non-union mines,
485 compare with the wages called for by the scale of the United Mine Workers of America?

A. The per day rate of wages is less; also the tonnage rate is less.

Q. So the unionizing of the West Virginia non-union fields would result in the raising of wages if the union scale were applied?

A. It would; yes, sir.

Q. That would increase the cost of the coal to the West Virginia operator, would it?

A. Very much.

Q. And that would lessen his chance of successful competition in the markets of the west and the northwest?

A. It would, very much.

Q. Do you know whether it is the purpose of the United Mine Workers' officials, as an organization nationally, and the operators who meet with them in convention—these operators being from the states where the union is paramount,—to so place the West Virginia non-union operator that his coal cannot come in competition in these same markets where they now compete in the west and northwest?

A. They certainly would like to bring this condition about?

Q. Is that their object, so far as you understand it?

A. It is.

The Court:

Q. Right there I want to inquire. Mr. McKinley: I have heard, or understood, that the mining conditions in West Virginia are much more favorable to the getting out of coal. That is, that a miner in West Virginia can mine and load a ton of coal in a shorter period of time, and with less labor, than a man can in Ohio or Illinois or Indiana. In fixing the scale in West Virginia would that be taken into account if the mines were unionized, or would the miner in West Virginia get exactly the same sum he would get in Ohio for mining a ton of coal?

A. Their practice is to have a base rate of wages. For instance: This central competitive field fixes a base rate for all the rest of the territory. If they agree that the rate shall be ninety cents per ton it is tacitly understood, if not openly agreed to, that no other district shall be allowed to sign up at a less rate of wages, and they enforce that same base rate all over the territory. The comparative minor conditions are settled between the districts; but the same rate of eighty cents or ninety cents or ninety-five cents, as it is now, prevails in western Pennsylvania, eastern Ohio, the Hocking Valley,

Indiana and that part of Illinois that runs the screen coal basis, and the run-of-mine is based on that.

Q. Take, for example, the miners in the Fairmont region, who, as it has been testified, are not unionized, and those over in
486 this district in Ohio where they are: What is the general status of the mining conditions as between the two classes of miners? Which, on a general average, live to the best advantage and make the best wages, and have the most continuous labor, in your observation?

A. The annual result in the two places is approximately the same. The West Virginia miners work more regularly and their per day wage is less, and I believe they will produce more tons of coal for a dollar than the miner in eastern Ohio; but the miner in eastern Ohio does not work as regularly, and therefore the miner in northern West Virginia really makes more money than the miner does in eastern Ohio.

Mr. Gilchrist:

Q. You said a moment ago that the operators demanded that there should be a unionizing of the non-union fields or else a lowering of freight rates. Do you know whether the operators in the No. 8 vein in eastern Ohio have made any effort for the lowering of freight rates?

A. Yes, sir; they made a very strong effort to have the rates lowered.

Q. Where, do you know? Before what tribunal?

A. Before the State Railway Commission of Ohio.

Q. I find on page 24 of Upstill's Exhibit No. 1, purporting to be the language of Mr. T. L. Lewis—speaking of the organizing of West Virginia on account of the competition, &c., that we have just been talking about, between the non-union fields and the union fields, that deal with the United Mine Workers' national organization—these words: "If I have a proper conception of this movement it does not mean that either operators or miners can publicly say, 'We will organize West Virginia in order that the miners of Ohio or Indiana can get more work.' That has done more to prevent the organization of West Virginia than anything I know of." Does that statement compare with the attitude of the United Mine Workers' organization, in convention, that you have heretofore referred to?

A. Yes, sir; I have heard practically the same language used, myself.

Q. On page 112 of Upstill's Exhibit No. 1, I find this language attributed to Mr. Savage, of Ohio: "I was surprised a moment ago to hear that some of the operators were not in sympathy with the men in trying to get a readjustment of their freight rates in Ohio. I know as one miner we did all we possibly could in giving testimony before the commission in Columbus, and from what I heard then I believed, and I believe now, that the operators were
487 absolutely right in asking for this readjustment. I believe I can assure you that we will help you in every manner that

we can to get that readjustment. But we would ask you, on the other hand, if we are willing to help you—and by helping you we agree we are helping ourselves—if you operators from Ohio and Pennsylvania will lend us the same assistance in West Virginia in getting the mining price up so that competition will not prevail. When we ask that what do we find? Operators have told me in years past that they were willing to have the miners organized in Ohio, but they were not willing that their miners should be organized in West Virginia. We find as great opposition on the part of the operators from this State who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union State. Go down there and practice what you preach in Ohio. Help us get the protection of the law in that State and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that State. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of those men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe those contracts as religiously as the miners in Ohio, Pennsylvania, Indiana, or any other state."

Q. (Continued.) How does that compare with what you have observed in your experience at these conventions?

A. It is the same line of reasoning throughout.

Q. The Mr. Savage who made this speech in this convention is George W. Savage, the defendant, who is now in court, is it?

A. I suppose; I think so.

Q. He is what, now?

A. Secretary-Treasurer of District 6, which comprises the State of Ohio.

Q. Now, with regard to the general purpose of this union, I believe you said that as a result of your observations and experience in these joint conventions you had found that it was the idea of the United Mine Workers' organization as a national body to become supreme throughout the land in the coal mining industry. Is that what I understood you to say?

A. There is no question about it. That is their desire and ambition.

488 Q. On page 187 of this same "Upstill's Exhibit No. 1." I find the following, which is the language of Mr. T. L. Lewis:

"I think the time is coming in the development of the coal industry of this country when we will be able to agree upon a minimum basis for mining and make it a perpetual contract. That is the kind of plan I have in mind. I do not know how soon it will come. There is only one thing in the way, and that is the lack of such an organization among the operators and the miners as we

ought to have to govern the industry. I think if our friends on the other side could have a national organization and we could have a complete national organization on our side the time will come when we will establish the relative mining prices in the different districts, and we can afford to fix a minimum basis as a wage scale and make it a perpetual contract. We could go from that up, but not below it. If anybody tried to get below it we would attempt to find out who was trying to injure the trade."

Q. (Continued.) Does that compare with what you understood the proposition was?

A. Yes, sir; Mr. Lewis has told me that a number of times—that that is his ambition.

Q. Mr. McKinley do you recall the occasion of the holding of Sub-District 5 convention in March, 1907?

A. Yes, sir.

Q. Have you any recollection of having any conversation with Mr. Rankin, one of the defendants, upon the subject of unionizing the mines in the northern Panhandle District?

A. I have.

Q. State what that conversation was, as nearly as you now recall?

A. My recollection is that just after the Sub-District convention adjourned I met Mr. Rankin on the street and knowing him very well I entered into conversation with him. During that conversation I said to him, "Well, what did you all do?" "Well," he said, "there is one thing we did, and that was to arrange to organize the Panhandle district of West Virginia." "Well," I said, "Why don't you let us alone?" and he replied, "That was brought up in the convention and a resolution was passed directing us to organize the Panhandle;" and he said further, "We will be over to see you right away," or something to that effect.

Q. In "Plaintiff's Documentary Exhibit No. 5" which purports to be the proceedings of the Ninth Annual Convention Sub-District 5, District 6, held at Wheeling March, 14, 15, 16, 18 and
489 19, 1907," I find on page 28 this resolution:

Resolution No. 8.

Whereas, there are miners in the Panhandle District and Ohio that are not organized, and believing every mine should be organized; be it

Resolved, by this ninth annual convention that the sub-district officers together with the district officers, be authorized to take up the work of organizing every mine in the sub-district as quickly as it can be done."

Q. (Continued.) Was that the resolution referred to in your talk with Mr. Rankin?

A. I suppose so. He did not tell me the number of the resolution but that is the gist of it.

Q. Now, what happened after that talk with Rankin with reference to the attempted unionizing of the northern Panhandle District of West Virginia, as nearly as you now recollect?

A. My recollection is that we did not hear anything about it for two or three months, and I thought they had given up the attempt until along about the middle of the summer they commenced to come in to see me, and mentioned the fact at different times when I saw them that they were going to organize us, and then afterwards I found that they were sending organizers about our mines, as well as other mines in the Panhandle District, and they told me what they were doing at other mines. They neglected to say, however, just what progress they were making at our own mine, except that they were going to get us sooner or later.

Q. And if they got the men and didn't get you, what would happen with your mine, did they say?

A. Oh, they said they would shut us down and compel us to recognize the union.

Q. Did they say anything on that line with reference to the other mines in the northern Panhandle District that were running non-union?

A. Yes, sir; they stated specific mines that they were going to organize.

Q. What mines were they?

A. The Glendale, Hitchman, Richland—which was ours—and the Beech Bottom mine.

Q. Do you know from them what progress they made at the Glendale mine?

A. Yes, sir; they told me that they had twenty some men (I think it was twenty-four) who had joined the organization,
490 and that they had sixty men who had signed up or had agreed to join the organization at Hitchman, and that they were going to shut the mine down as soon as they got a few more men.

Q. The Hitchman mine?

A. Yes, sir; and all of the mines in the Panhandle District would have to recognize the union or remain closed.

Q. You say they did not tell you what progress they were making at the Richland mine?

A. They did not.

Q. What was your experience that disclosed what progress they were making at that mine?

A. Our first experience that showed us the progress they had made was when they succeeded in shutting us down, which was about the middle of October, 1907.

Q. And after the mine was shut down did it resume union, or did it stay shut down, or did it resume non-union again?

A. It staid shut down until a restraining order was allowed by the court, immediately after which it resumed non-union and has been so operated since.

Q. You have had no labor troubles since?

A. No; we have not.

Q. Mr. McKinley, you said, I believe, that you had been interested in four or five different mines in Ohio?

A. Four.

Q. Two of them, I believe, you said you were not now interested in—that they had been sold?

A. Yes, sir.

Q. And the other two, I think you said, had been leased?

A. Yes, sir.

Q. For what period of time, if you can recall?

A. Both for twelve years.

Q. And from about what date, if you now recall?

A. One from January 1st, 1910, and the other one from June 1st, 1910.

Q. From that it would seem that you are not now engaged in coal mining in Ohio?

A. No, sir; we are not.

Q. What occasioned you to quit operating in Ohio?

Mr. Hogg: Well, we object to that as it has nothing to do with this issue—why he quit over there.

The Court: I will let him answer it.

(Exception by counsel for served defendants.)

A. The methods and practices of the United Mine Workers.

491 Q. Did they cause you trouble?

A. Continually.

(Objected to by counsel for the served defendants.)

The Court:

Q. Do you mean by that, that the conditions were such that a mine could not profitably and advantageously be carried on by you as an operator?

A. It could not. They were calling strikes continually.

Mr. Gilchrist:

Q. I have before me and will hand you for identification a letter on the letter head of the United Mine Workers of America, District 6, Columbus, Ohio, August 25th, 1908, which reads as follows:

Mr. J. C. McKinley, Wheeling, W. Va.

MY DEAR SIR: I am in receipt of your favor of the 20th inst., and have noted carefully your detailed and comprehensive explanation of the trouble at Stewartsville.

It is hardly necessary to state that I deplore very much, these stoppages of work, either at your company's mines, or any other mines, where contracts exist, between our organization and them.

You will observe, however, that the present contract in Eastern Ohio recognizes the right of the men to strike, providing said strike is ordered by two-thirds vote of the Local Union.

These periodical stoppages and stampede strikes, I am pleased to note are occurring less frequent than they formerly did, as there is a large number of mines in Eastern Ohio where no stoppage of work occurred during the entire contract term.

Inasmuch as you have sent Sub-district President Watkins a copy of this letter, and I will see him this week, personally, he will no

doubt give this matter his attention. It is impossible for me to do so, owing to the number of pressing engagements demanding my attention.

I hope that when the matter is taken up by him, that such action will be taken as will prevent a recurrence of this, of which you complain.

Some time ago, I requested that you settle with the representatives of our Organization, the trouble at Moundsville, where a
492 strike exists, and where it is costing our Organization thousands of dollars quite unnecessarily, as I believe.

I beg leave to again state inasmuch as that trouble is not settled, that I request a settlement of that by you and the representatives of our Organization, otherwise, I shall immediately take such steps at the Mines which you manage and represent at Glencoe, Stewartsville, and the other mine near Glencoe, as will require a settlement of this difficulty, or discontinue operation at these mines.

I hope to receive from you a favorable reply, for which, I will wait before taking the above action.

Yours truly,

(Signed) WM. GREEN.

A copy teste:

(Signed) JOHN T. HARRIS,
Official Stenographer.

Q. (continued). Is that the William Green who is one of the defendants?

A. It is.

Q. At that time what position did he hold?

A. President of District 6, United Mine Workers of America.

Q. Did you do what he ordered you to do?

A. We did not.

Q. Have you any objection to the filing of this original letter, or do you care to preserve it?

A. If a copy would do as well I would prefer to have it copied.

Mr. Gilchrist: I would ask, then, that the stenographer make a copy of the letter and that the copy be marked as verified.

The Court: Mr. Stenographer, you can just insert it in the testimony.

Mr. Hogg: It can go in subject to our objection, of course.

The Court: Certainly.

Mr. Gilchrist:

Q. Now, here is another letter from the same man on the letter head of the United Mine Workers of America, which is dated
493 Columbus, Ohio, September 4th, 1908, and is as follows:

Mr. J. C. McKinley, Pres., "Raven Coal Co.," Wheeling, W. Va.

MY DEAR SIR: I have your favor of August 31st, and beg leave to say that the question in dispute at Moundsville, is one that I am not

personally familiar with, but do not believe that it is a question of organizing those men, for the reason that they have already been organized.

I have been informed that there was a Local Union at this Mine, when you assumed charge of this property.

The question, as I understand it, is some question, either as to rules, conditions, or the right of the men, who have been working there to continue work.

I do know that it is costing us thousands of dollars, without cause or reason

You promised to settle this, with Mr. Watkins, and Mr. Sullivan, a short time ago. You have not done so, and for that reason, I feel fully justified in informing you, as to our position.

In view of your unsatisfactory reply, I shall, in accordance with my judgment, take such steps as we deem necessary to protect our interests in dealing with you at your Mines in Ohio, where you profess to carry out the contract.

I have also notified Mr. McBryde, to this effect, and also, suggested that their Association require its members (as I understand you are a member) to comply with the spirit and letter of the contract in dealing with us, just as they would require our members to carry out the spirit and letter of the contract in dealing with them.

Yours truly,
(Signed) WM. GREEN.

A copy teste:
(Signed) JOHN T. HARRIS,
Official Stenographer.

494 Q. (continued). That is the same William Green?
A. The same William Green, President of District 6, United Mine Workers of America.

Mr. Gilchrist: That may go in in the same way.

Q. I show you another letter on the letter head of the United Mine Workers of America, District 6, dated Columbus, Ohio, September 14th, 1908, which reads as follows:

Mr. J. C. McKinley, Pres., "Raven Coal Co.," Wheeling, W. Va.

MY DEAR SIR: I herewith acknowledge receipt of your favor of the 11th inst. I am very much disappointed at your attitude toward our Organization and in your attempt to justify your action and position.

It is clearly evident from your action, that you deal with the Organization at your Mines in Ohio, because you find it more profitable than to do otherwise, thus it is merely a question of dealing with us when it is profitable to do so and antagonizing our Organization, when circumstances and conditions warrant.

It is hard to justify a position of this kind and I would suggest that you either deal with our Organization altogether, or antagonize it altogether.

I do not wish, however, to continue longer, this controversy, for your unreasonable attitude indicates that it would be a waste of valuable time.

I merely desire to point out that our Organization had dealt fairly and squarely with you and has spent time and money at your Mine at Glencoe and other places when trade conditions were good, in compelling our men to comply with the contract in every particular, notwithstanding the fact that they were fully aware of your unreasonable attitude toward our Organization, an incident, with which, you are thoroughly familiar.

Your replies to my request to settle the trouble at Moundsville and thus relieve us of the drain upon our financial resources, of thousands of dollars, verbally, as well as many times I have wrote you, and also, as requested by Sub-district President Watkins and Mr. Sullivan, is so highly unsatisfactory that I wish to again
495 repeat that I shall, when circumstances and conditions warrant, take such steps at your mines, where you have contracts with our Organization, as will fully protect our interest and if possible, prevent a continuance of this drain upon our financial resources.

Yours respectfully,
(Signed) WM. GREEN.

A copy teste:
(Signed) JOHN T. HARRIS,
Official Stenographer.

Q. (continued). Is that the same William Green, one of the defendants?

A. The same William Green.

Q. Was he then president of the district?

A. Yes, sir; of District No. 6.

Mr. Gilchrist: This letter may go in in the same way.

Q. To what did you understand he referred by the language: "an incident with which you are thoroughly familiar?"

A. It was the question of a strike at Moundsville. Well, not exactly a strike, either. In 1906 I think it was—no; 1908, I believe—we operated the Moundsville mine, and the miners went out on a strike on April 1st, or quit work, rather; they didn't call it a strike; the scale expired. Inasmuch as we needed coal we suggested to them to keep on at work, and the union forbade it. We had sufficient men who wanted to keep on at work to go ahead, and we did so, and the organized men, or the men belonging to the local union, remained idle. After a certain period of time the United Mine Workers paid them, I think, three dollars a week. They continued to do that for some time, and that is the subject to which he refers when he speaks of Moundsville.

Q. Do you recall any demand on his part that you should shut down your mine so that the mine being shut down could resume without being in the union, and the union men thus not be entitled to receive benefits from the union?

A. That suggestion did not come from Mr. Green; it came from Mr. Watkins. He and Mr. Rankin were in my office one day and asked me if I would not, as a favor, shut down the mine and put up a notice that "This mine is closed indefinitely." He said, "You
496 need not keep it shut down but one or two days; then you can resume as soon as you want to, but that will relieve us from paying benefits to these men."

Q. Did you do that?

A. After some time we did that. We posted the notice that "this mine is closed down indefinitely"—that was one Friday—and we resumed the following Monday. That was done so as to relieve them from paying benefits there.

Q. And these men—these officials—were these defendants, were they,—Watkins and Rankin?

A. Yes, sir; Watkins and Rankin.

Q. Did they do that sort of an act?

A. They seemed to; and requested us to do it, and Mr. Green asked us to carry it out.

Q. Why, that was a betrayal of the very men whose money they were taking, was it not?

A. Yes, sir; these men had been paying money into the organization.

(End of Direct Examination.)

Cross-examination:

Upon cross examination, the witness, J. C. McKinley, recalled, said that the property of the Richland coal mine is owned by the Richland Coal Company, of which witness is president and a majority stockholder; the Richland Coal Company has a suit in which it is plaintiff against the same persons who are defendants in this suit.

At this point the witness was asked and answered questions as follows:

Q. You stated that an operator when running his mine union had nothing to say or had no right to say when or when not one of its employes should be discharged—that that was entirely in the control of the United Mine Workers, did you not?

A. I do not think so.

Q. You did not say that?

A. I do not think that I said that and I should like to hear the testimony read where I said it, if I did say it.

Q. Well, you recollect what you said and I shall not refer to the testimony. If you have not stated it, why, of course, you know.

A. No, sir; I do not think I stated that.

Q. You also gave by way of illustration an instance occurring at the Delora mine, in Ohio, then run union and at which time you were connected with that mine, in which two men had been discharged by the management of that company for an open vio-
497 lation of the law of Ohio; and that when they were discharged they were taken before a justice and ultimately brought to the court of common pleas, indicted, convicted and fined, as well as

being sentenced to jail; and that the representatives of the Mine Workers' Union succeeded in having the jail sentence remitted; that they then paid the fine and, further succeeded in having those men reinstated at the Dolora mine; or in substance that is what you stated, is it not?

A. No, sir.

Q. What did you state?

A. I said that these men were arrested by the justice, held for the court and pleaded guilty, and their sentence was suspended both as to the imprisonment and the fine, and the costs were paid by the United Mine Workers of America, and the men were put back to work by the management, first at the Stewartsville mine, as I recollect it, and afterwards with the understanding that they were to go to work at the Delora mine.

Q. Do you recall the year in which that occurred?

A. It was either in 1907 or 1908.

Q. Do you recall what the offense was for which they were arrested?

A. Yes, sir.

Q. Please state it.

A. It was for not posting and taking care of their working place.

Q. And when you say "not posting," you mean not placing timbers where they should be placed?

A. That is it; yes, sir.

Q. For the purpose of supporting the top?

A. Yes, sir.

Q. Can you give the names of those two men?

A. I could by referring to the papers.

Q. Do you remember who was present at that time of Sub-District No. 5?

A. I think Mr. Andy Watkins was.

Q. You were asked on your examination in chief the following question: "Now, with regard to the general purpose of this union; I believe you said that as a result of your observations and experience in these joint conventions, you had found that it was the idea of the United Mine Workers' organization as a national body to become supreme throughout the land in the coal mining industry. Is that what I understand you to say?" To this question you answered as follows: "There is no question about it; that is their desire and ambition." What are we to understand by the expression used there that it is the idea of the United Mine Workers' organization, as a national body, to become supreme throughout the land in the coal mining industry, and especially the word "supreme" as used in that connection?

498 A. Their desire, as I understand it, is to have every employe in and about the bituminous coal mines of the United States and Canada, as well as the anthracite mines, a member of the United Mine Workers of America, and that they will be in position to absolutely dictate a minimum wage for which their members will work.

Q. That is your understanding?

A. Yes, sir.

Q. Now, you say in answer to another question: "Does that compare with what you understood the purpose was?" And you answered: "Yes, Mr. Lewis has told me that a number of times—that that is his ambition." When and where did you have any conversation with Mr. T. L. Lewis, one of the defendants in this case, in which he stated to you that it was his ambition to have the United Mine Workers of America become supreme in the mining industry, so that this organization could dictate a minimum scale in the coal mining district?

A. That has been the tenor of Mr. Lewis's conversation with me many times, and not only that they may establish a minimum price for mining, but that by co-operation with the operators they shall establish a minimum price for coal throughout the country.

Q. I am asking you to state when and where any of these conversations occurred?

A. The conversations were so numerous, and have been throughout the last several years, that I will not undertake to state just when and where these conversations have taken place, because there have been a great many of them.

Q. Mr. McKinley, do you know from your observation and experience what difference there is between unionizing the employes at a mine and unionizing the mine?

A. Of course, I suppose there is a difference—theoretically, at least.

Q. What is it?

A. The men might be unionized at a mine and the mine owners not recognize the union. That would in effect be an open shop. When I said "unionize the employes," I meant practically all of the employes; but a union mine, as I understand it, is one wherein the closed shop is practically enforced.

Q. That is the case when the operator is in contract relation with the organization, is it?

A. Practically so.

Q. Then, as I understand, the United Mine Workers may unionize the men, but cannot unionize the mine so as to have it operated union, without the consent of the operator?

A. No; I should say they could not; but the practice in the United Mine Workers is that they will not work—if they have a majority of the men they will not work with any non-union man.

499 Q. Well, the Hitchman will not work with any union men, will it?

A. I am not in the management of the Hitchman mine, and I cannot say.

Q. The Richland does not, does it?

A. No, sir.

Q. Don't you know that as a fact—as well as you know these other things—that the Hitchman mine does not allow union men to work there, so far as you can know a thing without seeing it?

A. I do not think they will allow their men to owe their allegiance to the Mine Workers, and work for them.

Q. Well, he cannot be a union man, can he?

A. Not if he follows out the rules of the United Mine Workers, because in that event he will not work with non-union men, I believe.

Q. Suppose he should just simply join for the first time, wouldn't he have to quit down there at the Hitchman?

A. Yes, sir; I believe so.

Q. Now, there is a difference between unionizing the men and unionizing the mine, in the very nature of the thing?

A. Yes, sir; I suppose there is.

Q. Did you say in your examination in chief that you had run union from 1903 to 1906, or what period did you run union?

Witness: Where do you mean? At what mine?

Mr. Hogg: At the Richland.

A. We ran for sometime union; I could not just say; it was from 1903 until 1904, '05 or '06, or sometime along there; it was a year or two or such a matter.

Q. I believe you stated in your examination in chief that you were interested in or operated the Mound Coal Company?

A. Yes, sir.

Q. Well, were you operating that company in 1906?

A. I do not believe so.

Q. Do you know that in 1906—possibly about the first of May or sometime in the early part of that month—that it signed the scale of 1903 as proposed by the national convention at Indianapolis in January, 1906?

A. My recollection now is that we leased that mine January 1st, 1906, and we had nothing whatever to do with the management of it.

Q. Are you aware that it did sign the 1903 scale in that year as proposed by the Indianapolis convention of January, 1906?

A. I could not say, but my recollection is that they did, although I am not positive.

Q. Do you recollect about the time they signed it?

500 A. No, I do not; it was in the spring, however, or the early summer, but I had nothing to do with the management of that mine at that time.

Q. I believe you said in your examination in chief that when a mine is unionized it is under contract to run union, and that that contract provides a definite period when the scale shall begin and when it shall end? Is that right?

A. That is usually the case.

Q. And usually the period is two years?

A. It has been for the last several years in the central competitive field.

Q. I am going to ask you a question from memory and if I misstate it you can correct me. I believe that you stated that you had quit the eastern Ohio field by selling two of your mines and leasing the other two. Is that right?

A. Yes, sir.

Q. You leased those mines upon a royalty?

A. Yes, sir.

Q. Are those two mines that are now under lease operated union?
A. Yes, sir.
Q. Do you know anything about the comparative production of those mines with reference to their capacity to produce, as taken from year to year?
A. Yes, sir; somewhat.
Q. Well, do they find a market for their products pretty readily over there?
A. Yes, sir; fairly readily.
Q. Well, I believe you said the reason why you left that field was because of the continuous strikes over there while they were run union?
A. Yes, sir.
Q. Did you have more strikes than the other people there around in that union district?
A. No; I do not know as we did; we had a good many, though, and we thought we had more than our share of trouble.
Q. Well, you had more local strikes over there than the balance of the operators, didn't you?
A. More than some of the balance.
Q. Did you have anything to do with the management of that mine over there?
A. Oh, yes.
Q. Don't you think that might be attributed in part to your temperament as a manager?
A. No; I think it was largely on account of our operating non-union in West Virginia, or part of it was that.
Q. Where were you operating non-union in West Virginia?
A. At the Richland mine; and I was told by the president of the sub-district that they felt kind of sore because we were operating non-union over there.
Q. What president was that?
A. William Green.
Q. He is the only man that you recollect about having
501 that conversation with?
A. I think he was the only one that came out and stated that they were feeling sore about it.
Q. Is that the same Green who had the spirited correspondence with you in regard to it?
A. Yes, sir; he is the same William Green.
Q. Now, is it not a fact, Mr. McKinley, that you refused over there at the Delora mine, or your other mines, to adjust the grievances that were often submitted to you?
A. We not only never refused to adjust the grievances, but we never refused to meet a committee; and in all the time we were there we were never found guilty of breaking a contract with the United Mine Workers.
Q. Didn't the officials of the United Mine Workers attempt to see that the contract was carried out with you?
A. Ostensibly they did; and in some instances I think they sincerely tried to find that the contract was carried out.
Q. Wouldn't it be to their interest that the men should go on

and the mines operated so that the dues and assessments might have been paid?

A. I would have thought so.

Q. Isn't that the natural view and reasonable view to take of it?

A. It is pretty hard to fathom the motives of people at times.

Q. What motive could be greater than self interest?

A. They claim it is to their self interest to organize the Panhandle of West Virginia.

Q. Wouldn't they have been required to pay these people benefits while they were on a strike?

A. No, sir; as I understand it the rules require that they must be out on a strike four weeks before getting benefits, and they can have these temporary shuts-down, as they term them, and local strikes, three or four weeks without costing them anything.

Q. The rule is, then, that there must be a suspension of four weeks before they are lawfully entitled to benefits?

A. Yes, sir; I believe that is the rule.

Q. Therefore, if the mine is idle say six weeks they would be entitled to only two benefits?

A. To a two weeks' benefit, as I understand it.

Q. Well, now, what official do you think, while he was ostensibly acting in your interest for the purpose of seeing the provisions of the contract carried out, was insincere?

A. Several of them; and principally the president of the sub-district.

Q. Of the sub-district?

A. Yes, sir.

Q. Who was that?

A. Mr. Andy Watkins.

Q. Well, can you specify any instance wherein you think
502 Mr. A. R. Watkins was pretending to act in your interest, keeping up the contract, when he was really not trying to do it?

A. In 1907 or 1908—I could not state which year it was without refreshing my memory—we had a strike. I think it was about the discharge of one or possibly two drivers. The entire mine was called on a strike because we would not reinstate these men, (since thinking it over I believe it was only one man), and he was discharged for cause. My recollection now is that he was insubordinate and abusive. The mine was, as I say, called out on a strike and that condition lasted for two or three weeks. President Green, of the State organization, ordered the men back to work and they refused to go. Some of the other officers claimed that they ordered them back to work and they refused to go. Mr. Green instructed Mr. Watkins to go out there and put the men to work. He went out there and instead of ordering the men to work he says, "Men, we have got McKinley up a tree and we will win out." He was confronted with that statement in Cleveland and while he did not exactly admit it he did not altogether deny it. And further evidence which I had, and from their own people was, that Mr. Watkins not only did not carry out the agreement but he did not carry out the instructions from the state officials, and the mine did not resume work until Mr.

Green, himself, had the charter taken away, thus declaring the mine non-union, and then the miners surrendered and went back to work.

Q. This you say occurred sometime in 1907?

A. It was about that time.

Q. Do you recollect about what time it was?

A. I do not; it may have been—well, I would not say definitely just when it was; it was about that time though.

Q. Did you not after this occurrence bring this to Mr. Watkins' attention and didn't he deny to you that he stated that he had you "up a tree"?

A. As I said a minute ago he did not admit, but he did not altogether deny it.

Q. Well, then, you say that he did not deny it, do you, or how about that?

A. I do not think that he did. Well, I believe he did deny it and that I told him then before the meeting that he was telling what was absolutely untrue, and he knew it.

Q. That was in the joint meeting of the operators and miners, was it?

A. It was in the joint meeting between the executive board of the Operators' Association and some of the Mine Workers' officials. I think Mr. Green and Mr. Watkins and possibly one or two others, were the men.

503 Q. I would like to ask you, Mr. McKinley, while I think of it, whether you are paying the five-sevenths scale?—whether you are paying the union scale at the Richland mine?

A. Practically so; yes, sir.

Q. Well, you pay five-sevenths—you stated in your examination in chief—run-of-mine. That is your basis.

Witness: What is the question?

Q. You pay five-sevenths of the pick price for run-of-mine coal. Is that correct?

A. No, sir; because we do not pay for any run-of-mine coal. We handle a little engine coal and we average that with screened coal. Everything is paid for on a screened coal basis.

Q. Everywhere?

A. Yes, sir.

Q. Do you have any run-of-mine coal there at all?

A. As I stated awhile ago we have a small amount of run-of-mine coal but we average that with the screened coal.

Q. Then you do not attempt to pay the union scale on the run-of-mine coal—machine mining?

A. If you will allow me I will explain a moment: That five-sevenths is not a practicable division in eastern Ohio, and the United Mine Workers themselves admit it, and they say it is not used and probably never will be, so why not just leave it the same as the base rate in the Hocking Valley? It is not intended or expected to be used.

Q. Mr. McKinley, what do you pay for your run-of-mine coal? You say you haven't much but of course you pay for it?

A. I say that we pay the average of the screened coal mined.

Q. What does it amount to per ton?

A. I could not say without I had the figures. It is on a basis that would vary according to a man's ability in mining. If he mines good, big coal he gets more than if he mines small coal. Each man's average is paid for the one or two cars or more which may go to the railroad and which is used run-of-mine coal.

(End of Cross-Examination.)

Redirect examination:

Upon re-direct examination the witness McKinley, recalled, was asked and answered questions as follows:

Q. At what mine did this incident with Watkins occur?

A. That occurred at the Delora mine of the Highland Coal Company, in Ohio.

504 Q. You said that the officials took away the charter of the local and that upon that being done the men came to time. What had that to do with the return of the men?

A. That is one method that the United Mine Workers had of enforcing discipline. They had what they call "take away the charter"; that annuls the local at that point; and then as soon as they do that, why, as a general thing, they ordinarily say that they obey the orders of the organization, and they come back to work; they ask for an official to come there and put them back to work.

Q. That is the equivalent then, in a sense, of ex-communication?

A. It is; yes, sir; and as soon as they are ex-communicated then they usually want to get back.

Q. And to a man living and working in the union field, that sort of a proceeding is effective, then, as a general proposition, is it?

A. It is a matter of practical life or death with him in a union field. He cannot work there unless he belongs to the organization and when he is ex-communicated of course he cannot secure employment unless he goes out of the state or the district.

(End of Re-direct Examination.)

Recross-examination:

Upon re-cross examination the witness, McKinley, recalled, was asked and answered questions as follows:

Q. Because the operators themselves working union will not employ him?

A. The operators might be perfectly willing to employ him but as soon as he is out of the organization he cannot work with the United Mine Workers.

Q. They have no control over him when he is out of the mine?

A. They have no control over him but they will not work with him—the members of the United Mine Workers.

Q. Don't the operators in eastern Ohio pay five-sevenths for run-of-mine coal?—on a basis of five-sevenths?

A. I do not think there is a mine in eastern Ohio paying the five-sevenths rate.

Q. Were they in 1907?

A. No, sir.
Q. Are they now?
A. No, sir; not to the best of my knowledge.
Q. What rate do they have at the Aetna Standard mine?
A. That is not a commercial mine; that is a mine that supplies coal for the steel works alone, or rolling mill, which ever it is, and I think they pay what is termed bank measure.
505 Q. And that basis then does not exist at all in any regular coal producing plant?
A. Not in any regular commercial coal producing plant.
Q. Or any where in eastern Ohio?
A. Not to my knowledge, sir.
Q. Do you know a mine called the Moore's Run mine?
A. Yes, sir; I know the Moore's Run mine.
Q. Aren't they paying it there?
A. No, sir; they screen all their coal and pay on a screened coal basis.

(End of Re-cross Examination.)

Redirect examination:

Upon re-direct examination the witness, McKinley, recalled, was asked and answered questions as follows:

Q. And that coal at the Moore's Run mine, when furnished as run-of-mine coal, is screened, and then all put together again?
A. Yes, sir.
Q. And it then passes as run-of-mine coal?
A. Yes, sir; it then becomes run-of-mine coal.
Q. But is paid for on a screened basis?
A. Yes, sir; that is my information.

(End of Re-direct Examination.)

PAUL LEONARD.

Direct examination:

Upon direct examination the witness Paul Leonard, said: My name is Paul Leonard; residence, two miles north of Wheeling; occupation, superintendent of the Richland mines; has been such superintendent for five years last June; has seen a man by the name of Thomas Hughes; he was on the Richland Coal Company's property two miles north of Wheeling; had a talk with Mr. Hughes in regard to organization; witness asked Hughes his business when he discovered him on the property and Hughes told witness that he was an organizer for the United Mine Workers; said his business in that section of the country was to organize the Panhandle district of West Virginia; the mines at that time in the Panhandle district were the Glendale mine, the Hitchman mine, the Moundsville mine, the Elm Grove mine, the Richland mine, the Beech Bottom mine, and
506 the Wheeling Steel & Iron mine; the Wheeling Steel & Iron mine is not a commercial mine but belongs to an industrial plant; all the others named are commercial mines.

At this point the witness was asked and answered questions as follows:

Q. What did you understand him to say was his meaning when he said he was there to organize the Panhandle District?

A. Why, that he would make them join the United Mine Workers or tie them up, were the words he used to me.

Q. He said, then, that he was there to have the men join the United Mine Workers, or tie up the mines?

A. Tie up the Panhandle.

Q. What did you understand him to mean when he said he would "tie up the Panhandle"?

Mr. Hogg: If your Honor please, I do not like to be making these objections, but the only thing that the witness can testify to is what the party said and not his understanding. If he does not recollect what he said he can give the substance. Now, he has given what he said—that he was there to make them join the union or tie them up; that was the language. Now, what he meant is a different thing. Read that question, Mr. Stenographer, so the court may hear it.

(Last foregoing question was read by the stenographer.)

The Court:

Q. Mr. Witness, have you told all the conversation with him? Give his language as near as you can, how it occurred and what was said.

A. Why, the way it occurred was this: I was informed—I was in the shop at the time Mr. Hughes landed upon the property and when I went out of the shop a man made the remark to me that there was an organizer out there and we were going to have some trouble. "Oh," I says, "I do not think there will be any trouble." So I went out to Mr. Hughes and asked him his business and he told me he was an organizer. I told him to move off; that down over the hill was a good place for him; that we did not want him on our property; that we didn't want to be bothered with the union; that we were getting along first rate without any union. He told me not to get mad, that nobody was going to hurt me. I told him I was not worrying at all about getting hurt; but I stuck to him and did not allow him to see any of our men, and eventually put him on a car.

Q. Now, what was it he said about his object and purpose and intention?

A. Why, it was to organize the Panhandle.

507 The Court: I think he has expressed his conversation sufficiently. You can go on, Mr. Gilchrist, and ask him what further he said. His understanding would be immaterial anyhow.

Mr. Gilchrist: I expected to get out of the witness a further conversation explanatory of what was meant by the organizer when he said he would tie up the mine.

The Court:

Q. Did he make any explanation as to what he meant by tying up the Panhandle?

A. That they would organize us and we would recognize the union. He went on further and stated that he would come there and ask me for a job and I would be compelled to give it to him, and he would work for me.

Mr. Gilchrist:

Q. Was that remark of his following any statement on his part that the men if organized by him would have to be recognized by the officials of his organization and the mine sign up and run union?

A. That was my understanding of it.

Q. *What* that the substance of your conversation with him on that point?

A. Yes, sir.

Q. Then getting back to the question that I asked you a moment ago, but as to which some objection was made by counsel on the other side. When Hughes said he was going to organize the Panhandle, or tie it up he meant, as you understood his language as you have expressed it here, to cause the mines to be shut down provided he succeeded in organizing the men and the operators refused to unionize?

(Question objected to by counsel for the served defendants.)

The Court: Under the exception I will let the answer be given and consider it finally.

Mr. Gilchrist:

Q. Now, state fully—(interrupted)——

A. My understanding of it was that if the company did not recognize this union that the mines would be shut down.

Q. Did you see Hughes more than once?

A. Yes, sir.

Q. Where?

A. At the Richland mine.

Q. What was he doing there, if you know?

A. He was talking to the men.

Q. Were you present when he was talking to any of the men?

A. Sometimes I was.

508 Q. If you heard anything that he said in talking to these men on the subject of joining the union, state what it was, as nearly as you now recollect?

A. I recollect of him telling one man—not a man, rather, but a boy, that we were paying at that time $1.75 for a boy's job—he told him that his job would pay him $2.25 if they were organized.

Q. Did you hear him talk to anybody else along that line of thought?

A. No; that was when I walked in where there were about thirty or forty men that he had gathered around him, that I heard this talk, and of course when I entered he quit talking to the men.

Q. He was then in company with the men, was he?

A. Yes, sir.

Q. Was that on the property of the company or not?

A. No, sir; it was not.

Q. Was it near the mine?
A. Yes, sir.
Q. Do you know how he happened to be in conversation with them at that time?
A. No; I do not.
Q. You just found him there talking with the thirty or forty men?
A. Yes, sir.
Q. Your employes?
A. Yes, sir.
Q. Did Hughes, in any of his talks with you—if you had any other than what you have already detailed—say anything about his work in other mines in the Panhadle District?
A. Yes, sir; he did.
Q. Well, what mine or mines did he speak of that he was working on?
A. He spoke of the Glendale mine—about them organizing and joining the union. If I remember right at the Glendale mine he got twenty-two men.

Mr. Hogg: Just note an objection to what the witness says in regard to what Hughes did at the Glendale mine, for reasons to be assigned at the final hearing.

The Court:

Q. Did he say anything about the Hitchman mine?
A. No, sir.

Mr. Gilchrist:

Q. What did he say, if anything, with reference to the twenty-two men?
A. He said they had been discharged by the company but he had gotten them jobs elsewhere at union mines.
Q. Did he say in what state?
A. In Ohio.
Q. That is just across the river from the Glendale mine—the State of Ohio?
A. Yes, sir.
Q. If he said anything about giving them cards—that is, union cards, as their evidence of a right to work in union mines in
509 Ohio—what did he say?
A. Why, that he had given them cards—good union cards.
Q. What, if anything, did he say about the cost of those cards or what he charged the men, if anything?
A. I do not remember that he said anything about the cards; that is, I do not remember that he said anything about the cost of the cards, but that he gave them cards.
Q. Now, if he said anything about fines for having worked at the Glendale mine, what was it?
A. I do not remember that he said anything about fines.
Q. Did Hughes succeed in organizing the Richland mine, where you were?

A. Yes, sir.

Mr. Hogg: Please note an objection to that.

Mr. Gilchrist:

Q. What did he accomplish?

(Question objected to by counsel for the served defendants.)

A. Why, he accomplished the organizing of about fifty men, as near as I can recollect.

Q. How many men did the mine have employed at that time?

A. Between eighty and ninety, as near as I can remember.

Q. Now, I wish you would state, as nearly as you can now recollect, about the proportion of men who entered your employ after April 1st, 1907, that were included within the number of about fifty men that he succeeded in organizing at the Richland mine, as you have stated?

(Objected to by counsel for served defendants.)

A. I would say there were about forty; as near as I can recollect.

The Court:

Q. That had been *been* employed after April 1st?

A. Yes, sir.

Mr. Gilchrist:

Q. When the men were organized at the Richland mine by Hughes, what happened to the mine?

A. It was shut down.

Q. Did it resume union pursuant to the organizers' efforts?

A. No, sir.

Q. Then that was a case of tie up, was it?

A. Yes, sir.

510 Q. And that was what Mr. Hughes told you he would do provided the men were organized and the mine was not unionized by the operators?

A. Yes, sir.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Leonard, was asked and answered questions as follows:

Q. Are you the same Paul Leonard who made an affidavit to be used by the Richland Coal Company in a suit by it against John Mitchell and others, filed in this case?

A. Yes, sir.

Q. I hand you what purports to be an affidavit of Paul Leonard, filed in the case of the Richland Coal Company versus John Mitchell and others, on the 24th day of October, 1907, and ask you to examine the signature to this affidavit and state whether or not that is your signature?

A. Yes, sir.

Q. Did you read this affidavit, or have it read to you, before signing it?

A. Yes, sir.

Q. Do you recollect the time when you met Hughes on the occasion of your going out of your shop when you were told that he was an organizer?

A. Yes, sir.

Q. Please give the dates?

A. I do not know that I can remember the dates.

Q. Well, the year and month, as well as you can.

A. If I remember right it was in 1907.

Q. Was it in the month of October?

A. Well, I believe so.

Q. Is that your best recollection now?

A. That is my best recollection.

Q. You say that there are in the Panhandle District of West Virginia, the Glendale, Hitchman, Moundsville, Elm Grove, Richland and Beech Bottom coal mines?

A. Yes, sir.

Q. Did you at one time run on a union basis at the Richland mine?

A. No, sir.

Q. You never did?

A. I never did.

Q. When did you go there?

A. I went there on the 26th day of June. It will be six years the 26th day of next June.

Q. Do you know whether or not the mine was on a union basis before you went there?

A. It was not.

511 Q. It never was run union?

A. I did not say it never was run union; I said it was not before I went there; I did not say that it never was run union.

Q. Well, was it ever run union?

A. I believe it was at one time.

Q. Do you know when?

A. No; I do not.

Q. How many men did you employ in 1906 when you went there?

A. Why, I cannot recollect just exactly—about fifty, I suppose, or possibly sixty.

Q. Then by the first of January, 1907, how many had you?

A. I do not know that I can just exactly state; there was quite a number of men.

Q. You say that you asked the organizer that you met—this man Hughes—his business at the mine?

A. Yes, sir.

Q. When you met him did you say this to him: "I told him that down over the hill was a good place for him"?

A. Yes, sir.

Q. Did you speak peremptorily or positively to him about it?

A. Yes, sir.

Q. Did he reply to you that there was no use for you to get mad—that he was not going to hurt you?

A. Yes, sir.

Q. You were mad, were you?

A. Yes, sir.

Q. Did he say that he was going to organize the men?

A. Yes, sir.

Q. Did you say to him in reply that you did not intend to let him do that?

A. Yes, sir.

Q. Did you tell him that you did not want him to trespass on the company's property?

A. I did.

Q. Did he then ask if you intended to insist on that and you told him that you certainly were?

A. Yes, sir.

Q. And you did insist on it?

A. I did insist.

Q. Did you tell him that when a man applied for a job that it was always the understanding that the men there were not organized?

A. Yes, sir.

Q. Did you tell him that you did not recognize the union at that mine?

A. Yes, sir; I did.

Q. And did you tell him that the company was not going to be organized?

A. Yes, sir.

Q. Then did you say to him if under those circumstances he wanted to work, he could work for you?

A. Yes, sir.

Q. Did you also say to him that if he did enter your employment—that is, the employment of the Richland Coal Company—and wanted to join the union, that he would have to leave the employment of the company?

A. That he would have to go elsewhere to join it.

512 Q. I believe you stated that you saw him talking to some of the men?

A. Yes, sir.

Q. Well, after you had the conversation that you have detailed here on the witness stand, did Hughes go off of the property as you had requested him to do, or ordered him to do?

A. At times he would be off and at times he would be on.

Q. Whereabouts was he with reference to the mine at that time?

A. He was, as near as I can give it, about 600 feet west of the mine.

Q. Of the mouth of the mine?

A. Not of the mouth of the mine but west on the county road.

Q. How far was it from the mouth of the mine leading into where the men were working? Do you have a drift mine there or is it a shaft mine?

A. It is a drift mine.

Q. Well, go on.
A. Well, I would judge it would be from a thousand to twelve hundred feet.
Q. Then you had this conversation with him about a thousand or twelve hundred feet from the entrance to the mine?
Witness: That is, when he was talking to the men?
Mr. Hogg: No; I mean where you were talking to him in the conversation in which you told him to get off of the property.
A. Oh, that was about sixty feet from the mouth of the mine.
Q. Now, then, when he was talking to the men he was about a thousand feet, was he, from the mine, or twelve hundred feet?
A. Yes, sir.
Q. You did not hear what he said with the exception of what he stated to a boy. What was the boy doing?
A. Spragging cars on the tipple.
Q. And he wanted to know what he was getting, did he?
A. Yes, sir.
Q. And the boy said $1.75 a day?
A. Yes, sir; I think that is right.
Q. And he then replied that the union scale was $2.25 for that kind of work, did he?
A. Yes, sir.
Q. He held that out to him, then, as an inducement to become a member of the United Mine Workers?
A. Yes, sir.
Q. I believe you stated that you did not recollect anything else that he said, in your examination in chief?
A. I believe I did state that.
Q. That is about all you recollect, is it, of what occurred?
A. Yes, sir.
513 Q. I believe that you stated that Hughes gave certain men that you had discharged from the Richland Coal Company's employment, union cards. Did you or not?
A. I did not make any such statement; I did not make any statement of that kind.
Q. What did you say, then, in regard to that matter?
A. Why, that was the Glendale mine.
Q. Oh, that was the Glendale mine?
A. Yes, sir.
Q. Well, where were you when you saw him, if you saw him giving the men the cards?
A. I did not say I saw him giving the men the cards.
Q. What did you say in regard to that?
A. He told me that he had given the men the cards.
Q. He told you that he had given them good union cards?
A. Yes, sir.
Q. And that would entitle them to employment at a union mine?
A. Yes, sir.
Q. Did you say that there were about fifty men who joined the union at the Richland mine?
A. Yes, sir; as near as I can recollect.

Q. And when they joined the Richland company discharged them. That was the rule, wasn't it?

A. No, sir.

Q. Didn't they have to quit if they joined the union?

A. No, sir; I discharged three of the men or ordered three of the men discharged.

Q. Why?

A. For being leaders of the union.

Q. Well, were they members of the union?

A. They were at the time I discharged them; and the rest of them came out.

Q. And did not remain any longer with you?

A. No; not at that time.

Q. Well, you did not employ those men for any definite time?

A. Oh, no.

Q. Were they union men—those men that came out? Had they joined the union—those that came out?

A. Yes, sir.

Q. Well, your rule was not to allow a man to remain if he joined the union. Wasn't that it?

A. Yes, sir.

Q. So you would have discharged them had they not come out?

A. Yes, sir; I would have discharged them if they hadn't.

The Court:

Q. When you speak of coming out, do you mean coming out of the union or quitting work?

A. Quitting work.

514 Mr. Hogg: Coming out of the mine.

Q. I believe you stated that Hughes said nothing to you about the Hitchman mine?

A. I do not believe that he ever mentioned the Hitchman mine.

Mr. Hogg: If your Honor please, where evidence has been objected to I wish to make the statement that under the rule I do not want to be understood as waiving any point that is at issue, and I wish to state further that I have conducted this cross examination without waiving my objection.

Mr. Gilchrist: I understand that to be true only to the extent where the cross examination is strictly cross examination.

The Court: Certainly.

Mr. Hogg: And as a matter of course if we get irrelevant evidence in here ourselves, the court will not consider it.

The Court: The court will instruct himself to disregard it.

(End of Cross Examination.)

R. G. AUSTIN.

Direct examination:

Upon direct examination, the witness, R. G. Austin said: My name is R. G. Austin; age, fifty; residence, Benwood, West Virginia; oc-

cupation, store manager for the Western Supply Company; the Western Supply Company's store is near the Hitchman mine in Benwood; witness has been in that position six years this month; witness saw a man by the name of Thomas Hughes around the Hitchman mine, believes it was in October, 1907, or around about that time of year; it was in the fall of 1907, it was about October, it was in the fall of the year; witness saw Hughes around there several times—around in front of the store and in the streets; witness saw him off and on for some little time; witness is handed a card upon which is printed this language: "Notice: To the Miners of the Hitchman mine. There will be a mass meeting Friday evening at 6:30 p. m., at Nick Heil's Base Ball Grounds for the purpose of discussing the principals of organization. President William Green will be present. All miners are cordially invited to attend," is asked to state what, if anything, he knows about that card, and replied: "Well, that card I took down off of a telephone pole, I believe after Mr. Hughes had tacked it up there, and I made that memorandum on there." The memorandum on the card is "9th 19, '07. RGA." my initials; that memorandum is in the handwriting of witness; witness made it on the card at the time he tore the card down; witness saw Hughes at different times.

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At this point the following questions were asked, answers given and proceedings had:

Q. Did you see him put up this notice?
A. No, sir; I didn't see him put that one up.
Q. Did you see him put any notice up?
A. I did.
Q. What kind of notices were they?
A. Well, I saw him put up the same kind of notices as this.
Q. The same kind?
A. Well, it might not be the same kind of a notice but it was a notice of that description—a notice of a meeting.

Mr. Gilchrist: I offer this card in evidence to be marked "Austin's Exhibit No. 1."

Mr. Hogg: And we object to that as we did to the others.

Q. I believe you stated that you did not see Hughes put that notice up?
A. No, sir; I did not see him put it up.

Mr. Hogg: Well, we object.

Upon further direct examination the witness, Austin, was asked to look at the card handed him upon which appears in black stencil the following: "Notice. A meeting for Hitchman's miners at 6:30 p. m., Friday, Sept. 27, Pres. Green will be there," is asked to look at the card and state what, if anything, he knows about it, and replies that he remembers of Hughes sticking up such notices—remembers of Hughes putting up such notices as that; saw Hughes put up that notice, thinks he saw him, or one just like it.

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At this point the following proceedings were had:

Mr. Gilchrist: I offer this card in evidence to be marked "Austin's Exhibit No. 2."

(Objected to by counsel for served defendants.)

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Austin, said: Witness could not tell what relation the Western Supply Company sustains towards the Hitchman Coal Company; the Western Supply Company furnishes supplies to the employes of the Hitchman Coal Company, it sells them goods; the bill or account for the goods is not rendered to the Hitchman Company, the men patronize the store and some of them pay cash; the Western Supply Company issues a coupon to the miner—to the employes—redeemable in goods; the Hitchman Coal Company pays the Western Supply Company for the coupons that it issues; the Western Supply Company does a pretty big business with the Hitchman Coal Company along that line—a pretty good business; it has been doing that kind of business with the Hitchman Coal Company ever since witness has been there; witness has been there about six years; cannot approximate the extent of that business with the Hitchman Coal Company; it amounts to a considerable sum during the year—it is quite a business; witness is intimately acquainted with the superintendent, Mr. Koch, and also with Mr. Hitchman.

At this point the witness, Austin, was asked and answered questions as follows:

Q. I believe you stated in your examination in chief that you saw Mr. Hughes in front of your store, or on the streets, in October, 1907?

A. Well, I am not certain about its being in October but it was around that time. It might have been September, or some other month; I do not just remember the month.

Q. Exhibit 1, filed with your deposition, marked "Notice," you tore down from a telephone pole?

A. Yes, sir.

Q. But you say that you did not see Mr. Hughes tack this notice on the pole?

A. Not that particular notice.

517 Q. You did not see him do that?

A. No, sir.

Q. At whose instance did you preserve this document?

A. At Mr. Koch's.

Q. At whose instance did you tear it down?

A. At his.

Q. Now, taking Exhibit No. 2 that you have spoken of, this seems to have been nailed or hung up somewhere. Where did you discover that?

A. Well, I think that was hung on a telephone pole.

Q. To a hook or nail?

A. Well, I could not say.

Q. Well, how long had it been there before you lifted it off of the hook or nail?
A. I did not lift that one off.
Q. Well, how do you come to identify it?
A. I saw another fellow lift it off.
Q. Who was that other fellow?
A. Mr. Knapp.
Q. Who is Mr. Knapp?
A. He is the electrician of the Hitchman Coal & Coke Company.
Q. He is in the employ of the Hitchman Coal & Coke Company, is he?
A. Yes, sir.
Q. Did he hand that to you?
A. No, sir.
Q. When that was lifted off by Mr. Knapp, what did he do with it?
A. Well, he took it in the office, I think; I do not remember.
Q. In the office of the Western Supply Company?
A. No; of the Hitchman Coal & Coke Company.
Q. After it went into the office of the Hitchman company did you go on a mission of inspection?
A. No, sir; I did not even see him take it in the office; I just saw him take it and go around the corner with it.
Q. Now, about when was that?
A. It was in the fall of the year.
Q. In 1907?
A. I think it was around in September or October, 1907.
Q. Was it on the same pole that you discovered the notice that you took down?
A. No, sir.
Q. Well, then, you have not seen the notice to inspect it, until to-day, have you?
A. No, sir; not that I know of.
Q. Well, can you swear, then, that that notice that was handed to you by Mr. Gilchrist is the same notice that you saw Mr. Knapp lift off of the hook or nail?
A. No, sir.
Q. And you don't do it?
A. No, sir.

(End of Cross examination.)

518 M. C. KNAPP.

Direct examination:

Upon direct examination the witness, M. C. Knapp, said: My name is Martin C. Knapp; age, 39; residence, McMechen, West Virginia; occupation, master mechanic of the Hitchman Coal & Coke Company; has worked for the Hitchman Coal & Coke Company—it will be eight years the 16th day of next October; witness has seen Thomas Hughes; talked with him; first saw him to know him in the private driveway of the Hitchman Coal & Coke Company; with

reference to the mine that driveway is laid direct from the street back to the mine, passing the store of the Western Supply Company.

At this point the witness, Knapp, was asked and answered questions as follows:

Q. Well, what was the occasion of your conversation with Hughes?

A. I took down a notice that was hung on an electric light pole, I think, and started around into the office, and Mr. Hughes approached me and stopped me just as I got in off of the street, in the private driveway.

Q. What, if anything, did he say when he stopped you?

A. Well, he said things that I do not suppose it would be proper for me to speak here.

Q. Well, yes, it is proper.

A. He attacked me very maliciously and vigorously; he was very mad.

Q. What, if anything, did he say to you?

A. He asked what I took down the notice for and the way he spoke it, of course, I replied by saying no, and asked him what it was to him—that I didn't know him—and he told me what it was to him; he told me who he was and what he put it there for.

Q. Well, what did he say on that subject?

A. He said his name was Thomas Hughes; that he was a gentleman from the south and that he was there for the purpose of organizing the Hitchman miners, and had put that notice up. That he had put the notice up, if I remember right, and that he did not intend it to be interfered with by such fellows as myself. I told him I did not know as I was interfering with his business; that I was not taking much interest in his business at all; and I cannot recollect whether that was all or not; I may think of something else. Anyway, he said he would settle with me later—that he would
519 see me—and I replied to him that that was all right; he could do that; that he was on private property and to get out of the alley.

Q. Did he get out?

A. Yes, sir.

Q. Look at the card I now hand you, which is marked "Austin's Exhibit No. 2" and state what, if anything, you know about that?

A. To the best of my recollection that is the notice that I took down off of the electric pole.

Q. What did you do with it after you took it down?

A. I took it into the Hitchman Coal & Coke Company's office.

Q. Is this the notice, then, that Hughes referred to?

A. I would say that this is the notice.

Q. As his having put up and objecting to your having taken down?

A. Yes, sir.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Knapp, said: This private driveway leads by the Western Supply Company's store and on back

to the mines; it is a wagon-way—a paved road; it is used by the people there in going over to the office and over to the mine, but not in going over to the store; it is paved with brick; is about fourteen feet, probably—fourteen or sixteen feet in width; witness met Hughes in the alley or in the private driveway, in daylight; Hughes hollowed in the first place and drew my attention, and witness stopped until Hughes came up to him, and when Hughes came up Hughes wanted to know why witness had taken down that notice; witness got that notice off of an electric light pole close to the store; that electric light pole did not belong to witness, but witness knows to whom the pole did belong; it was about noon when witness took the notice down; could not say how long the notice had been there; witness did not see Hughes put it up.

At this point the witness, Knapp, was asked and answered questions, as follows:

Q. It made you furious when you saw that notice?
A. No, sir.
Q. Did you take hold of it gently or did you life it down pretty viciously?
A. I lifted it down gently.
Q. Well, you say that he attacked you?
A. Yes, sir.
Q. Was it with language that he attacked you or with blows?
A. With language.
520 Q. Well, you are not afraid of words, are you?
A. No, but I squared myself just the same.
Q. Then you attacked him, did you?
A. No, sir; I did not.
Q. What I meant was with language—you attacked him with language?
A. Yes, sir; when I got a change to say anything.
Q. You sent back the same kind of a blow that he gave you?
A. Yes, sir; when I got a chance.
Q. He did not like it because you took down the notice?
A. No, sir.
Q. And you didn't like it because he found fault with you for taking it down?
A. I didn't like it because he attacked me in such a way that it was insulting.
Q. It was his language that insulted you?
A. Yes, sir; his abusive language.
Q. You did not feel that you had done just the right thing by taking his notice down?
A. I did not feel that I had done any particular wrong.
Q. You did not feel you had inflicted a loss or injury, but didn't you think that you had not done exactly the right thing by taking down his notice, to be frank about it?
A. No; I do not know as I did.
Q. Are you in the habit of disturbing opportunities for free speech?

A. No, sir.
Q. You are a lover of that, are you?
Witness: Of what?
Mr. Hogg: Of free speech.
A. Yes, sir.
Q. Did you take that notice immediately to the office when—you got it?
A. I did.
Q. Did you proclaim in a loud voice to Mr. Koch that you had the notice?
A. No, sir.
Q. How did you speak—gently to him?
A. I walked into the office and spoke to the clerk and told him there was a notice that I had taken off a pole.
Q. And then you handed it to him?
A. I either handed it to him or laid it down on the desk.
Q. Then did you go out?
A. Yes, sir.
Q. Did you notice what he did with it?
A. No.
Q. Well, did you go there afterwards and inspect it?
A. No, sir.
521 Q. That was your notice, wasn't it, after you had taken it down off of the pole?
A. No; I had no use for it.
Q. Then you didn't go to inspect it?
A. No, sir.
Q. When did you next see that notice after you had stored it away in the office?
A. Here.
Q. Now, you say that that is the same notice after the lapse of all these years?
A. To the best of my recollection it is the same notice.
Q. You think it is the same notice?
A. Yes, sir; there is a word in that notice that is mis-pelled; I took particular notice of that before I took it down.
Q. What word is that?
A. "Hitchman."
Q. Then you think there is no doubt about it?
A. I think there is no doubt about it.
Q. Suppose there were other notices like it that had been put up and all mis-pelled, how would that enable you then to identify it, having two or three like it?
A. It could have been possible if there had been any other notice like that, but not likely. That was hung on the pole by a string.
Q. How high up was it on the pole?
A. I could not tell you; I did not measure the distance; I do not know.
Q. Could you reach it conveniently, or did you have to get up on something?
A. No; I reached it conveniently.

(End of Cross Examination.)

Redirect examination:

On re-direct examination the witness, Knapp, was asked and answered questions, as follows:

Q. On your cross examination you said that the notice marked "Austin's Exhibit No. 2" contained one word misspelled. I hand you the notice and will ask you to state what the word is that attracted your attention as being misspelled?
A. "Hitchman."
Q. How is it spelled there?
A. It is spelled "H-i-c-h-m-a-n."
Q. And what is the correct way of spelling that name?
A. "H-i-t-c-h-m-a-n."

(End of Re-direct Examination.)

522 Recross-examination:

Upon re-cross examination the witness, Knapp, was asked and answered the following questions:

Q. Then, in giving that notice he did not notify the Hitchman Company but he notified the "Hichman" company?
A. I suppose he notified the "Hichman"; but I suppose it was intended for "Hitchman."
Q. Well, wouldn't it stand for "Hichman"?
A. Yes, sir.

(End of Recross Examination.)

JOHN H. SIVERT.

Direct examination:

Upon direct examination, the witness, John H. Sivert, said: My name is John H. Sivert; age, 50; residence, McMechen, West Virginia; occupation, carpenter at the Hitchman coal works; has worked at the Hitchman coal wo/rks for about seven years last December; remembers the occasion of a strike at that mine in April, 1906; witness recalls the loading of coal from the bins at that mine on the engines of the Baltimore & Ohio Railroad Company after April 16th, 1906, and before June 12th, 1906, that is loading coal on the contract that the company held for coaling engines at the bins; witness remembers that very distinctly.

At this point the witness, Sivert, was asked and answered the following questions:

Q. How was that coal delivered at the mine and how was it gotten into the bins from the railroad cars?

A. We have a siding where the empty cars are put on the B. & O. above the tipple preparatory to loading at the Hitchman tipple. The coal was supposedly brought from Fairmont and put upon this siding —loaded cars instead of empties at this time—and there is a trestle that spans McMechen Run, and by means of this trestle that is somewhere from 15 to 18 feet high, we took the coal over it. We had chutes put in that trestle—two chu-es—leading down to a temporary

track that we laid from these chutes up into the Hitchman yards. There is a little stationary engine up there and by means of that engine and a cable we would pull two cars at a time from these
523 chutes up into the yard. There we laid a temporary track over the mouth of the mine, bringing it out to intersect the main track coming out of the mine, and the cars were brought into the yard and were switched up onto that track over the mouth of the mine and pushed by hand to the main track of the mine where they were put on the cable and taken to the bins as usually or as regularly brought out of the mines.

Q. From that bin, then, that coal was loaded into engines as fuel?

A. Yes, sir; that was the purpose of putting that in there—to coal the B. & O. engines.

Q. Did you see any shipping cards on any of the railroad cars which would indicate to you where any of the coal came from that was thus hauled in by the railroad company and then hauled up by the mine officials and put into the bin, and thence into the engines of the railroad company?

A. Yes, sir.

Q. If you now recall what was on any of those cards, I wish you would state it.

A. Well, there was several kinds; but there was coal put in there that I could almost positively swear was not Fairmont coal, judging by the coal itself; but there was one special time that there was a drag of about six or seven cars put in there that were filled with Wheeling Creek mine coal.

Q. Where is the Wheeling Creek mine?

A. It is back of Bridgeport; I have never just been at the mine, but it is supposed to be in Ohio.

Q. Bridgeport, Ohio?

A. Yes, sir; I remember that very distinctly—about the drag.

Q. Do you know whether that mine belongs to the Lorain Coal & Dock Company?

A. I do not know positively and did not at the time. The only thing that impressed me was that we were waiting. It was awful late in the evening and it was quite a job for us to keep any coal in these bins whatever at that time, owing to the conditions we had to work under, and we had to wait almost all the afternoon on coal, and it came over awful late in the evening, and the railroad men that were to handle it said that they would have to wait until the C. L. & W. came in to get the coal. That is what rather aroused my suspicions at the time—why we would have to wait for coal to come on that road; and when it came over I noticed particularly the first car and I could see the way-bill, "Wheeling Creek Mine." I could not see all of them distinctly at the same time. It was getting dark and where I was loading—I was below the track attending to our pit wagons, loading them from the chutes and sending them
524 up. The track the coal was put in on was above me and ran parallel. I would be looking facing the first car and the others from me I would be looking glancing along the side. It was just a card with printing on it and it would look like one black streak, and that is why I could not say positively that they were all

billed that way. The one in front of me I could see plainly and the others, I was looking glancing at. It was getting dark at the time.

Q. In appearance what would those cards look like compared with the one that you read?

A. They would look like the same cards.

Q. The Wheeling Creek mine over at Bridgeport was a union mine, was it?

A. I could not say positively for I had never given very much attention to any of the different mines. I do not know anything about unions or strikes or anything of the sort. I never have been implicated in anything of the kind and haven't taxed my mind about what were union mines and what non-union.

Q. You are not a member of the United Mine Workers of America?

A. No, sir.

Q. Were you ever a member of that organization?

A. I never was.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Sivert, was asked and answered questions as follows:

Q. Mr. Sivert, how often would you be down there when that coal was brought in—every day?

A. Yes, sir; and sometimes into the night at twelve o'clock.

Q. You remained there, then, during the whole day, did you?

A. Yes, sir.

Q. And that system was in use between the 16th of April and the 6th of June, as you stated in your answer to Mr. Gilchrist. That is right, is it not?

A. Well, it was along about that time. We had two hitches at it and the dates I cannot give positively.

Q. You answered in response to Mr. Gilchrist's question that it was between the 16th of April and the 12th day of June. Is that correct—that answer that you gave?

A. Well, I guess I did answer it in that way, but I would not say positively about the starting date or any future date.

Q. Anyhow you were there?

A. Yes, sir.

525 Q. You said also in your answer that the coal was supposedly delivered from the Fairmont mines?

A. That was my understanding.

Q. But on this occasion that you speak of when the C. L. & W. train came in was the day you saw these seven cars?

A. I would say six and I — almost positive there were seven of them.

Q. And on one of them, although it was getting dark, you could see distinctly enough to read the card on the car?

A. Yes, sir.

Q. Now, do you recollect the language on the card?

A. Oh, not positively, no; for I did not tax my mind or memory with it, not knowing that I would ever be called upon to testify about it.

Q. Did you see "Wheeling Creek Coal Company" on it?

A. Well, now, it was "Wheeling Creek Coal Company," or "Coal Mine," or something of that sort; I would not *say* positively about that.

Q. That was the only one you read. You saw cards on the other five or six but did not read them.

A. Yes, sir; and the only thing that called my attention to it was that we were not working and somebody else was putting their coal there. That is about the only thing that caused me to take notice *to* it at the time.

Q. Who brought that coal in there?

A. I do not know who they were; they were railroaders.

Q. Who ordered it?

A. I do not know anything about that; I didn't.

Q. Do you know who put those cards on those cars and when and where they were put on?

Witness: These coal cars?

Mr. Hogg: Yes.

A. No, sir.

Q. What sort of looking cars were they—about what size?

A. They were steel hoppers.

Q. Then they were pinned on there, were they?

Witness: What was pinned on?

Mr. Hogg: The sign, "Wheeling Creek Coal Company."

A. No, sir; they were on paper bills.

Q. What kind of paper was it? Was it a post-card, or tag-card, or what sort of a card?

A. It was not a post-card; it was just a square card.

526 Q. Do you recollect how it was fastened on?

A. It was tacked on.

Q. You do not know how long it had been there?

A. No, sir.

Q. Now, do you know, Mr. Sivert, that railroad cars go from line to line and from place to place?

A. Yes, sir.

Q. Of course you do not know how long that card had been on there? You do not know anything about that?

A. No; I do not know how long it had been on there but there were no others.

Q. That is the only one you saw of that kind during the time that you were there?

A. Yes, sir; on that car.

Q. Well, what other card like that, then, did you see? You did not state you had seen any more.

A. I could see them on the other cars but not to read them distinctly.

Q. You do not know what was on the other cards?

A. Well, I could not say positively about that but they looked similar.

Q. Do you know whether the Wheeling Creek Coal Mine was working at that time? Was it in operation?

A. No, sir; I do not know.

Q. Don't you know there was a strike on in Ohio at the same time, among the coal miners?

A. No, sir; not particularly.

Q. Well, if they were on a strike at that time and the Wheeling Creek Coal Company was in that strike, you would not get very much coal from that mine, would you?

A. I do not know anything about that.

(End of Cross Examination.)

JOHN MOONEY.

Direct examination:

Upon direct examination the witness, John Mooney, said: My name is John Mooney; age, fifty-six; residence, McMechen; occupation, track foreman; was track foreman for the B. & O. at Grafton, Benwood, Wheeling and Glovers Gap; was track foreman for the B. & O. about eighteen or twenty years; witness works now at the Hitchman Coal & Coke Company at Benwood; has worked for that company about eight or nine years; remembers the occasion of the 1906 strike at that mine; witness was there; he was working for the Hitchman Company.

527 At this point the witness was asked and answered questions as follows:

Q. During the time the mine was shut down on account of the strike, do you remember whether any coal was loaded out of the bins of the company into engines of the B. & O.?

A. Yes, sir.

Q. What coal was loaded into the bins during that strike and how did it come about?

Witness: You mean that was unloaded off of the side track?

Mr. Gilchrist: I want you to explain what you know about the getting of the coal into the bins when the mine was idle?

A. Well, the coal was backed in on the side track and shoved up there of a day time and at night, whenever we needed it, or whenever we ran out; and I was on top there and unloaded the coal. I dropped the drops out so the coal would run out of the car into the bin.

Q. Now, when the coal ran out of the hopper car it would run down into what?

A. Into a chute where they loaded the coal cars or mine cars.

Q. And then when the coal was loaded into the mine cars, what was done with the mine cars?

A. They were hoisted up and two more empties were put in the place of those that were loaded.

Q. Now, those loaded coal cars were hoisted up where?

A. They were hoisted up on the top and then shoved over with the motor to the bin to coal the engines.

Q. On the track of the trestle?

A. Yes, sir; on the trestle over to the bins where they coal the engines.

Q. Where are the bins with respect to the round house?

A. The bins are right along side of the round house.

Q. On what railroad were these cars of coal brought to the mine?

A. They were shoved in off of the B. & O. road for awhile—that is from the main line—and some of them came from over on the C. L. & W.

Q. Do you remember seeing any loaded cars of coal brought in by the B. & O. from the C. L. & W. line?

A. Yes, sir.

Q. Were any of those loaded cars, filled with coal, emptied by you?

A. Yes, sir; they were all emptied by me.

Q. And that coal so emptied was reloaded into the mine coal cars and put on the tipple and thence into the bin?

A. Yes, sir.

528 Q. And was that coal then fed to the engines of the B. & O. from the bins?

A. Yes, sir.

Q. Did you at any time see any signs or cards on any of the cars which would indicate where the coal came from?

A. Yes, sir.

Q. State what you now recollect about that?

A. The cards on the cars were from the Lorain Coal & Dock Company.

Q. You mean, do you, that the coal was shipped by the Lorain Coal & Dock Company?

A. Yes, sir; that is where they told me they came from.

Q. And that is what the cards indicated?

A. Yes, sir.

Q. Where does the Lorain Coal & Dock Company do business?

A. Over at Bridgeport, or out that way, in Ohio.

Q. Do you know the name of any one of their mines?

A. No sir; I do not.

Q. What did you do when *when* you observed that the cards were Lorain Coal & Dock Company cards?

A. Well, sir, I pulled some of them off and threw one of them down for Mr. Sivert and the other fellows to read; and as to the others, some I pulled off and some I didn't; and I told some of the fellows around there how awful strange it was—(interrupted).

Mr. Hogg: Don't tell what you told anybody.

Mr. Gilchrist: Just tell what you did. What did you do with the cards?

A. I took and threw one of them down that Mr. Sivert or some one tore off.

Q. Well, did you say anything about that Ohio coal to the men working about the mines who were on a strike?

A. Yes, sir.

Q. There were some of them around the mine still, were there?

A. Yes, sir; there were one or two.

Q. Do you recollect having told any particular person?
A. Yes, sir; I told two.
Q. If you now recollect, who was it you told?
A. John Oliver was one and Mr. Sivert was another.
Q. Can you fix the date or the time when you saw this coal that was contained in these Lorain Coal & Dock Company cars, there?
A. It was the 22nd day of June.
Q. The 22nd day of June?
A. Of May, I mean.
Q. How do you fix the date as the 22nd day of May?
A. By the B. & O. ice house burning down that day. It
529 burned that evening when we were sitting there waiting for the cars to come.
Q. And where was the B. & O. ice house?
A. Well, sir, I expect it was about four or five hundred yards, or may be a little farther than that, from where we were sitting there.
Q. What did you do at the time the ice house was burning?
A. We went down there and helped to fight the fire—all of us; helped to put out the fire.
Q. Did you go alone or was any one with you?
A. All of us went together down there.
Q. You say you were working there with some other people at that time unloading this car and having it loaded to the mine cars?
A. Yes, sir.
Q. Do you recall who else was about there and working on the same job?
A. Yes, sir; Mr. Sivert was there.
Q. Mr. John Sivert?
A. Yes, sir; and Frank Goodwin was there and William Hawkins was there.
Q. Can you tell No. 8 coal from its appearance when it is being unloaded from a hopper car? Can you tell that as distinguished from Fairmont coal?
A. Yes, sir.
Q. How can you do that?
A. Well, sir the Fairmont coal will run out a heap easier—out of the car—then No. 8. That is, No. 8 will stick on account of the slack; there is so much slack in it.
Q. In unloading this coal from these cars which contained coal shipped from the Lorain Coal & Dock Company's mines did you notice whether the coal was Fairmont coal or whether it was No. 8 coal?
A. Yes, sir; it was No. 8 coal.
Q. And what peculiar distinguishing feature did you observe in that coal which led you to the conclusion that it was No. 8 coal and that it was not Fairmont coal?
A. Well, sir; there are streaks in it, of this slate, and then there is a bottom coal that is mixed amongst it about three or four inches thick, I expect. The Fairmont coal hasn't got any of that in it, or I never came across any—not big lumps like that.

Q. From your recollection now, of the coal that was supplied to the engines of the B. & O., out of the bins of the Hitchman mine during that strike, and after May 22nd, 1906, what could you say as to the character of the coal that was furnished by the B. & O. and loaded in the manner you have stated, up over the tipple and into the bin?

A. Well, sir, there were three different kinds of coal unloaded there.

Q. What kinds of coal, then?

A. There was Fairmont coal, there was No. 8 coal and there was one car of blacksmith's coal that was backed in there—Piedmont coal.

530 Q. So that there was some Fairmont coal, and then there was one car of Piedmont coal, and the balance was No. 8 coal?

A. Yes, sir.

Q. After May 22nd, 1907, in the supply of this coal used in this manner, what coal predominated? You have stated that there was Fairmont coal, that there was one car of Piedmont coal, and that the balance was No. 8 coal. Now, what was the proportion, as nearly as you recollect?

A. Well, I expect there was more—there was an awful sight of Fairmont coal and there was a lot of No. 8 coal put off there, too; I could not tell you how much.

Q. After April 16th, 1906, how soon did this loading process start?

A. Well, I could not tell; it was not very long after the mine had stopped that we had to lay track.

Q. That is, you had to lay a temporary track?

A. Yes, sir; a temporary track to haul the coal over?

Q. To arrange to haul the coal up on the trestle?

A. Yes, sir.

Q. But after that time the coal was shipped in, then, was it, and hauled up over the trestle and into the bins, and thence into the engines, until the mine resumed operation June 12th, 1906.

A. Yes, sir.

Q. And you think that during that entire time there probably was more Fairmont coal than there was No. 8 coal?

A. Well, there was a lot of No. 8 coal. There was not very much difference, I do not think, between the two. There may have been more Fairmont coal than there was of the rest.

Q. May 22, 1906, was the first day that you remember now of having seen the No. 8 coal from the Lorain Coal & Dock Company's mines. Is that what I understand you to say?

A. Yes, sir; but then if it had not been for it being so late, I would not have noticed that very much, I guess. It was awful late and we had between six and eight cars to unload,and whe hadn't had any coal since eleven o'clock, I think, and we did not get started until half past four or five and of course that would throw us until about ten or eleven o'clock at night getting done.

Q. Your attention then was directed to the origin of the shipments owing to the fact that you had had to wait so long?

A. Yes, sir; and I asked the conductor what kept them so long, and what was the matter that they didn't get the coal over sooner, and he said he had to go over to the C. L. & W. and wait until the C. L. & W. local fetched the coal in before they could get it.

531 Q. And that was said with reference to this coal which you say you unloaded on May 22nd, 1906?

A. Yes, sir.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Mooney, was asked and answered questions as follows:

Q. Your hearing is bad, isn't it?
A. Yes, sir; a little.
Q. You don't know of your own knowledge where any of this coal came from, do you?
A. Only by the cards on the cars.
Q. I know; but you did not see where it came from? You did not see it loaded into the cars?
A. No, sir; I did not see it loaded into the cars at all.
Q. You do not know what mine this No. 8 coal came from?
A. No, sir; I do not know which mine.
Q. You saw some cards tacked on there marked, "Lorain Coal & Dock Company."
A. Yes, sir.
Q. How large was the card?
A. I expect it was eight inches long, may be, or it might have been a foot.
Q. How wide was it?
A. About six or eight inches.
Q. Were the words in printing or in hand writing?
A. They were printed.
Q. They were printed with black letters?
A. Yes, sir.
Q. Was it a white cardboard or was it yellow?
A. It was a white cardboard.
Q. Did you notice to what railroad company the cars belonged?
A. To the B. & O. Railroad Company.
Q. Were they marked B. & O.?
A. Yes, sir.

(End of Cross Examination.)

J. W. LOGSTON.

Direct examination:

Upon direct examination the witness, J. W. Logston, said: My name is J. W. Longston; age, fifty-two when my next birthday comes; residence, McMechen; occupation, coal miner; works at the Hitchman mine; has worked at the Hitchman mine about eight

years; was working there when the mine was unionized in
532 1903; cannot just recollect how the mine came to be unionized then; recollects that there were men there in the pit talking to the men about joining the union; they were employes at the same time; after the mine was unionized those men quit and went away; after the mine was unionized the men came out for awhile; witness would not say for certain how long they were out before they went back to work again; witness says that the way he understood that strike was for the company to recognize the union; witness cannot remember any strikes after the company recognized the union; witness mined coal at the Hitchman mine on a run-of-mine basis; witness mined coal there on an average basis; the basis now used there is run-of-mine; the run-of-mine basis was the best method for witness to make money under; run-of-mine was better than the average basis.

At this point the witness was asked and answered questions as follows:

Q. Do you remember Thomas Hughes?

A. Well, I never knew the man's name.

Q. Do you remember of a man being about the Hitchman mine along in September and October of 1907, trying to organize the mine?

A. I remember once going out of the pit and going home. I was going across the bridge right below the Hitchman Coal Company's coal mine, and there was a fellow caught up with me right there by the bridge and I talked to him as we walked down the street until we came to Third Street, and he asked me if I would not sooner it would be a union mine than the way it was run, and I told him I did not know whether I would or not. Then he wanted to know if I would not go back in it again and I told him if he got the rest of the men, that I was willing; and he said something about that he thought it would not be hard to get the balance of the men; and that is all I remember about his saying.

Q. Did he offer you any union card?

A. Well, there was something said, I believe, about if I would go back into the union, and I happened to lose my job, he said there would be no trouble in getting a job at other union mines and he would give me a card to that effect.

Q. Did he say anything about you—about paying any money to him?

A. I did not hear him say anything about money that I recall.

(End of Direct Examination.)

533 Cross-examination:

Upon cross examination the witness, Logston, was asked and answered questions as follows:

Q. Mr. Logston, is your hearing bad?

A. Yes, sir.

Mr. Hogg: Well, I will get up close so I can make myself understood.

Q. Now, you spoke about two scales—the run-of-mine and the average scale?
A. Yes, sir.
Q. That is right is it? I understood you right, did I?
A. Yes, sir.
Q. Now, that run-of-mine coal applies to engine coal, does it?
A. Yes, sir.
Q. Of course the other coal is commercial coal—the screened coal—is it?
A. Yes, sir.
Q. Well, now, how long have you been on the average basis?
A. I cannot say for certain how long it was an average basis.
Q. Well, you recollect when you started up non-union in 1906, do you? You were there, were you, at that time—the second time when you started up non-union?
A. Yes, sir.
Q. When you started up then non-union in 1906 did you start up on an average basis, or was it a straight run-of-mine basis? Which was it when you started up the second time, when you ran non-union in 1906?
A. I can't remember now.
Q. What are you on now?
A. On a run-of-mine basis.
Q. About how long have you been on that basis?
A. Well, I cannot tell you that.
Q. Do you recollect what you get for run-of-mine basis—how much your pay is?
Witness: Per ton?
Mr. Hogg: Yes.
A. Thirty-two and one-half cents, I believe.
Q. Thirty-two and one-half cents for run-of-mine basis?
A. Yes, sir.
Q. Well, do you recollect how long that has been in force—that 32½ cents?
A. I cannot remember.
Q. For sometime, has it?
A. Yes, sir.

(End of Direct Examination.)

534 HERMAN A. HUNDT.

Direct examination:

Upon direct examination the witness, Herman A. Hundt, said: My name is Herman A. Hundt; age, thirty-four; residence, Wheeling, West Virginia; occupation, attorney at law; does some stenographic work once in awhile; had occasion to go to Benwood on Friday evening, September 27th, 1907.

At this point the witness, Hundt, was asked and answered questions as follows:

Q. What was the occasion of your going to Benwood at that time?

A. Well, Mr. Lewis Walters, one of the court reporters of Ohio county, asked me to go down there in his place, stating that he had another engagement and could not fill that one, and I told him I would go. I was instructed to go down to Benwood that evening of September 27th, to report the proceedings of a meeting that was to be held that evening near the Hitchman coal mine. So I went down there that evening. I left home about six o'clock and got down there about half past six. I walked back and forth from Nick Heil's place where there is a base ball field and where the meeting was supposed to be held. I did not see anybody there—and there was no platform or anything—so I walked down Marshall Street toward McMechen in a southerly direction, and toward the Hitchman coal mine. I got down that far and I did not see anybody around there so I just loafed around and walked back and forth on that street. There was at that time two saloons there—one of them run by a man by the name of Wilhelm, and the other by some foreigner whose name I have forgotten. I heard people inside and I walked in to see who was in there and what they were talking about. There were several people in there. I was there just a few minutes and then came out and loafed around until about eight o'clock. It was about dusk then and I did not see anybody. Then I went to the Hitchman plant to see Mr. Koch, to see what was to be done, and while talking with Mr. Koch and reporting what I had done, Mr. E. C. Pickett came in and said that Mr. Green, Mr. Zelenka and Mr. Hughes were on the outside. I walked up past them and stood around waiting to see what was to be done there and whether they intended to hold the meeting, so that I could report it. It was kind of dark and I did not think they would hold the meeting, so I slipped back to the Hitchman office and told them I did not think the meeting would be held,
535 but in all probability they would go up on a car. They were standing in two groups, I expect between sixty and one hundred feet north of the Hitchman mine, or rather the Western Supply Company's store. There were two groups of men conversing there. I passed them but they were speaking in such a low tone that I could not catch what they said. I stood around there for a little time and then made arrangements to board the same car that they would return to Wheeling on. After a time Mr. Pickett came up on the car and these same gentlemen were on that car. While they were standing on Marshall Street it was a little dark where they were standing and I could not see who they were; that is, I could not see their faces very distinctly; so when we got on the car—Mr. Pickett got on the car and those Moundsville cars are rather lengthy—and these gentlemen sat in the rear end and Mr. Pickett and myself went in the front vestibule. While up there he pointed the three men out to me—that is, he pointed out who was who and gave me their names—Green, Zelenka and Hughes—and there was a fourth, but I do not know who he was.

Q. As you came by the crowds you have spoken of, did you see these persons you have named in those crowds?

A. Yes, sir. Well, I could not say that they were crowds, exactly; I would say there were not more than six in one bunch and then a few feet away there were six more, and in those two bunches were Green, Zelenka and Hughes. Green was pointed out to me. He wore a light suit that evening and a derby hat, and he had a scar on the left side of his nose. Zelenka was a tall fellow and inclined to be stout. He wore a dark suit of clothes. Hughes was a young man and thin, and had on a dark suit of clothes.

Q. And the other man? Do you recollect what he looked like?

A. He was a man built about the same as Mr. Hughes; he was a young fellow.

Q. Would you know Mr. Zelenka if you were to see him again?

A. I think I would.

Q. Will you look around the court room here and see if you can recognize him?

A. That is the gentleman back there with a blue necktie on.

Q. That gentleman who just smiled at you?

A. Yes, sir; he is smiling now.

(End of Direct Examination.)

No Cross Examination.

536 ROBERT MYERS.

Direct examination:

Upon direct examination, the witness, Robert Meyers, said: My name is Robert Myers; born in 1871; residence, Glendale; occupation, coal miner; has mined coal for eleven years; has been mining coal in different mines in Pennsylvania and West Virginia; has not mined coal in Ohio; tried for work there but could not get work; did belong to the United Mine Workers of America; is not now a member of that organization; is now working at the Hitchman mine; has worked here going on seven years; remembers the occasion of the 1906 strike at that mine; was working at that mine at that time; has done work at the Glendale mine; worked there about three months before the strike came on in 1906; the national strike of 1906 was called April 1st; the mines generally closed down at that time; the Glendale mine closed down then; witness was working at that time at the Glendale mine; that was not his permanent place of work at that time; was working there just temporarily at that time to do some repair work; witness was at time really in the employ of the Hitchman company; he nad been sent down from the Hitchman mine to the Glendale mine to do some work, and while he was working at the Glendale mine doing that work this strike of April 1st, 1906 came about; when the Glendale mine shut down on April 1st, 1906, witness did not go back to the Hitchman mine.

At this point the witness, Myers, was asked and answered questions as follows:

Q. Why was that?

A. I was trying to go and went up again while the Hitchman

mine was working ahead, and there was a good many Americans there and they called me a "black sheep" and I didn't work.

Q. Was the Hitchman mine running at that time?

A. A. Yes, sir.

Q. Why did they say you would be a "black sheep" if you were to go to work?

A. Well, of course I worked at Glendale at that time.

Q. They claimbed that you were working at Glendale?

A. Yes, sir; I explained it to them but they would not know and even did not care about what my explanation was.

Q. Now what was the Hitchman mine doing—running at that time—if you know?

A. Well, after the first of April they worked fourteen days ahead before they closed down.

537 Q. What did the men at that time during those fourteen days do?

A. They loaded engine coal.

Q. And the objection, then, was made to your working because *he* would be a "scab" if *he* worked at the Hitchman mine?

A. I suppose that they thought I was.

Q. So you didn't want to be a "scab" and you did not go to work?

A. No, sir.

Q. At that time were you a married man?

A. Yes, sir.

Q. Any family.

A. Yes, sir; three children.

Q. Did you own any property?

A. Yes, sir.

Q. Was it paid for?

A. No, sir; I had just started to pay for it.

Q. That is, you had just recently bought the property?

A. Yes, sir.

Q. And you had made a partial payment on it, had you?

A. Yes, sir.

Q. And owed the balance?

A. Yes, sir.

Q. The mine was idle from April 16th, 1906, to June 12th, 1906. What did you do during that time?

A. I did some work around about the house—some repair work.

Q. Where was your house, Mr. Myers?

A. At Glendale.

Q. Did you have any land with it of any amount?

A. Well, Mr. Koch allowed me to have some of his land to raise some garden stuff on.

Q. And you put in your time about the house and your place?

A. Yes, sir.

Q. And you managed to exist during the time that you were idle and kept out of work by reason of the strike?

A. Yes, sir.

Q. While you were in the union—you call it the union, do you—the United Mine Workers?

A. Yes, sir.

Q. While you were in the union was any of your money taken off of you in order to pay officials?

A. Yes, sir.

Q. Do you recall about how much they got from you?

A. I cannot remember how much but I remember of between twenty-five and fifty cents dues. It was not the same money always and I cannot remember; I do not know how much it was.

Q. You had dues and then you had assessments, did you?

A. Yes, sir.

Q. And the money was checked off by the company and you got the balance of what you earned?

A. Yes, sir.

Q. What did you understand would be the action of the union when you got out of work—on a strike—with reference to
538 money?

—. My understanding was that the union would be willing to help a man out if he was out of work, while he remained idle.

Q. And was that the reason that you were perfectly satisfied to have your money retained and paid to the union?

A. Yes, sir.

Q. Now, as a matter of fact, during this strike of 1906, were any benefits (they call them benefits) due you?

A. Yes, sir.

Q. Were those benefits paid to you or not?

A. Yes, sir; I got some of them, but they belonged to our own local there in Glendale.

Q. Let me see if I understand you: How much did you get?

A. Well, I cannot remember very good, but I believe it was between three and six dollars, and then they offered me three dollars of a store bill.

Q. The money that was paid you, that money was money that was in the local at Glendale, as I understand you?

A. Yes, sir.

Q. It was not, then, money that was paid to you by the officials of the union?

A. No.

Q. How did it come that they gave you from three to six dollars in money out of the Glendale's local funds when you were really a minor belonging to the Hitchman mine and only working temporarily at the Glendale mine?

A. Well, they sent a man to the Hitchman for my card two days before the strike came on.

Q. That is, your card as a member of the union?

A. Yes, sir.

Q. They sent from the Glendale local up to the Hitchman local to have your union card sent there from the Hitchman local *to have your union card sent from the Hitch-* — stand you to mean?

A. Yes, sir.

Q. And that was a few days before the men came out where?

A. Out on a strike.

Q. On which strike?

A. Nineteen hundred and six.
Q. On April 1st, 1906?
A. Yes, sir.
Q. At Glendale?
A. Yes, sir.
Q. So then they wanted to get your card from the Hitchman mine taken down to the Glendale mine a couple of days before the men would strike at the Glendale mine. Is that right?
A. Yes, sir.
Q. Was the card there, in fact, sent down?
A. Well, I do not know; I did not ask; the men of our own local told me they had my card; I told them it was not necessary
539 to get this card; that I would not stay at that time; that I was down on repair work.
Q. And you do not know, then, as a matter of fact, whether the card really was sent down?
A. No, sir; I do not.
Q. After the strike of April 1st, 1906, at the Glendale mine, then you were idle for fourteen days and you did not go back to the Hitchman mine because you would be called a "scab"?
A. Yes, sir.
Q. And then when the Hitchman mine was closed down on the 16th of April, 1906, you did not work any more until June 12th, 1906?
A. No, sir.
Q. And that was when the mine resumed non-union?
A. Yes, sir.
Q. Have you been working there ever since?
A. Yes, sir.
Q. Has there been any labor trouble there? Have you *hay* any strikes?
A. Not yet.
Q. From June 12th, 1906, to this date, 1911?
A. Yes, sir.
Q. Did you have any talk with a man by the name of Thomas Hughes?
A. I remember him; yes, sir.
Q. You remember a man by that name?
A. Yes, sir.
Q. What was he doing there—if he was about the Hitchman mine—if you recall?
A. Well, he explained to me that he was trying to organize the place again.
Q. What is that?
A. To organize the Hitchman coal miners again.
Q. What do you mean by "organizing"?
Q. To get us organized—organized back into the United Mine Workers of America.
Q. What did he say to you?
A. Well, he said it would be a very nice thing if we would go back again; and so he said if I would put my name down and give him

fifty cents on a book (he did not show me the book, but said it had lots of names down on it of the Hitchman coal miners); he said if I would give him fifty cents I would be entitled to a union card to go any place and get a job, if the Hitchman company would fire me, and he would put my name down on his book.

Q. Did you give him the fifty cents?

A. No, sir.

Q. What did you say to him on that subject?

A. Well, I said I would not do anything like this; he might be a stranger and I did not know that he was the man that he said he was, and anyhow, I was awful careful in putting my name down to anything. He told me that he was a good friend of Mr.
540 Koch, and that Mr. Koch had nothing against having the place organized again. He said he was a friend of his and I made the remark that I would ask Mr. Koc*k* and see if it was so; and he said no; that was of no use, because he was telling me the truth.

Q. Did he show you any book?

A. No, sir; I was trying to see the names on the book but he would not show anything. He told me he had it and I asked him how many names was on it and he said he had abou*n*t enough to "crack off."

Q. What is that?

A. That is what I didn't understand.

Q. Did you ask him what he meant by "crack off"?

A. The time was too short; no, sir. I was waiting for my street car to go home on and I went on the car.

Q. Did you say anything to Hughes about the job that you then had at the Hitchman mine?

A. Yes, sir.

Q. Well, what did you say, if you can recollect?

A. Well, I told him that I didn't care much about being organized again, because I had too much experience already how it goes. I told him I was in several strikes and there wasn't anybody that helped me out, and I had to beg the company to get my job back again after I lost my job.

Q. Did you say anything to him about having any property?

A. Yes, sir; I told him it was impossible for me to go any place else, because I could not walk around with my property on my back and hunt another job. I says, "I have work where I am now and as long as the company treats me as they are treating me I will not do anything against them that they didn't like to have."

Q. During that strike do you remember of seeing any official down near your home and talking with him?

A. Well, the rest of them said they was officials; I do not know that they were. I was trying to talk to one of them—or supposed to be one—and he gave me a very short answer. I was trying to find out what we were going to do—going to work or strike ahead again.

Q. Continue on a strike?

A. Yes, sir; we were on a strike that time about ten weeks.

Q. Did you say anything to them, or to that official, about coal being loaded on the engines up there that was shipped in from other places?

A. No, sir; I had no chance to say anything.

Q. He declined to talk to you?

A. Yes, sir.

Q. Do you know about that coal coming in from Ohio?

A. Yes, sir; that is the reason I was trying to find out what
541 we were going to do. I heard that the coal that the Hitchman coal company used on the engines was coming from places that was not on a strike and were in the strike district.

Q. If they were in the strike district, your meaning is that the coal came from some mine that was working in the district wherein the general strike still existed. Is that what you are trying to explain?

A. Yes, sir.

Q. What section of country did you understand the coal had come from that you were trying to inquire about?

A. Well, from what I could find out they said the coal came over from Ohio.

Q. And at this very time you were being kept out of work by the officials of the United Mine Workers?

A. Yes, sir.

Q. Now allowing the men to go to work again?

A. Yes, sir.

Q. That is what you were trying to inquire about?

A. Yes, sir.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Myers, was asked and answered questions as follows:

Q. You didn't see for yourself where this coal came from, did you?

A. No, sir.

Q. You simply heard about it?

A. Yes, sir.

Q. And Mr. Hughes told you he thought it would be a nice thing for you to join the union, did he?

A. Yes, sir.

Q. And that he would give you a card to get employment elsewhere?

A. Well, he did not say he would give me a card; he said if my name was on the book he had that it would be just as good as if I had a card.

Q. And you told him that you could not very well work any place else because you had property there that you had to pay for?

A. Yes, sir.

Q. And that was about the extent of your conversation with him, was it, as near as you recollect?

A. I do not know what you mean by that, sir.

Q. About as much as you talked to him—what you have stated here. You did not have anything more to say to him, did you?

A. Well, we had a good deal of talk; I cannot remember all he said.

Q. You were talking in a friendly way, were you, about it?

A. Yes, sir.

542 Q. And you were waiting to go up home on a street car when you had this talk?

A. Yes, sir; but he was trying to speak to me about it two or three times before and I was always anxious to get home; I was waiting for the car and he *he* never got *got* a chance to talk to me before.

Q. Do you know when this was?

A. I believe it was in 1907, or something like that.

Q. What time in 1907?

A. I do not know exactly; it was in the summer time.

Q. Now you spoke about getting six dollars in money. What man or person paid you that?

A. Well, I got it from an old man named Mr. Summers. He died. He used to be secretary of our local in Glendale.

Q. Who gave you the three dollars to get the store goods—the three dollar order?

A. No, sir; he gave me the cash money.

Q. But I am asking you who gave you the three dollar order?

A. That was Mr. Summers.

Q. Do you recollect what store that was on?

A. No, sir; I don't do the dealing; my wife does that, and she got the order and told me after all that she could not use that order.

Q. She told you that she could not use it?

A. Yes, sir.

Q. Who had signed the order?

A. I believe I was not at home when she got the order. Some of my friends signed the order—that is, the order for me.

Q. Did you see anybody representing the United Mine Workers in Sub-District 5 of District 6, about that time? Did they come to you?

A. Only one of them came to me. I heard that he was a member of the United Mine Workers of America. That was my understanding. I asked who it was and they told me it was one of our officials.

Q. And you say you got nothing at all from them—neither money nor orders?

A. I do not know who the order came from. I got money twice in cash from our own local in Glendale. You misunderstood: I got this money from our own local in Glendale, and then the order, I do not know who gave it to me.

Q. You do not know where the money came from except what you were told—that it came from your local?

A. No, sir.

Q. Is that right?

A. Well, the money I had twice was from our own local but where it came from I do not know, as I told you. They did not tell me where it came from.

(End of Cross Examination.)

543 B. C. ROWAND (Recalled).

Direct examination:

Upon direct examination the witness, B. C. Rowand, recalled, was asked and answered questions, as follows:

Q. Mr. Rowand, at the time of the 1906 strike at the Hitchman mine, were you on any committee of the men employed at that mine?

A. Yes, sir.

Q. Did you and any of your committee have any dealings with Mr. T. L. Lewis respecting continuing work at the mine?

A. Yes, sir.

Q. Did you go to Mr. Lewis's house?

A. Yes, sir.

Q. You know Mr. Lewis, do you?

A. Yes, sir.

Q. He here in this court room?

A. Yes, sir.

Q. He is now there in the court room?

A. Yes, sir.

Q. Do you recall in that conversation between Mr. Lewis and the committee, at Mr. Lewis's house, whether anything was said about loading engine coal at the Hitchman mine pending the settlement of a scale for the national organization?

A. Yes, sir.

Q. As nearly as you now recollect I wish you would state what was the substance of what was said at that time?

A. A committee of four of us went over to Mr. Lewis's home and told him that the company was willing to sign up the 1903 scale, and we would like to have the privilege of going ahead and loading the coal for the engines, pending a settlement, and that they agreed to pay us the 1903 scale; and we explained to him that if they gave us an advance that the company would pay us, but he would not let us go to work; he would not give us the privilege.

Q. Was that visit before or after the mine was shut down?

A. As near as I can recollect now the mine worked one day after that. We were at Mr. Lewis's house on Sunday and the mine ran the following Monday.

Q. So, then, it was just before going out on the strike of April 16th, 1906?

A. Yes, sir; just before that.

Q. Was anything said in that conversation about what might happen in case the mine was shut down and the company was unable to mine coal and furnish it to the engines of the B. & O.?

Witness: You mean at Mr. Lewis's house?

544 Mr. Gilchrist: Yes; was anything said in that conversation about that?

A. Why, yes, sir; I believe there was.

Q. What was it as nearly as you now recall?

A. I believe we tried to explain to Mr. Lewis if they shut down that the men would go ahead and work anyhow, for the company had said they would not recognize the union if they forced to shut their mine down.

Q. Well, was anything said in that same conversation upon the subject of the company loading other coal over the tipple that might be brought in by the railroad for engine use?

A. Yes, sir.

Q. What, as you now recall, was that conversation, in substance?

A. As near as I can remember we told him if we did not load that coal somebody else would, and that it would come from the Fairmont field where they were non-union, and that they would haul it up over the tipple the same as they had done before.

Q. What, if anything, did Mr. Lewis say to that?

A. Well, I cannot remember just what he did say, but he said that there were lots of companies that were willing to sign up pending a settlement.

Q. Well, wouldn't he let them sign up that way pending a settlement.

A. No, sir.

Q. Did he say that in that conversation?

A. Yes, sir.

Q. As a matter of fact did your prediction come true relative to the supplying of engine coal over that tipple?

A. Yes, sir.

Q. You say you were a member of the committee of the men at the mine?

A. I was at that time; yes, sir.

Q. Did you and other members of the committee make any investigation as to the source of the supply of coal that was ultimately used for the engines there?

A. I do not remember of making any examination as a committee, but I did personally.

Q. And what was the result of your examination on that point?

A Well, we didn't have anything else to do but loaf around there and watch this coal go up over the tipple and naturally wanted to see where it came from.

Q. And where did it come from?

A. It came from the Fairmont field for a while and then it was reported that the Lorain Coal & Dock Company was shipping coal over to our place, and I went down on the sidetrack to see.

Q. Well, what did you find, if anything?

545 A. I found three or four cars on the sidetrack with the card on one, "Lorain Coal & Dock Company."

Q. And the coal that was in that car—what became of it, if you know?

A. It was dumped down into the chutes and hauled up on the tipple and put in the bin.

Q. And this occurred during the time that Mr. Lewis was keeping you idle at the Hitchman mine and allowing the Lorain Coal & Dock Company to run its mine and supply coal that would other-

wise have been supplied by your labor and the labor of your associates. Is that a fact?

A. I do not know that it was particularly Mr. Lewis. We could not get the agreement from the officials to load our coal.

Q. Well, you went to see Mr. Lewis and had a talk with him on this subject?

A. Yes, sir.

Q. And it was either through Mr. Lewis or through some other officials who had the control?

A. It was through the officials of the United Mine Workers.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Rowand, recalled, said: That he is in the employ of the Hitchman Coal & Coke Company at this time; is running a machine; that he was one of a committee of four which visited T. L. Lewis at his home in Bridgeport, Ohio, the day before the strike at the Hitchman mine in April, 1896; the members of the committee besides witness were William Daugherty, William Schack and James Conoway; witness did not do the talking for the committee; the proposition was brought up by some individual in the meeting, witness does not remember who; the only ones present at the meeting besides Mr. Lewis were the four members composing the committee.

At this point the witness was asked and answered question-, as follows:

Q. I understood you to say that you stated to Mr. Lewis that the company was willing to sign up the scale of 1903 provided the men would go back to work.

A. No, sir; I never said that.

Q. What did you say?

A. I said they would sign up the scale of 1903 and let the men continue to work.

546 Q. Well, that was the same thing, wasn't it?

A. No, sir; we had never quit yet.

Q. Well, in that respect, then, you ought to correct your answer, or my question, rather. Then you were still at work?

A. Yes, sir.

Q. And you stated to him that the committee was ready to sign up the scale of 1903 and let the men continue to work?

A. Yes, sir.

Q. Well, wasn't that what the convention wanted—the scale of 1903 to be signed up?

A. Yes, sir.

Q. Do you mean to say that after you told Mr. Lewis that they were willing to sign the scale of 1903—the very one they wanted signed—that he would not let you sign it?

A. Yes, sir; they hadn't made their scale then.

Q. Well, isn't that the one they agreed on in 1903?

A. They did in the future; yes, sir.

Q. Other operators had not signed it yet?
A. Not at that time; no, sir.
Q. I believe that you said that you went down and looked at some cars on the track to find out if you could where the coal was coming from that was to be used in coaling the engines?
A. Yes, sir.
Q. And you found there three cars on the track?
A. Three or four.
Q. On one of which cars you saw a card?
A. Yes, sir.
Q. And on the card was marked, "Lorain Coal & Dock Company."
A. Yes, sir.
Q. Of course you do not undertake to say that the coal came from the Lorain Coal & Coke Company's mines?
A. No more than what the card said.
Q. Was it a B. & O. car?
A. Well, I did not notice the car, but it was a steel hopper.
Q. Do you recollect how long this was after the strike had commenced that you saw this car?
A No; I do not know as I could not say how long it was.
Q Was it a month would you say?
A. Yes, sir; I judge it was, if not more.
Q. The Hitchman Coal & Coke Company resumed work on the 12th of June, 1907?
A. I do not know when it was.
Q. Well, you were out in all about six or seven weeks, weren't you?
A. Something like that; yes, sir.

(End of Cross Examination.)

547 MIKE POPAGE.

Direct examination:

Upon direct examination, the witness, Mike Popage, said: My name is Mike Popage; age, twenty-seven; I live in Hitchman Row, Benwood; occupation, coal miner; was born in Austria; came to America in 1898; lived in Wheeling; when witness first came from the old country witness first stopped in Wheeling, and from Wheeling witness went to Benwood and has lived there ever since; witness has been working for the Hitchman Coal & Coke Company for about nine years; witness remembers when the mine was organized in 1903; remembers that the people all got together and organized and all of them were working for the Hitchman Coal Company; there was an organizer there to bring that about; he was working in the mine—a few of them were working in the mine; after the mine was organized those men did not continue to work in the mine; they went away when they organized; after they organized we had a strike; the company would not stand for organizing and we came out; after the company signed up with the union witness went to

work; there was a strike after that; we had the next strike in 1906; did not have any strike before that that witness now remembers of; does not remember much the occasion of the 1906 strike; was idle for quite awhile, and on June 12th, 1906, went to work again; has continued to work there from June 12th, 1906, to the present time; witness says there has not been any strike since they started up non-union; had been a member of the United Mine Workers; is not one now; during the time that witness was a member of the union part of witness's money was taken and paid to the union; witness got paid every two weeks, and the union takes off a percentage; the more a man makes the more the union takes off, and sometimes there were assessments, extra amounts taken off; witness does not know what that money was taken off for; during the time witness was idle in the strike of 1906 witness got three dollars benefits; that is, three dollars between April 16th, 1896, and June 12th, 1906, that is all witness got; witness does not know why he did not get more; witness wanted more if he could have gotten it, if they would have given him more.

At this point the following question was asked and answer given:

Q. Was any explanation given to you why you did not get more benefits?

A. Yes, sir; they said we ain't got no money.

548 Upon further direct examination the witness, Popage, said they did not offer him anything else instead of money; did not offer him a store order; he was not a married man at that time; witness remembers of a man by the name of Thomas Hughes coming about the Hitchman mine, saw him sometimes; talked with Thomas Hughes a few times.

At this point the witness was asked and answered questions as follows:

Q. What did he talk to you about?

A. Oh, he tried to get me along with him to help him out so he could get the Hitchman mine organized again.

Q. In what way did he ask you to help him?

A. To help him to get the people together, and everything, and he was to pay me for it.

Q. Were there at that time many men employed at the Hitchman mine who were foreigners?

A. Yes, sir.

Q. Did you speak their language?

A. Yes, sir.

—. Could he speak their language?

A. No, sir.

Q. Did he want you to interpret—. You understand what interpret means?

A. Yes, sir.

Q. Did he want you to interpret what he said to those men?

A. Yes, sir.

Q. Did you do it?

A. No; I would tell him I won't do it.

Q. Then what did he say?
A. He got mad and went away.
Q. After that did you see him any more?
A. Yes, sir.
Q. How did he treat you after that? I mean how did he treat you when you did not agree to interpret for him?
A. Why, he came to my house—the second time he came to my house.
Q. You mean he came to your house a second time?
A. Yes, sir.
Q. Then he had been there before?
A. No; not before.
Q. The second time you talked to him he came to your house. Is that the idea?
A. Yes, sir.
Q. Well, what did he say then?
A. He tried to get me to interpret again, and promised me a good job and everything else.
Q. Did that appeal to you then? Did you agree to do it then, or not?
A. No, sir; I would tell I had nothing to do with him anymore.
Q. Why did you tell him that?
549 A. They blamed me for not getting the men organized; they said it was my fault that the people kept on working.
Q. And that Hughes could not organize the mine?
A. Yes, sir.
Q. Did Hughes tell you that?
A. Yes, sir; he said that is what he heard off of the people.
Q. That is, you mean, the men that were working in the mine?
A. Yes, sir.
Q. Did he tell you at any time how he was getting along?
A. No.
Q. Did he succeed in organizing men there? Did he organize the men at the Hitchman mine?
A. No.
Q. Did the mine continue working while he was there?
A. Yes, sir.
Q. Do you remember of coal being brought in from somewhere, and hauled up on the trestle, and then out into the bin, and loaded on engines, during that strike of 1906?
A. Yes, sir; but I do not remember much.

(End of direct Examination.)
No cross examination.

JAMES STEWART.

Direct examination:

Upon direct examination the witness, James Stewart, said: My name is James Stewart; age, twenty-seven; residence, McMechen, West Virginia; occupation, coal miner; is working for the Hitch-

man Coal & Coke Company; has worked there since 1905; was working there at the time of the 1906 strike.

At this point the witness, Stewart, was asked and answered questions as follows:

Q. During the time the mine was shut down on account of that strike, what did you do? Did you stay around there or go to work elsewhere?

A. Well, after they went on strike I started to work at the Mound coal mine, at Moundsville, West Virginia.

Q. Was that run union or non-union?

A. Yes, sir; they had signed up.

Q. When you went from the Hitchman mine down to the Mound Coal Company mine, what became of your union card?

A. I took it there with me.

550 Q. And when the mine started—when the Hitchman mine started up non-union on June 12th, 1906—what did you do relative to your card?

A. I worked at Moundsville until after the Hitchman company had been working awhile, and then I came back to work. They were working for a couple of weeks before I came back, and may be more; I won't be sure.

Q. And you left your card at the Mound mine?

A. Yes, sir; I left it there at the Mound mine.

Q. How long did you work for the Hitchman company after you started to work, after the resumption non-union at the Hitchman mine in 1906?

A. Until about 1908.

Q. Were you about the Hitchman mine working there in the fall of 1907, when Thomas Hughes was there?

A. Yes, sir.

Q. Did you see Thomas Hughes there?

A. Yes, sir; I saw him there several times.

Q. Did you have any talk with him?

A. Yes, sir; I talked with him several times.

Q. Did you hear him talk with any other persons?

A. He was around there all the time and he was talking to everybody he would come to.

Q. To men employed at the Hitchman mine?

A. Yes, sir.

Q. Did he tell you what he was there for?

A. Yes, sir.

Q. What was it?

A. He told me he was there to try to organize the mine.

Q. Did he say what his business was?

A. Yes, sir.

Q. What was it?

A. He said he was an organizer.

Q. For what?

A. For the United Mine Workers, and that he was there for that purpose. But I knew him before he came around there.

Q. You did know him before that?
A. Yes, sir.
Q. What did he say to you, if anything, with relation to organizing the mine?
A. I do not remember all he did say, but I remember one certain thing that he said: He told me during one night that he was going to have a meeting called there. I do not know what the date of it was, but it was in the latter part of August or first part of September. He told me he had had a couple of meetings there, but he did not seem to think it was any good; but he told me he was forming a kind of secret order among the men. He said he had a few men—he did not state the number of them—and he said each man was supposed to give him so much dues to keep it going; and then
551 he said after he got the majority he would organize the place. He asked me what I had to say about it and I told him my job at the present time was satisfactory and the men had agreed with the company not to organize and not to have anything to do with the organization, and I told him I did not want to have any trouble and nothing to say, anyway; and I think that was the last time I saw Hughes around there. I saw him after that across the river but I didn't have any talk with him.
Q. Did he say anything to you about quitting work at the Hitchman and going to a union mine?
A. Yes, sir; he told me about it. He said he would get me a job, and I told him that might be all right about that, but I told him I did not think he could place me in any job any better than the one I had at that present time; and that is about as far as that went.
Q. You say you remember of some meetings being held?
A. Yes, sir.
Q. What kind of a notice did he put out for the meetings?
A. Well, I could not just say about the notices.
Q. Did he mark on the pavements, or anything of that kind?
A. Well, there was names around there, about meetings, but I do not know whether he wrote them, or who wrote them. I could not state just what was on them, but we miners claimed that that was what the purpose was.
Q. Were there calls for meetings marked on the pavements?
A. Yes, sir.
Q. In chalk or some substance like that?
A. It was in chalk.
Q. White chalk?
A. Yes, sir.
Q. Was that done anywhere near the Hitchman mine?
A. Well, the one I saw was right in front of Wilhelm's saloon, on the sidewalk.
Q. Where is Wilhelm's saloon with reference to the mine.
A. It was about 150 yards north of the mine.
Q. Did you attend any of the meetings that he held?
A. No.
Q. Did he say anything to you along the line of thought that unless you joined the union at that time, if the mine were unionized you would not get a job?

A. Yes, sir; he stated to me if we did not go in the local, or stay away from there and work where mines were organized, that we would not ever be able to get a job in a union mine, but I have worked in two union mines since that, and had two union cards, and then came back to the Hitchman.

Q. Did you hear him talk with others along the same
552 line?

A. Yes, sir; he talked with them all about the same, that ever I heard him talk to.

Q. Did you hear him tell them that unless they joined then, that if the mine was organized they would be out of a job and they could not get any?

A. He was talking to me and there was five or six or seven sitting there in a bunch, and they all heard just the same as I did about it.

Q. Did he say what he was going to do with the men when he got enough to organize?

A. Yes, sir.

Q. What did he say he was going to do?

A. He stated when he got a majority that he was going to organize the mine. I expect the meaning of it was that he was going to organize whether it was against the company or not.

Q. Did he say anything about shutting the mine down if they did not unionize it?

A. He stated it that way—that whenever he got a majority he was going to organize or they would close the place down.

Q. In point of fact, did he get a majority and unionize the mine or not?

A. No, sir; I think he failed.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Stewart, was asked and answered questions as follows:

Q. When was it that you had this last conversation that you speak of with Hughes? About when was it? You said you saw him afterwards across the river.

Witness: You mean the one about the meeting?

Mr. Hogg: You said you had this last conversation with him when you told him that you had a job there, and that you promised them not to join the union, or something to that amount, and he then went away and that was the last time you saw him there.

A. I stated that was when I was talking there to him—talking about his secret order.

Q. Was that the last time that he was over there to the Hitchman mine?

A. No; I expect he was over there after that.

Q. But I am talking about what you said in your examination in chief. What was it you said? When was the last time you saw him there, did you say?

553 A. The last time that I saw him around the mines was the time he told me that.

Q. When was that?

A. In the latter part of August or first of September when he told me if he got a majority he was going to organize the mine.

Q. And that was the last time you saw him?

A. Around the mine.

Q. And that was the latter part of August or the first of September?

A. Yes, sir.

Q. Well, you were working there during that time, in September and October?

A. Yes, sir.

Q. And continued to work then until some time in 1908?

A. Yes, sir.

Q. Well, then, while he was there he was trying to get men to join the union?

A. Yes, sir.

Q. And he invited you to join the union?

A. Yes, sir.

Q. And told you he thought it would be better for you to join, didn't he?

A. Yes, sir; that is what he said.

Q. And he said if you worked there and happened to be discharged, you could not get into a union mine?

A. That is what he said.

Q. His idea was that there were a great many more union mines across over in Ohio than there were non-union, wasn't it?

A. I expect that was what he meant.

Q. Well, did he give you any further reasons why he thought it would be better for you to join the union?

A. No; not just exactly.

Q. Where did you meet with him—at your boarding house or outside?

A. I met him above the Hitchman coal company's works.

Q. In daylight?

A. Yes, sir; in the afternoon.

Q. You talked to him on two or three occasions?

A. Yes, sir.

Q. Well, how many men would you say you heard him talking to all told there before that last time, just before he went away?

A. Well, I could not just say, but he was around there from some time during the morning until late in the evening, and he was in and out. There are three saloons there and he was in and out and he had them all together; he just talked to every one that came along.

Q. Trying to get them to join the union?

A. He stated that was what his business was there?

Q. No, when did you first notice him there after the Hitchman people first started up non-union after 1906? Was it in 1906

554 or 1907 that you noticed him there?

A. Why, it was in 1907 when I first noticed him around there.

Q. I believe you stated that when the strike was called in April, 1906, you went down to the Mound coal company?
A. Yes, sir; some three days after that.
Q. During April, though?
A. I do not know just whether it was in April or whether it was the first of May; it was right away after they signed up.
Q. They signed the scale and went to work?
A. Yes, sir.
Q. Then the strike at the Mound Coal Company also commenced on the first of April, 1906?
A. Yes, sir.
Q. The same time that the strike at the Hitchman commenced?
A. The Hitchman commenced on the 16th of April.
Q. Then did you stay up at the Hitchman mine until they quit mining coal for the engines, or not?
A. Yes, sir.
Q. Then after the 16th you went down to the Mound Coal Company?
A. No; it was after that.
Q. Then there was awhile that you did not work, was there?
A. Yes, sir; a couple of weeks.
Q. You must have gone down there about the first of May?
A. It had been three weeks or more; I do not just remember.
Q. Then they went to work in the same way that they had done before, after signing up the scale?
A. Yes, sir.
Q. And you worked there as a union man?
A. I worked there as a union man.
Q. Do you know whether they signed up the scale of 1903?
A. No; I did not see the scale but that is what the men claimed.
Q. That is what you got?—the pay you got?
A. Yes sir.
Q. How far is that Mound Coal Company, would you say, Mr. Stewart, from the Hitchman Coal Company's plant?
A. I think it is about seven miles.

(End of Cross Examination.)

E. A. UPSTILL.

Direct examination:

Upon direct examination the witness, E. A. Upstill, said: My name is E. A. Upstill; age, 52; residence, Cleveland, Ohio; occupation, vice-president and sales agent of the Hitchman Coal
555 and Coke Company; has other business, that of operating in and selling coal generally; has lived in Cleveland about twenty-two years; prior to going to Cleveland resided at Pittsburg and Cannonsburg, Pennsylvania, and while in Pittsburg and Cannonsburg his business was that of producing and selling coal; was engaged in the coal business for about five years in Pittsburgh and Cannonsburg, Pennsylvania, prior to going to Cleveland; witness

has been in the coal business for the last twenty-seven years—all of his business life; as a result of his experience in the coal business witness has become acquainted with the different characters of coal, to a greater or less extent; is familiar with the Fairmont coal; with the Pittsburg coal, so called; with the No. 8 coal, so called; with the coking coal; with the cannel coal, and with the smokeless coal; witness knows from his experience or the general trend of trade the markets in a general way of the different kinds of coal; witness knows in a general way the locations geographically, and in a general way geologically, of the different kinds of coal; knows that the vein mined at the Hitchman mine is known as the Pittsburg No. 8, it is the same vein that is mined in Belmont and Jefferson counties, Ohio; with regard to the size of the vein, the coal mined at Fairmont is larger and the physical conditions are better—some of it is suitable for coking purposes, and for all purposes witness would say the Fairmont coal is the equal and for many purposes it is superior to the Pittsburg No. 8 coal; in markets where coal from the Fairmont field and coal from the No. 8 vein is to be found, the Fairmont coal stands better in the market as a rule than the No. 8; witness has visited the Fairmont field to some extent and is familiar with the general working conditions relative to unionism there; witness is familiar with the working conditions in the No. 8 vein in Eastern Ohio to some extent, in Belmont county and Jefferson county; witness is familiar with the Hocking Valley field to some extent; in a general way the bulk of the coal produced in the Fairmont field goes to the west and northwest generally, and also to the east—to the seaboard; a portion of the coal from the Pennsylvania field—western Pennsylvania—is consumed locally, but much of it goes to the west and northwest by rail and by lake; if shipped by lake from the Pittsburg district the coal generally goes to Erie, Ashtabula, Cleveland, Sandusky and also to Fairport; the coal mined in western Pennsylvania as a general rule is mined under union rules or under the organization otherwise of the United Mine Workers of America;

556 meaning by western Pennsylvania, roughly speaking, the Pittsburg district and the Monongahela district: the coal that is mined in the Pittsburg district is both gas and steam coal; it is bituminous coal; and in the markets of the west and northwest to which the Fairmont coal is largely shipped, this coal from western Pennsylvania stands, as compared with Fairmont, as a general proposition, superior to the Fairmont coal for all purposes, and under ordinary circumstances would command as good if not a better price; there are many different qualities of coal in Pennsylvania the same as there are in West Virginia.

The Myersdale coal is a very soft, friable coal, and is not of the same general quality as the Fairmont or Pittsburg; it is generally shipped to the east, witness believes; as a rule there has not been very much coal shipped from Connellsville, but if it were shipped its natural channel would be east; the Connellsville coal is put to use—in the first process of manufacture—for making coke, and that product of coke is shipped from the locality or the place of mining the coal to the markets—to points of consumption, those points of con-

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sumption vary—east and west and north and south; Fairmont coal which is the subject of shipment to and which does not go to the west and northwest goes to the seaboard largely and to eastern points generally, and naturally would then come into competition with coal from the Myersdale district; coal is produced in the southern portion of West Virginia; witness is familiar with that coal to a greater or less extent; and that coal which is the subject of shipment finds its market both in the west and in the east; the coal in that section of the state of West Virginia is produced in different fields, for instance, the Kanawha field, the Bluefield field, and the Pocahontas field; the character of that coal in the southern portion of West Virginia varies, to some extent for some purposes it—is superior to the Pennsylvania coal and the Fairmont coal in the markets of the west and of the northwest, and laying aside those purposes for which it is not superior, witness thinks that for everything with the possible exception of making gas it is equal in quality for the purposes for which the Fairmont coal would be sold in these same markets, so that the Fairmont coal would be superior even in the markets of the west and the northwest for gas purposes; the coal that is shipped from the southern fields of West Virginia to the coast goes principally to Norfolk and Newport News, Virginia, and then is carried by vessels to New England and other eastern ports; in these ports that coal would come in competition with coal from other portions of West Virginia and Pennsylvania, such
557 as the Myersdale coal mentioned; coal that is mined in the Pittsburg No. 8 vein in eastern Ohio, outside of local consumption, goes to the west and northwest, and thus comes in competition in those markets with the coal that is shipped from the Pittsburg District and from the Fairmont District and from the southern districts in West Virginia; some of the coal that is mined in the northern Panhandle of West Virginia, in the Pittsburg vein No. 8, is used locally and much of its is shipped to the west and northwest also; no, witness says he would have to correct that since he comes to think of it, and witness adds, most of it is used locally, but some little—some portion of it—can be shipped to the lakes and points locally between the mines and the lakes; it cannot be shipped generally to the west and northwest, or rather it can but it is not; that condition obtains by reason of the freight rates; there is a differential against that particular coal of twenty-five cents a ton to all points west and northwest, except to local points between the mines and the lakes, and the lake rate proper; coal that is shipped from the northern Panhandle of West Virginia is, as against Ohio, under a handicap to the west and northwest of twenty-five cents per ton; there isn't any point of difference to witness's knowledge as to the coal itself between the coal mines located in Belmont and Jefferson Counties, Ohio, in the No. 8 vein, and the coal mined in the northern Panhandle of West Virginia, except the physical fact that the Ohio River intervenes there; the Ohio River simply intervenes between the northern Panhandle district of West Virginia coal and the eastern Ohio or No. 8 coal, and there is a twenty-five cent differential against the coal from the northern Panhandle of West Virginia when coal from that section and coal from the eastern Ohio

district immediately across the river is shipped to the same market in the north and northwest—that is a fact.

At this point the following proceedings were had:

The Court: Pardon me right there: It is a matter of common knowledge that the Baltimore & Ohio Railroad Company places a differential of twenty-five cents on coal west of Newburg. Does the Pennsylvania make the same differential against your coal shipped east from the northern Panhandle?

A. No, sir; we ship east under the same rates as Fairmont. There is no differential east. We have the same rates east as Pittsburg.

Q. Over the Pennsylvania lines?

558 A. Over the B. & O. We are located on the B. & O., and we have the same differential as Pittsburg and Fairmont, east and also west.

Upon further direct examination the witness, Upstill, said: The Hitchman mine is situated on the B. & O. Railroad; it is not situated on any other road; it has no shipping facilities in any way except over the B. & O.; the mine is located at Benwood, below Wheeling.

At this point the following questions were asked and answers given, and proceedings had:

Q. Now, the Pittsburg vein, No. 8, has in a general way certain boundary lines, geologically speaking, and it is mineable under the present methods of mining in certain places where the coal exists. In some sections the conditions may be that the coal is too deep for economical mining to enable the product to complete with other coal mined under more favorable circumstances. If you know, in a general way, about where this Pittsburg No. 8 vein of coal lies and is mined, please state.

A. It is mined in Jefferson, Harrison and Belmont counties of Ohio, and in Marshall county, West Virginia. I do not know whether any other counties come in there in the Panhandle or not, but it is mined clear up through the northern Panhandle.

Q. Passing up the river from Marshall county in which Benwood is situated, comes Ohio county, and passing still farther up the river comes Brooke county, and still above that Hancock county. Coal is mined, then, is it, in the Panhandle district in Marshall county, in Ohio county, in Brooke county and possibly some in Hancock county?

A. Yes, sir. I am not familiar with the territory up there. I know that coal is mined up there but I do not know whether it is all the No. 8 seam or not.

Q. It may be the No. 7 coal?

A. Yes, sir; or the No. 6, or the regular Pittsburg vein.

Q. It runs out, does it?

A. There is a line of demarcation up there some place.

Q. Do you call this No. 8 the regular Pittsburg vein?

A. It is an extension of the Pittsburg vein into the Ohio field.

Q. As compared with the Fairmont region it is not so thick?

A. It gets thicker in Fairmont and is purer; Ohio is not so pure as Fairmont.

Q. What do you call six and seven?

A. Those would correspond geologically with your different veins in this state.

559 Q. The little Pittsburg and Freeports?

A. The Freeport and little Pittsburg; those are just local geological names.

Q. Passing from the Ohio towards the east, assuming that the Ohio River in its general course between the upper end of Brooke county and Moundsville, West Virginia, runs substantially north and south—passing from the Ohio River then on that assumption towards the east, how does the coal dip, if at all?

A. I am not familiar with the physical conditions there, but I would rather think to the southeast.

Q. Do you know how far east from Wheeling coal is mined successfully?—that is, eastward from the river?

Witness: Do I understand along the line of the railroad or back through the country?

Mr. Gilchrist: There is no production apart from the railroad along the Pittsburg division of the B. & O. road.

A. There are mines all the way along, right into Pittsburg.

Q. The Elm Grove mine is where?

A. The Elm Grove mine is east of Wheeling on the Baltimore & Ohio Railroad.

Q. About five miles?

A. Five or six miles, I should think.

Q. There is no mine after that, then, until you come to beyond Finleyville?

A. No; on the Baltimore & Ohio Railroad there is no mine until you come to Finleyville or some place near there.

Q. So that you were in error when you said there was a continuous string of mines along that road from Wheeling clear into Pittsburg?

A. I did not mean to say there was a continuous string of mines, but that coal is mined at places along. I remember now that there is a gap there.

Q. And the gap is due to the fact that the coal dips so deep that it cannot be mined?

A. Yes, sir; the coal all lies deep there.

Q. And when you come into the Finleyville district you get into the Pittsburg district again?

A. Yes, sir.

Q. And from there on into Pittsburg it is mined, so that coal is generally mined right along the railroad—(interrupted).

A. Yes, sir; and right along to the Monongahela and Youghiogheny rivers.

Q. When you answered as to those mines being continuous from Wheeling to Pittsburg, along the Pittsburg division, you were misled by me owing to the fact that I assumed you were familiar with that much of the region. I recall now that you said in advance that you were not familiar with it; so that was my fault and I, of course, apologize.

A. Yes, sir.

560 Q. Now, the coal in the Pittsburg No. 8 vein is mined in the northern Panhandle down as far as Moundsville, is it, in Marshall county?

A. Yes, sir.

Q. You are familiar with that feature of the Panhandle, are you?

A. Yes, sir.

Q. And passing from the region of Moundsville, where is coal next mined out along the B. & O., that you know of?

A. I think the next point is at Farmington.

Q. That is on the outskirts of the Fairmont field?

A. Yes, sir; so considered.

Q. So that between Moundsville and Farmington coal is not mined?

A. Coal is not mined in that territory.

Q. Now, the Fairmont field, when you reach Farmington, is a different coal, I believe you said?

A. It is of a different nature—different in quality.

Q. Do you know why it is that the coal between Moundsville and Fairmont is not mined, assuming that there is any coal there?

A. If there is any coal there it lies very deep.

Q. So deep that it could not be economically mined under present operating conditions?

A. Not at the present day.

Q. Now, this twenty-five cent differential you said applied to the Fairmont field and to the northern Panhandle district so far as the B. & O. serves that region; Is that so?

A. As compared with Ohio? Yes, sir.

Q. This mine of the Hitchman Company at Benwood is not in what is known by the railroad company as its Fairmont field?

A. No, sir.

Q. It is in what is known as the Moundsville district, is it?

A. The Moundsville district; yes, sir.

Q. But the Moundsville district is charged under its descriptive name of Moundsville district the same twenty-five cent differential in favor of Eastern Ohio that the Fairmont district is charged in favor of eastern Ohio?

A. Yes, sir.

Q. You have said that the coal in the eastern Ohio field, in the counties of Belmont, Jefferson and Harrison—did you name Monroe, or not?

A. No; I do not think so, although there is some coal mined there, I guess, but not to any great extent.

Q. You have said that the coal mined in Belmont, Jefferson and Harrison is of the same vein as the coal mined at the Hitchman mine and the northern Panhandle of West Virginia?

A. Yes, sir; it is so considered.

Q. The coal is mined under the same or substantially simi-

561 lar conditions on each side of the river, is it?

A. Yes, sir

Q. Do you know whether the product of the coal mines in those

counties of Belmont, Jefferson and Harrison is the product of union labor or of non-union labor?

A. It is the product of union labor.

Q. Do you know whether the coal mined in the Pittsburg vein No. 8 at the Hitchman mine is the product of union or non-union labor?

A. Non-union labor.

Q. Do you know whether the operating conditions at that mine and at the mines in Belmont, Jefferson and Harrison counties, Ohio, are substantially similar?

A. Yes, sir; they are.

Q. Aside from the question of compensation of labor?

A. Yes, sir; the physical conditions and the operating conditions are identical.

Q. Do you know how the wages paid to the mine workers and other employes for the production of coal at the Hitchman mine, in the Pittsburg vein No. 8, compare with the prices paid for union labor for the production of coal in the mines in the No. 8 district in Belmont, Jefferson and Harrison counties, Ohio?

A. They are just the same.

Q. Do you know whether that same condition obtains as to the other mines in the Panhandle district of West Virginia?

A. Not of my own personal knowledge, but I believe it does.

Q. Did that condition come about in any way by reason of the fact that that territory in the northern Panhandle district of West Virginia had been a part of Sub-District 5 of District 6, United Mine Workers of America, and had at one time been organized?

A. I believe so.

Q. So as one of the results of that section having been under the jurisdiction and control of the United Mine Workers, the wages of the men have been retained on the same basis as the United Mine Workers?

A. They are so retained; yes, sir.

Q. The result, then, of this situation would be, would it, that barring slight differences in operating methods, equipment, &c., of the mine, and the ability of the operator in shrewdly managing his business, the cost of the product of any mine in eastern Ohio in the counties of Belmont, Jefferson and Harrison would be substantially the same as the cost of the product of mines in the Panhandle district where the coal was substantially the same and where the wages were substantially the same?

A. I think the cost of production would be about the same.

562 Q. Now, that coal in the northern Panhandle of West Virginia is shipped to the west and to the northwest subject to a discriminatory charge of twenty-five cents per ton as against the coal from the mines in Belmont, Jefferson and Harrison counties, Ohio.

A. Yes, sir.

Q. Is that twenty-five cent differential enough to keep the coal out of the market which comes from the mines of the Panhandle district of West Virginia?

A. Oh, decidedly so.

Q. When you say decidedly so, do you mean that it is altogether impossible to compete in the market under the ordinary conditions of trade?

A. Yes, sir; you would not expect to get twenty-five cents a ton more for coal of the same general quality simply because it was produced on the otner side of the Ohio river.

Q. Passing to the Fairmont district: that coal you said was mined non-union and was mined from a larger vein and under more favorable circumstances as to the conditions of the coal. Do you know how the wages paid in the Fairmont region, and other costs of operating, compare with the wages and other costs of operating in the mining of coal in the northern Panhandle district of West Virginia?

A. Not in detail, but generally speaking they are very much lower.

Q. Do you know how they compare with the mines in the No. 8 field in Jefferson, Harrison and Belmont counties, Ohio?

A. Much lower.

The Court:

Q. Are the mining conditions easier—is it easier to get out coal in the Fairmont region than in Ohio?

A. Very much so. The physical conditions are better, the vein is thicker, and the men do not have the dead work to do—that is, in the handling of slate, posting, and so on.

The Court: I do not know anything about it but I had an idea derived from what I have heard of the Fairmont mines that the conditions there were more favorable than in the Ohio mines.

Witness: The whole condition is better. They have an advantage in the cost of production of from thirty to forty cents a ton.

Q. You have to pay higher rates in Ohio for mining?

A. Yes, sir.

Q. To compete against the Fairmont region, with its lower
563 cost of mining to all the markets of the west?

A. Yes, sir; as against Fairmont.

Mr. Gilchrist:

Q. You said to the court in answer to a question I was about to ask as to what was the natural result of the easier conditions and also the wages in the Fairmont district with respect to the cost of coal—you stated that the coal there in the Fairmont region could be produced from thirty-five to forty cents a ton less than in Ohio?

A. From thirty to forty cents, I said.

Q. Now, passing again to that differential of twenty-five cents, it would seem that the Fairmont field could easily absorb the twenty-five cent differential and still have an advantage of five cents over the Hitchman and the mines in the northern Panhandle of West Virginia?

A. Yes, sir; and still be able to compete with Ohio against its higher rate of mining.

Mr. Hogg: I want to interpose an objection to each question propounded and to each answer made by the witness on the stand thus far, as not in any wise bearing on the controversy involved in this case. There isn't any question, it seems to me, but that the sole issue here is whether this organization is a lawful one; and secondly, if it be a lawful one, then as to the right to solicit members to their organization from the plaintiff's employes. There isn't any evidence here of fraud or violence and there is nothing for this court to determine except these two matters. Now, as to the condition of things in the field and whether the operators would unionize, that may be considered; but there is no attempt here to unionize the Fairmount mines; no attempt here to unionize—in the sense of compelling the Panhandle people to operate their mines by agreement with the union, and the conditions existing in the Panhandle and in Ohio are the same and the wages agreed to, and the evidence thus far produced by the plaintiff, are the same; and I cannot see how the court is going to derive any information as to whether this organization is a legal organization or not from this sort of testimony, and I wish to be emphatic, may your Honor please, in excepting to each question and answer so far detailed by the witness as not bearing on any of the issues raised by this suit. I may be unable to perceive its bearing, but I have remained here and listened to the testimony and considered it from every conceivable phase of the case. There is already an immense volume of evidence in this case and it is a hardship on any one connected with the litigation to allow the
564 expenses of the litigation to increase, except as may be necessary by legal and relevant testimony. It seems to me it is unjust.

The Court: Well, as I have said repeatedly, I will have the objection entered and will consider the admissibility, or rather the pertinency of the evidence upon the final hearing. In other words, I will hold the exception until then and for this reason: There are very explicit charges in this bill to the effect that the defendants confederated in a conspiracy to destroy and injure the business of the plaintiff. Now, I can see, in one view of the case, where this testimony might be pertinent. It is simply a recital of the conditions that surrounded this mine. If those conditions were such that it were absolutely impossible for them to meet the demands and requirements sought to be enforced against them by the defendants, as officers of the union, and the officers of the union knew it, that might be pertinent testimony. If it was common knowledge to them, it might be evidence that they were enforcing a demand such as could not be met under any conditions. I think you can see my idea, and under the broad plan that has been adopted here you must let in everything that will tend to prove in any way the issues in support of the theories made by the parties themselves. I think I will admit this now. I always go on the proposition of being on the side of the plaintiff when he is introducing his testimony, and let him have the benefit of all testimony that I can possibly conceive is proper; then when the defendant comes to introduce his testimony I try to get on his side of the case and let everything in that will possibly support the theory as he may present it.

Mr. Hogg: I have been going all the while on the assumption that we have the right to except to any incompetent or irrelevant evidence on the final hearing, under the rule.

The Court: Yes, sir; and that is what I mean by it. Rather than pass upon the matter here in its fragmentary state, I would rather pass on these exceptions as a whole when I have all the testimony before me and can understand fully the theories advanced by both sides.

Mr. Gilchrist: I believe I am correct in assuming that the same privilege of exception to any irrelevant, immaterial or otherwise improper testimony will be accorded to the plaintiff on the final hearing, as is accorded to the defendant.

The Court: That is the rule.

565 Mr. Gilchrist:

Q. When you speak of the twenty-five cent differential as a uniform rate, do you mean to other points than those you mentioned in your first statement upon the subject of the differential?

A. Yes, sir.

Q. Now, what is lake coal, or what is known as lake coal?

A. Coal that is shipped to the lake for reshipment by vessel.

Q. What is the differential, if there is any, in favor of the eastern Ohio field and against the Hitchman mine, from the Moundsville district on the B. & O., on what is termed lake coal to certain points?

A. Three cents per ton.

Q. So that during the time of the year in which shipments of lake coal may be made, there is a three-cent differential only against the Hitchman mine and in favor of the eastern Ohio mines on lake coal to certain points?

A. Yes, sir; on lake coal only.

Q. During what period of the year may coal be shipped for lake trade on that three-cent differential?

A. From about April 1st until about December 1st.

Q. And that varies somewhat with the season of the year, I suppose?

A. The weather.

Q. Cold weather would close navigation?

A. Yes, sir.

Q. And cold weather in the spring would retard the opening of navigation?

A. Yes, sir.

Q. So the date of opening and the date of closing is variable?

A. Yes, sir; those dates mentioned are the extreme limits.

Q. That is, in the length of the period during which coal may be shipped from the Moundsville district for lake purposes?

A. Yes, sir.

Q. On the three-cent differential?

A. Yes, sir.

Q. In competing with the eastern Ohio field there would be, then, on lake trade during that restricted period of time in the summer and in the fall, merely a three-cent differential against the Hitchman mine?

A. Yes, sir.

Q. And under ordinary conditions of trade and under an ordinary market is that differential of three cents such as to debar or such as in many instances to permit the shipment of coal from the Hitchman mine to the lakes, for lake trade, and thus compete with eastern Ohio coal in the same markets in the west and in the northwest?

A. It is sufficient at times to debar it from making shipments, only because the mine must absorb or take care of this three-cent differential in the price of its coal. In other words, we must

566 reduce the price of our coal to meet the price of Ohio coal laid down at the lake front.

Q. In shipping coal for the lake trade during that restricted time and on that three-cent differential to the particular ports to which that three-cent concessionary rate applies, what, if you know, is the requirement with reference to the speedy loading of coal on vessels for further transportation to the ultimate market? I mean with respect to the question whether there is any dockage facility, or whether there is demurrage charged, or what there is, if anything, that affects the question as to whether a mine might mine coal all winter and send it to this point under the differential?

A. No, sir; we are allowed and were allowed seven days' time up until last year, but last year it was reduced to five days. That is, we are allowed to hold the coal on the cars at the lake front for five days and accumulate sufficient for a cargo. If you hold it longer than that we are subject to a demurrage charge of one dollar per car a day. We must get the vessel there and load the coal within five days after its arrival at the lake front.

Q. Then it becomes important on such shipments to know that you have a vessel at hand and can promptly unload the cars when you are shipping lake coal?

A. It is almost imperative.

Q. May you ship less than a full cargo of coal?

A. That would depend. If you were selling it for account of mines on the other side of the river where the coal could be bunched and put in together, we could then ship less than a cargo. If we were shipping to a point of final destination ourselves, up the lakes, we would have to ship it in cargo lots running from three to ten thousand tons according to the size of the vessel.

Q. So that you are then further confronted with the shipping difficulty after you overcome the three-cent differential?

A. To a greater or less extent.

Q. That would make necessary very careful calculations as to the prices and dates when you could deliver coal from the Hitchman mine?

A. Yes, sir.

Q. When this coal shipped from the Hitchman mine for lake trade during this brief period of time during which it may be shipped on the three-cent differential reaches its ultimate market, where, in the main, is that market?

Witness: The final market, do you mean?

Mr. Gilchrist: Yes.

567 A. Usually the lake ports in the northwest such as Duluth, Superior and the Canada ports, and Milwaukee or any other ports at which it may be sold.

Q. What coal would that coal shipped from the Hitchman mine as lake coal come in competition with in the final market?

A. It would come in competition with all the various coals, but more particularly with the Ohio No. 8 coal of Harrison, Belmont and Jefferson counties.

Q. And is that owing to any particular reason or is it a mere outgrowth of the fact that Ohio is bounded on one side by the lake to which this coal from the Hitchman mine would be shipped for transshipment?

Witness: I do not know that I understand that question.

Mr. Hogg: Read that question, Mr. Stenographer; I do not understand it either.

(The question is read by the stenographer.)

A. Well, that is due to the reason that the Hitchman coal is of the same general quality as the Ohio coal and it naturally must go in competition with it.

Q. And it arrives at the same ports owing to the fact that it departs from the same ports, does it, in the main?

Witness: You mean as to its final destination?

Mr. Gilchrist: Yes.

A. Yes, sir.

Q. Coal from these mines in eastern Ohio goes in the main to the same ports that coal shipped from the northern Panhandle of West Virginia would go?

A. Oh, yes.

Q. And vessels engaged in carrying coal, carry coal to the north to the same lake port and then have sometimes return cargoes?

A. They generally have return cargoes.

Q. And that brings about a condition where the coal from the Panhandle district naturally gets to the same place where the coal from the eastern Ohio district gets?

A. Yes, sir.

Q. Now, I believe you said that coal from the eastern Ohio district went very largely to the west and to the northwest, and you have now said that coal from the same region went to lake ports and thence to the north and northwest lake ports. You have said that the

568 coal from No. 8 district in Ohio had its final destination in the north and northwest lake ports, or otherwise finds itself in competition with coal from the Fairmont region and coal from the Pittsburg region?

A. Yes, sir.

Q. The same thing then would obtain as to the competition that the Hitchman coal would encounter at a lake port in the north or the northwest?

A. Yes, sir.

Q. But that condition could not obtain, as I understand you, at other points than lake ports owing to the twenty-five cent differential which debars the Hitchman coal from reaching the inland ports in

the north and the northwest and competing with the different kinds of coal including the eastern Ohio coal that gets to these inland ports?

A. It could not by rail.

Q. Is it a practicable proposition to ship coal on a three-cent differential to lake ports in the north and the northwest, and then unload, and then trans-ship by rail out into the interior of the country, and compete with coal which goes direct by rail to those ports from eastern Ohio or from the Pittsburg district or from the Fairmont field?

A. That is a pretty far reaching. Our operations, so far as the shipment of coal is concerned, and when we get it on the docks at the northwest. It is then handled by different companies and becomes a different proposition. It has to be re-screened and reloaded into cars which are handled by separate and different companies entirely. We sell it to the dock companies and they handle it that way.

Q. And each time coal is loaded or unloaded it naturally is reduced to finer lumps?

A. Oh, yes; it suffers a loss every time.

Q. And the finer the coal and the more slack you have the less valuable your product is at the point of final sale?

A. Yes, sir.

Q. Where in the main is the coal mined in Indiana marketed?

A. In the markets of the west and northwest.

Q. And the coal mined in the State of Illinois?

A. In the same markets.

Q. All this coal comes in competition then in one section of the country?

A. Yes, sir.

Q. The members of the United Mine Workers in the states of western Pennsylvania, Ohio, Indiana and Illinois, formerly met in national convention, did they?

A. Yes, sir.

Q. Latterly and at the present time they meet still in national convention, but in dealing with the operators in fixing the scale, while they formerly dealt with the operators in those particu-
569 lar states corresponding to the membership of the union, they now deal with the operators of western Pennsylvania, Ohio and Indiana jointly?

A. Yes, sir.

Q. In other words, Illinois has withdrawn?

A. It deals separately.

Q. I have here a book which says on its title page, "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana. Cincinnati, Ohio, March 8-29, 1910. Revised and Edited by F. S. Brooks, Secretary." Will you look at that and state what it is and where you got it?

A. That is what purports to be the "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana," and I received it from Mr. F. S. Brooks, the secretary of that meeting.

Mr. Gilchrist: I offer this book in evidence to be marked, "Upstill's Exhibit No. 1."

Mr. Hogg: Let an objection be noted to it.

Mr. Gilchrist:

Q. Mr. Upstill, in 1907, during the period when the lake trade was open, did you sell any coal for the Hitchman Coal & Coke Company, or make any contracts for the sale of coal for the lake trade?

A. Yes, sir.

Q. Can you state whether you were able to fill the orders that you took, or not?

A. We were not from the Hitchman mine, entirely.

Q. What did you do as to the amount that you failed on tonnage?

A. We bought it from mines on the Ohio side of the river.

Q. No. 8 coal?

A. No. 8 coal, and applied it in those contracts.

Q. What price were you to obtain for the coal that you had to substitute for, for the Hitchman coal, per ton, on that contract?

A. I think it was $1.05 a ton to the best of my recol-ection now.

Q. Why was the Hitchman Coal & Coke Company unable to supply the coal, as you recollect?

A. It was owing to their restricted operations on account of their trouble with their men.

Q. And the attempt to organize the men?

A. Yes, sir; the agitation and the attempt to organize the men. At that time they were not able to get out or produce the coal they should have produced.

570 Q. What tonnage was it that you had to purchase elsewhere on account of your contract?

A. Oh, I suppose we had to buy ten or fifteen thousand tons all told.

(End of Direct Examination.)

Cross-examination:

Upon cross examination the witness, Upstill, was asked and answered questions as follows:

Q. Where did you buy the coal that you applied on your contracts for the supplying of the lake trade?

Witness: From what mines did we buy it?

Mr. Hogg: In Ohio; yes, sir.

A. I rather think we bought some from Pursglove.

Q. State the location.

A. The mine is located on the C. L. & W. Division of the B. & O.

Q. Whereabouts in Ohio is it?

A. Beyong Maynard, some place; I do not know exactly; it is in that territory.

Q. Do you recollect the quantity you bought?

A. I stated that altogether we bought between ten and fifteen thousand tons at different mines; I cannot recall just now all the mines.

Q. If I understood your examination in chief you stated that the Pittsburg vein No. 8 is mined in the Panhandle district of West Virginia, in which the Hitchman mine is located.

A. Yes, sir.

Q. That the same vein is mined in eastern Ohio, in Belmont, Harrison and Jefferson counties.

A. Yes, sir.

Q. And that these two localities in which this vein is situated are separated by the Ohio River?

A. Yes, sir.

Q. The same practically, I believe you said they were; and the same conditions of mining exist in the Panhandle district that exist in Belmont, Jefferson and Harrison counties?

A. Yes, sir.

Q. I believe you also stated that the Hitchman Coal & Coke Company pays the same price for mining coal now that is paid in the eastern Ohio section in the counties mentioned?

A. Yes, sir.

Q. I will ask you to state whether or not the Panhandle district located in West Virginia, where the Hitchman mine is sit-
571 uated, is in the same Sub-District of District 6 that the counties of Harrison, Jefferson and Belmont are in?

A. I understand that they are.

Q. I also understood you to say that the reason the Hitchman Coal & Coke Company pays the same price that is paid at union mines in Ohio, is because when the Hitchman mine stopped running union in 1906 it just continued for that reason to pay the same price that the union paid.

A. That is what I said; yes, sir.

Q. And this matter of paying prices in the two sections has continued from 1906 up to the present time?

A. That is my understanding; yes, sir.

Q. You know nothing to the contrary?

A. I know nothing to the contrary.

Q. And they paid the same prices at the Hitchman beginning in 1903 and continuing through that year, and in 1904, 1905 and up to April 1st, 1906, that were paid in the counties of Belmont, Jefferson and Harrison in the State of Ohio.

A. I believe that to be the case.

Q. Because they were all running on a union basis at that time?

A. Yes, sir.

Q. I believe you also stated that there is a freight differential on the B. & O. railroad of twenty-five cents that is applied to shipments made from east of the Ohio River, as compared with those made from west of the Ohio River, in the State of Ohio, in shipping coal west?

A. West of the line of the C. L. & W. railroad.

Q. Where does that intersect the B. & O. railroad, leading north?

A. At Bridgeport.

Q. How far is that from the Ohio River?

A. It is on the bank of the Ohio River.

Q. I believe you also stated that the bulk of the coal mined at the Hitchman mine finds a local market instead of a market either east or west of their plant?

A. I do not know that I stated that, but that is a fact. It does find some local market.

Q. I understood you to say that the greater part of the Hitchman product found a local market.

A. Yes, sir.

Q. And that has obtained for a long time?

A. Yes, sir.

Q. Not only when they ran union but since they have been running non-union?

A. Yes, sir.

Q. I also understood you to say that there is a differential against the operators in Ohio of twenty-five cents for shipments of coal from that region to the eastern markets?

A. No; I did not say that.

572 Q. What did I understand you to say in reference to that?

A. I do not think that question was asked me.

Q. Well, what do you know about that?

A. They have no rates to eastern markets that I know of.

Q. There are no shipments made east?

A. No, sir.

Q. It is all shipped west?

A. Yes, sir.

Q. I also understood you to say that the same rates of freight were extended to the Hitchman, so far as the eastern markets are concerned, that are given to the Pittsburg and Fairmont fields?

A. Yes, sir.

Q. Do you know the average annual production of coal from the Hitchman mine for the last eight years?

A. No, sir.

Q. Has it been on the increase or not?

A. I think it has been on the decrease for the last two or three years, but I cannot give you the figures, as I haven't them.

Q. What was the annual production of the Hitchman mine for the year 1910 as compared with the same production for the — 1909— more or less?

A. I would be unable to answer that question without the figures, but I think it was a little less.

Q. What was the annual production of the Hitchman mine for the year 1909, as compared with the production for a like period for the year 1908?

A. Probably a little more or the same.

Q. How does the production of 1907 of the Hitchman mine compare with the production for 1906?

A. Nineteen hundred and seven would be the greater.

Q. How does the production of 1906 compare with the production of 1905?

A. I could not tell you; I haven't any idea and cannot say.

Q. This coal that you purchased to apply upon your contract for the lake trade, where did you dispose of it and to whom?

A. I applied it on the contracts that I made for the Hitchman coal.

Q. To whom?

A. Largely to Pickands, Mather & Company; some I think to the Lorain Coal & Dock Company; some to George M. Jones Company, of Toledo; some to the Drake Coal Company, of Cleveland; and other small orders and contracts which we had that I do not recall at this moment.

Q. Now, in furnishing coal to the lake trade, that is handled by companies or corporations located on the lakes owning or operating their own docks, is it not?

A. Not necessarily their own docks. Do you mean at the port of loading or at the point of destination?

573 Mr. Hogg: At the port of loading.

A. (continued). No; the railroad companies own the docks at the point of loading.

Q. Are the sales not negotiated to individuals, companies or agencies handling the lake trade?

A. Yes, sir; they are naturally negotiated with people who have use for the coal on the lakes.

Q. Then all of the coal that is shipped to the lake trade is sold at the point of unloading, as a rule?

A. No; there is no fixed rule as to that any more than there is to any other transaction. You either sell it at the mine or you sell it delivered, according to the deal.

Q. That is what I mean; mines operating say in the Panhandle of West Virginia or mines operating in Ohio, either sell their coal at the mine or sell it at the point of destination at the lake.

A. Plus the freight.

Q. If it is sold at the mines it has a proce f. o. b. as a rule?

A. F. o. b. at the mines.

Q. Did you buy any of this coal that you speak of from the Lorain Coal & Dock Company?

A. I do not think I did that year.

Q. What year was it in which you made this contract?

A. It was in 1907.

Q. Coming back to the sale of the coal to the lake trade, the sale was either consummated at the mine or at the lake shore, plus the freight, by the Ohio operators or the Panhandle operators.

A. Yes, sir.

Q. Now, are you aware that there are different freight rates in the State of Ohio for shipments to the lake shore?

A. Yes, sir.

Q. Tell us how many.

A. I think there are only two.

Q. Can you designate them or distinguish them in any way?

A. Yes, sir; there is what is called the Middle District rate including Massillon and Tuscarawas fields, and the No. 8 and Hocking rate, including the Pittsburg No. 8, the Hocking and Cambridge districts.

Q. Now, coming back to the three-cent differential for lake trade: As I understand your testimony, if a shipment is designed for the lake trade the differential is only there cents per ton.

A. Yes, sir.
Q. That is obtained, I presume, is it not, by a rebate at the lake?
A. No.
Q. Where is that rebate obtained?
A. I do not know just how they handle that, but I know there is no rebate to it.
574 Q. It is a flat charge, is it?
A. It is a flat charge.
Q. In the first instance?
A. Yes, sir.
Q. So that on all shipments for the lake trade the differential is twenty-two cents per ton less than for the other trade?
A. As applied to our mines.
Q. I mean as applied to the State of Ohio.
A. As applied to the State of Ohio as against the Hitchman and other Panhandle mines.
Q. Did I understand you to say that the market value of the Pittsburg vein of coal and the Fairmont vein of coal, is about the same, or not?
Witness: The Pittsburg vein as confined to the Pittsburg district proper?
Mr. Hogg: Yes; the No. 8 vein.
A. I did not say that, I do not think.
Q. What did you say as to the difference? Did you not say that the only difference is in the thickness of the Fairmont vein?
A. No; not as regards the market, I didn't; that applied to the mining conditions.
Q. Then the mining conditions of the Pittsburg No. 8 as compared with the Fairmont vein are the same, with the difference created by the thickness of the Fairmont vein?
A. And other physical advantages.
Q. So that the Fairmont coal may be mined cheaper than the Ohio coal and the coal in the northern Panhandle of West Virginia. Is that right?
A. By thirty or forty cents a ton.
Q. What did you say about the market value of this Fairmont coal as compared with the Pittsburg vein No. 8?
A. I said that the Fairmont coal was worth a little more in the market for some purposes than the No. 8.
Q. Would the physical conditions in mining at Fairmont make a difference of thirty or forty cents a ton?
A. In my opinion, they would.
Q. You have had no practical test of it?
A. Except as we met the contention in the market for trade.
Q. Well, I am talking now about the physical conditions in the cost of mining.
A. No; I am not in the mining — and of course I cannot speak specifically of that.
Q. This is a mere matter of opinion then of yours?
A. No; how I arrive at that is that there is a difference of twenty-five cents in the rate *if* freight. We have the advantage in Ohio

of a twenty-five cent difference in freight, and still with that
575 differential they can undersell us in times of compet-tion for business.

Q. Of course you cannot say, then, that that is due entirely to physical conditions outside of the fitness of the vein?

A. It is entirely due to advantages of some kind that they have.

Q. What is the difference in screening in the Fairmont region and the No. 8 seam?

Witness: Do you mean in the size of the screens or in the proportion of fine coal that they get?

Mr. Hogg: In the proportion of fine coal.

A. I am not qualified to answer as to that, as I do not keep posted on that question.

(End of Cross Examination.)

Redirect examination:

Upon redirect examination the witness, Upstill, was asked and answered questions, as follows:

Q. What is the comparative selling price of the Pittsburg No. 8 coal in the markets of the west and the northwest where that coal comes in competition with the Fairmont coal, or Pennsylvania coal, or Indiana or Illinois coal, if you know?

A. That is pretty broad.

Q. Well, just generally speaking.

A. That would depend largely upon the nature of the competition and the condition of business. In many cases, for ordinary steam purposes, when it comes to competition West Virginia can make lower prices than we can. For gas, of course that is a specific coal, and we cannot in Ohio and in our No. 8 district compete with that kind of coal.

Q. When you say West Virginia coal you do not mean from the northern Panhandle?

A. I mean Fairmont coal.

(End of Redirect Examination.)

And the plaintiff here rested its case.

576 *Testimony on Behalf of Served Defendants.*

Philippi, West Virginia, March 18, 1911.

WILHELM W. SAVAGE.

Age, forty-three; occupation, secretary-treasurer of District No. 6, United Mine Workers of America; formerly a miner for twenty years; began work when about eleven years of age; mined coal at French Hill, Trumbull County, Ohio; worked there until he was nineteen years of age; moved from there to Portage county and worked there with the exception of two years, until he took position as secretary-treasurer of United Mine Workers. In those two years

worked in Indiana at Center Point, Clay County; been secretary-treasurer of District No. 6 twelve years; prior to the organization of the United Mine Workers was a member of the Knights of Labor and a local officer; the Knights of Labor was composed of all crafts; was initiated into it in 1887; the National Progressive Union was organized as a branch of the Knights of Labor; it was organized as an open branch because many of the members objected to the secrecy of the Knights of Labor, and were not in favor of doing business in secret; the National Progressive Union was formed, witness thinks, about 1882 or 1884; it had already been formed when witness joined; it was part of the Knights of Labor, known as District Assembly 135; the Knights of Labor carried on their business in practically the same way as the United Mine Workers do now, except that their proce-dings were strictly secret. A man could not enter a meeting of the Knights of Labor unless he was properly initiated and carried with him the signs and pass-words; the United Mine Workers of America was established and organized in 1890, at Indianapolis, Indiana, but the first ground work was laid at Columbus, Ohio; it is an open organization; it has no other or different objects or purposes from that of the Knights of Labor; being handed "Plaintiff's Documentary Exhibit No. 1," and asked to examine the preamble, states that it sets forth the objects and purposes of the organization since it was organized in 1890. Here this preamble, together with section 2 of article one of the constitution are inserted with the evidence of the witness.) Witness states that this preamble and section apply to the objects and purposes of district 6, and all other districts subject to the jurisdiction of the United Mine Workers of America; it also applied to sub-district 5. The witness explains the clause in the preamble "To secure an earning fully compatible with the danger of our calling and the labor performed," by saying, "We, as
577 coal miners, when this organization was formed, feeling then, as we do now in many instances, that the miners are not compensated as much as they should be for the labor performed; the object of the organization is to secure to these men, by united action and by contracts with our employers, a wage that we believe to be right."

As to the clause in the preamble reading "To secure an earning fully compatible with the dangers of our calling and the labor performed," the witness further says: "The mines of this country are dangerous in many ways. In the different strata we have very dangerous roofs and we have other dangers to encounter, such as gases, fire damp, powder explosions and impure air." Prior to 1890 witness found conditions in a deplorable state. Men were compelled to work in mines where there was not sufficient air to generate lights. He has worked in places where three men tried to make enough light for one man to work. He knows those conditions impaired the health of any person compelled to work there. Knows it materially injured him, because for two years after that period he was ill and unable to do labor which he should have *been* done. Those conditions existed for the reason that there was no inspection of the mines. The men were disorganized and one man of himself could not force

a condition, and if he would attempt to do so he was immediately notified to secure employment some other place, and if he should go to another place he would find practically the same condition existing. Since that time, or in the seventies or early eighties, in Ohio, they had a mine department composed of a chief mine inspector and one deputy, to cover the whole state, which was very inadequate, for the reason that it was impossible for them to visit all the mines, and the men insisted that something be done to remedy those conditions. There were very few laws on the statute books in those days governing mining, and it seemed that the general public not understanding the situation that existed in the mines, was indifferent to the condition, and when the men went before the legislature a man, as witness understood—heard it from men who were there at the time—took the floor in the legislature and stated that sufficient air would go into a mine without artificial means, which the men know now and knew then to be untrue. The organization, as the preamble suggests, believed in remedying this, and has striven at all times to remedy those conditions. They have succeeded in a large measure but there is still a large work to be done. Witness also says that the organization was not formed only to secure higher wages; but better
578 ventilation in the mines and improved sanitary conditions, so that a man going into a coal mine to work can work there and come out and still retain his health. Witness says that under the old conditions—men who mined thirty or forty years ago, you will find that a large percentage of those men have what is called "miner's asthma." When they reach the age of between forty-five and sixty years their breathing gets very bad. Witness has seen them with asthma so bad they could not work any more, just on account of the bad air they had encountered in the mines. Some call this disease "miner's consumption." While a man may live for years in that condition, he cannot labor in the mines because he has not the breath—his breathing or his lung power is gone, so that he cannot breathe enough to do the work. Owing to this imperfect supply of air there is not sufficient oxygen to generate lights, unless it would be in a place where there is what is called white damp and that situation is more dangerous than black damp. A lamp will burn in that place and burn very brightly, but the gases there are so poisonous that a man is liable to drop over and go to sleep and should *he* go to sleep he will never waken unless somebody carries him out in the air.

Witness has never worked in a machine mine but has been in them and is in touch with them. Knows about the work in them and the conditions that exist. For instance: "If you had a trolley in this town, and you would place the trolley wire by the sidewalk within four feet from the ground, and that was on the side of the walk where people were walking up and down, and that wire were charged (some of our wires are charged with four or five hundred volts), we know that somebody at some time will touch that wire. As it is on the outside, trolley wires are hung high up in the street where you cannot come in contact with them. In the mines they are hung along the entry-ways and men walking along these passage

ways stumble and fall on these wires. In fact, I saw one poor fellow one time who was going out. He had to move to one side of the entry to get away from cars that were coming towards him, and he stumbled and fell upon this wire. While the volume of electricity was not sufficient to kill him, it burned his hands or fingers clean off and both of his hands were absolutely crippled. We also find them electrocuted and dying immediately. Then there are other dangers in machine mining. The men are caught in the chains of the machine, for instance. The chain revolves at such a speed that a man's pants are liable to be caught in it. I have known in Ohio an instance where a fellow was drawn into a machine and they
579 had to go outside of the mine and get a surgeon to come inside of the mine and amputate that man's limb so they could get him away from that machine. Of course that man did not live but a few hours. These are some of the dangers in coal mines. * * * There are other dangers of this kind: There is a class of men coming into this country today, who are employed as coal miners, who have never seen a coal mine. They are given employment in a mine that generates gas or fire damp. They know nothing of those things and if they are given a safety lamp those men are liable—not knowing the danger—to strike a match if their safety lamp goes out and cause an explosion that will send to eternity all the men in that mine. Those are some of the dangers existing. Now, incompetent miners are employed after an examination, and we are endeavoring to have a standard placed so that a man of that kind cannot be employed by himself but only under the direction of a competent person. We believe by so doing that we are going to protect the competent miners in a mine. That policy is resisted by the coal operators where we have endeavored to secure laws governing that class of labor. * * * It would have a great effect upon the saving of human life and limb in the mines.

The United Mine Workers of America, as an organization, have taken an active part in securing remedial legislation for these evils. They have spent thousands of dollars, and have spent it in this way: They have had, sometimes—many of the districts now have—a standing legislative committee that waits upon the legislature or the members of the same. They employ attorneys to draft bills which they believe to be constitutional, &c., and have some member of the legislature to introduce those bills. They have those legislative committees there for the purpose of acquainting members of the legislature with their wants and desires and the purposes of the laws, have spent thousands of dollars in that way.

The organization does as much as it can towards acquainting ignorant foreign *emi*grants with the dangers of mining coal. Under their contracts, a mine committee is not supposed to go around the working places of the miners unless they have actual business in going there or unless they are called. In fact, the operators have insisted that this condition exist, and witness thinks there is a clause covering that feature in the contract existing in Sub-district 5, of District 6.

Witness being asked if membership in the union affords these

*emi*grants an opportunity to get acquainted with these dan-
580 gers of mining, witness says that the organization is largely educational, and it is meant to be so, but it depends upon the miners in each locality how much they make it so. It would naturally tend that way.

Being asked as to what steps have been taken in Ohio and other states to remedy the defects entailing dangers upon the miners the witness says: "We have made a very great improvement, and I will say this: That so far as the operators are concerned we do not find the same resistance, or it is not as noticeable along those lines *h*ow as it was some years ago. We are getting better acquainted and I believe that the average operator wants to protect his employes as much as practicable; but on account of the keen competition that sometimes exists—some of those things cost some money to put them in force, and we all know how men are in business; they want to make profits; and while the selling price of coal is low they lose sight of the fact that they are taking chances by not doing things that they should do, thereby causing a loss of life. And that is true of coal miners themselves in their working places at times. We have men killed because they take too many chances. For instance, a man may have a piece of slate hanging over the place where he is working, and he has a car there, and he says, 'I will load this car before drawing that slate down;' and he starts to loading the car but before he gets it loaded the slate is on top of him. Those are reckless men who take chances and it is those things that we are trying to avoid. Of course they cannot all be eliminated. Some one will be killed in coal mines so long as coal is mined, but I believe they can be minimized largely so that not so many of them will occur."

As to laws designed to avoid the dangers incident to the use of electricity in a mine, the witness thinks there is an agitation of that kind or a law proposed—is not certain whether it is a law or not; thinks there was a bill of that kind introduced in the Legislature of Pennsylvania; there is none and has been no agitation in Ohio; he believes that mines can be wired to a better advantage than they are today; finds a great improvement today over what existed three years ago, on account of the agitation in Ohio. Four or five years ago a bill was introduced in the legislature which had for its purpose the compelling of operators to cover their wires or have them insulated so that if a man came in contact with them he would be safe, but on investigation witness understands that insulation itself is not practicable on account of the operation being by direct contact. And on account of the insulation being imperfect they cannot get
581 insulation that would protect life as it should. Sometimes the insulation may break. A man may think on account of the wire being insulated that he can touch it, and by doing so at a place where the insulation is bad he would be electrocuted.

Witness understands that in Pennsylvania the matter of the greater safety of compressed air as compared with electricity is a very live question; the union believe, and everybody knows, that the use of compressed air is absolutely safe, while in the use of electricity there is a great element of danger. On the other hand, they find from

the operators' standpoint that he can mine coal cheaper with electricity than he can with air; there are some men that put the dollar above human life; witness does not think they do it viciously but they do it on account of their greed to make money and possibly sometimes to save their money; witness thinks that many be *strrib*utable to the spirit of the times and the genius of our people; it would not necessarily be visited on the coal operator only.

Witness is acquainted with Mr. J. C. McKinley, who has testified on behalf of the plaintiff that it is one of the chief purposes of the United Mine Workers of America to unite all of the workers in and around coal mines to secure a minimum wage for the laborer and to enable also the operators to dictate a minimum price for their coal in the markets. As to this witness says they believe that if there is a minimum wage placed upon mining that it will compel the operator to go into the market and secure prices for his coal so he can pay those wages, and when a man is compelled to do a thing he will always find a way to do it, and they believe it is possible that can be done. They also believe that the American public is willing to pay the price as coal in the United States is cheapest—that is, coal mined in the United States is cheaper than any coal in the world, and the American public are getting their coal very much cheaper than in any other country in the world.

There is a very great discrimination in the selling of coal to those who use it for fuel for the producing of steam as a motive power, and the price that is paid for it by the great mass of domestic consumers; it is very evident that when the railroads get coal at prices quoted from eighty cents to a dollar a ton and some of them pay a little more—possibly a dollar and ten cents a ton—and the general public has to pay from three to five dollars a ton for coal, it is evident that those people are getting their coal very cheap as compared with the general public.

582 The United Mine Workers believe that the operators and the consumers of coal as a fuel could regulate the price of coal for these purposes on a more equitable basis to the great mass of domestic consumers throughout the country, and that it should be done; witness does not think that would affect the marketing of the coal so as to deny the operator a fair profit; if they would get more for their steam coals they would be able to reduce the other to a certain point—the percentage of coal that goes for steam purposes is so large that if they get more for their steam coal they could reduce the price of coal to the general public and still put their business on a better paying basis.

By the Court:

"Q. Right in that connection let me ask this question: What should be the effect of establishing a minimum price for coal that would warrant all operators in selling their coal based on that minimum price, upon the poorer classes of coal, or the grades of coal that would not rank high for steam coal, with the Pocahontas and the New River and the No. 8, which you speak of, in Ohio. Wouldn't it have the effect, in other words, of destroying coal

operators in all other veins that could not compete in the market with them, and create a monopoly in favor of these better veins?

A. I do not think it would, for the reason if that would be true in that case, it would be true now, because the good qualities of coal would adjust themselves accordingly.

Q. Well, there is unquestionably an over-production of coal in the country?

A. Yes, sir.

Q. And isn't it really a fact that the producers of these indifferent coals simply live by cutting the price of coal and selling it at a cheaper price?

A. Well, in some instances. How, we have in Ohio—and I can speak for those veins better than I can for others—we have some seams there that are poor in quality. For instance, in the Jackson district, as we cal- it, they are mining there what is known as No. 4 and No. 5; they are not a good quality of coal but still they find a market for it, and they pay our scale of wages there. Again, in that same section, we have what is known as the No. 2 seam of coal that is very good for domestic purposes, and I guess one of the best in the country. Still that coal maintains its price; those operators will not sell it unless they get a good round profit on it, and I believe it sells at the mine at from fifty to seventy-five cents a ton more than this No. 4 and No. 5 coal.

583 Q. You think, then, that the better coal would command a price above the minimum price sufficient to give the poorer veins the minimum price?

A. Yes, sir; just like a good garment will command a better price than a cheap garment."

Witness is not sufficiently acquainted with the seams in West Virginia to talk intelligently of them; he knows what is called Pocahontas coal, but knows nothing about the New River coal.

There is a difference between unionizing a mine and unionizing the employes in the mine; unionizing the employes—is having the men join the organization; unionizing a mine is creating joint relations between the employers and employes; a mine cannot be unionized unless the employer enters into contractual relations with the union; it is not the policy or purpose of the United Mine Workers as an organization to coerce a man into doing a thing against his will; this distinction between unionizing a mine and unionizing the employes of a mine has existed since the organization came about, and this method of unionizing a mine existed in 1906 and 1907.

"Q. Something was said yesterday about the strike in the eastern Ohio field as having gone into effect on the 20th of March, 1911. I want to ask you whether the operators in the Tuscarawas field were under contract relations with the organization to pay the scale beginning in the year 1910?

A. Yes, sir; on April 5th, in the city of Columbus, we met (that is, the officials of the Ohio miners) with the operators from the Hocking district, eastern Ohio, Guernsey and some other places that I cannot recall just now, and we drew up the contract which I believe has

been read here. The substance of it was that they would pay an advance of five cents per ton for pick mining and 5.55 per cent on day labor, and the same relative price for machine mining, commencing then and expiring on March 31st, 1912. The operators of the Tuscarawas district—that is, the officials of that association—were not in Columbus that day but they sent word to us that they were ready to sign and that if we would forward them a copy they would sign it and return it; which was done."

Mr. Cassington, President of the Association, signed for the association; they were in the joint association that covered all the mines in that district; they operated under that scale until June 11th of last year; the operators of Eastern Ohio likewise signed the
584 scale; the operators in eastern Ohio are the same men that are operating the mines that the strike was called on in the Tuscarawas field; they entered into contractual relations through their representatives, for both fields; after having pursued that agreement for a while they declined to carry it out further in the Tuscarawas field; but they did continue to pay in the eastern Ohio field.

The scale of 1906 adopted at the convention in Indianapolis, readopted the scale of 1903. In 1903 the price for pick mining was ninety cents per ton; in 1904 the miners of the country accepted a reduction of five cents per ton; in 1906 the men demanded a restoration of the scale of 1903, which would bring it back to ninety cents a ton, which was eventually agreed to. If an operator signed that scale he had a right to go on and continue his operation as a unionized mine; it was not to the interest of the United Mine Workers to refuse to let anybody sign that scale; they courted signatures to that scale; and wherever they found an operator that was inclined to sign that scale, they went after him and tried to prevail on him to do so. Witness remembers the signing of that scale by the Lorain Coal and Dock Company, but not the date; he is informed that the Mound City Coal Company, located in the northern Panhandle of West Virginia, also signed the scale; the Hitchman Coal and Coke Company declined to sign that scale; and that was the difference between the Mine Workers' organization and the Hitchman Coal and Coke Company. As to why some operators refused to sign the scale, the witness says:

"The operators in Sub-District No. 5 were paying at that time two cents a ton for the handling of what we call 'draw slate.' They were contending to get that price off. As we understand it, that draw slate exists the same in the Pittsburg district as it does in eastern Ohio. In the Pittsburg district they were not paying this two cents and the operators in eastern Ohio were contending that they were coming in competition with the Pittsburg coal and that they should be relieved of this two cents per ton. Of course the miners demurred and the operators insisted that it should be done, and for that reason they refused to sign the scale as other operators in Ohio signed it—because they wanted that two cents off. Other operators refused to sign the scale because of this controversy on the two cents; they were afraid if they did sign the scale that the organ-

ization would hold them down to paying this two cents even if the other operators would succeed in getting it off. We met in
585 convention in Wheeling—the miners and operators of the district—and the scale was signed as the miners desired, with this exception; that there was a clause written into that scale to this effect; that at the expiration of the contract if the Miners' organization did not secure for the miners in the Pittsburg district two cents a ton to bring their price up to the price then existing in eastern Ohio, then the miners in Ohio would relinquish that price. The miners failed to get the two cents in eastern Ohio and in making our contract in 1908 the miners—according to their previous arrangement—surrendered the two cents a ton." This was done in order to equalize the burden among the operators as they saw it and make it uniform throughout.

"Q. Mr. Savage, I call your attention to the plaintiff's bill filed in this case appearing in the transcript of the record at pages 24 and 25, which reads as follows: 'After your orator started up non-union about June 12th, 1906, as aforesaid, efforts were repeatedly made by one or more of the defendants to induce your orator to unionize its mine, and, failing in that, efforts were made by some one or more of said defendants to bring about by inducement, persuasion, threats, and intimidation, and by various means and devices unlawfully to induce your orator's employees to cease working for your orator, and by use of like means, devices, intimidations, threats, persuasion and inducements to prevent men willing to work for your orator not to engage to work, or if having engaged to work, then not to go to work for your orator.' Have you heard that allegation read?

A. Yes, sir.

Q. Is that true or not true?

A. No, it is not true."

At that time witness believes that the Hitchman was a non-union mine, and says that had the United Mine Workers sought to organize the employes of the Hitchman mine, they would not have sought to have them cease working for the company, because as an organization they do not desire to go to a mine and get a lot of idle men on their hands. It sometimes occurs that they do have them, but if the men quit of their own accord the organization is not responsible for it. Witness knows nothing of any movement, either as an individual or as an officer, in any way to have the men of the Hitchman Company cease working for it, in 1906 or 1907, or any other time since it started up non-union; he had nothing to do with it individually, and knows of no attempt of that kind on the part of the United Mine Workers. Neither as a member of the organi-
586 zation, nor as an individual, did the witness attempt in any way to interfere with the operation of the Hitchman Coal and Coke Company's plant after it started to run non-union.

"Q. I call your attention to an allegation on page 28 of the plaintiff's bill, appearing in the transcript of the record filed as an exhibit in this case, which reads as follows: 'Yet you- orator says that although it has refused to permit it, still the said defendants, further

proceeding to carry out their conspiracy, are now endeavoring to unionize your orator's mine, and threaten, and your orator has reasonable ground to fear that they will, and so alleges, close down your orator's mine and keep it closed until your orator will agree to sign the scale and employ none but union labor.' Have you heard that allegation read?

A. I have.

Q. Is that allegation true or not true?

A. It is not true as far as I know.

Q. Are you attempting it in any way?

A. No, sir."

As an officer of District 6, witness says that no officer of that district, or sub-district 5, had any authority to shut down the Hitchman Company's mine in 1907, that he knows of; that it would have been against the interest of the United Mine Workers to have done so.

Witness is acquainted with Thomas Hughes; he was employed by District 6 as an organizer in 1907; but he had no power or authority to shut down the Hitchman mine; no organizer has such power; the business of an organizer is to try to induce men to join the union.

It is not the policy of the union to coerce men into joining the union; they are expected to join voluntarily and freely.

The scale adopted by the United Mine Workers in 1906, which the Hitchman Company refused to sign, expired March 31, 1908; since that time the United Mine Workers have adopted a new scale.

Witness says that the following allegation in the plaintiff's bill is not true: "Your orator further says that unless enjoined by this court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America, as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate de-
587 struction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and will compel your orator to contract with its employes through the said defendants as officers of the said associations under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and further will compel your orator to agree that each of its future employes as members of the said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employes would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the State of West Virginia."

The United Mine Workers did not in 1907, nor have they since then tried to compel the Hitchman Coal and Coke Company without its consent to recognize the United Mine Workers in its contractual relations with its men; it was not then and is not now a part of the policy of the United Mine Workers to dictate to the Hitchman Company the men it should employ; an operator who is running his mine as a unionized mine has the right to discharge his men, for cause.

A mine cannot be unionized without an agreement signed up between the coal operator on the one side and the Mine Workers' organization as the representative of the men on the other side; the right to discharge a man for cause has never been denied to an operator. But there are cases come up that if a man is discharged in the union and they find he is unjustly discharged, the union will take up his case for him. If a man is discharged from a mine he ought to be discharged for cause. The union has had men discharged and admitted the cause and admitted that they should be discharged, but the union has prevailed on the operator and he has consented to let the man go back to work; that was by the use of conciliation.

By the Court:

"Q. As a matter of fact, Mr. Savage, is that subject considered at all or embraced at all in any way in the contract you have
588 with the operator?

A. Yes, sir; we have a clause in our contract covering questions of discharge."

Witness states that the following allegation of the plaintiff's bill is not true: "Your orator further says that in effecting their said object of unionizing your orator's mine the said defendants propose and threaten to, and your orator being so informed and believing it to be true, alleges on such information and belief that said defendants will and are about to indulge in all the many methods of accomplishing their results by the use of threats, intimidation, force, violent or abusive language, picketing your orator's premises, picketing or patroling or guarding the streets and approaches to your orator's premises and going to the homes and boarding houses of your orator's employes for the purpose of intimidating or coercing them to leave your orator's employment and to picket railroad and street cars passing to and from or through your orator's premises for the purpose of intercepting your orator's employes in going to or from your orator's premises and for the purpose of intercepting and preventing persons coming to your orator's premises for the purpose of seeking or for the purpose of entering into your orator's employment." The United Mine Workers did not in 1907, or at any other time, authorize, direct or advise any of its representatives to use threats, intimidations, force or violence and abusive language for the purpose of intimidating or coercing the employes of the plaintiff to quit the plaintiff's service; they will not employ men who use abusive language, if they know it; it is contrary to the purposes and objects of the United Mine Workers; it is not the policy of the United

Mine Workers to coerce anybody, whether employed or not, to become a member of their union.

The witness did not in the year 1907, either individually or as an officer of the United Mine Workers, enter into a conspiracy and confederacy or combination to injure the Hitchman Coal and Coke Company in any way in the operation of its mine; "we never do conspire; our work is an open book;" if there had been a conspiracy of that kind witness presumes that he would have known about it because matters of that kind of legislation, in the absence of a convention, are handled by the executive board; witness being the secretary of the board and taking the minutes of the board would surely know whether there was anything transpired along those lines. Witness understands by a conspiracy that men organize for the purpose of injuring another man or his business; nothing of that sort
589 was done with reference to the Hitchman Company's property or men; the union is not secretly organized for that purpose; they are not secretly organized for the purpose of injuring any man or his business, nothing of that kind was done secretly or openly; witness was not on the premises of the Company in 1907; knows of no one who was authorized to coerce or intimidate its men to quit their employment, nor anything of that kind, did not know of anybody that was representing the United Mine Workers in 1907, or at any other time, going to the Hitchman mine or premises, for the purpose of intimidating the men, or coercing them or doing any other unlawful thing to compel the men to become members of the United Mine Workers of America; the organizers have charge of the work of getting men to join the union; that is, they are instructed to go and if possible hold meetings and talk to the men and show them the benefits of organization as the union sees it; they are not acting for the union if they use anything beyond reasonable persuasion.

Witness understands that Lee Rankin lives at Martins Ferry and is employed by the Florence mine as superintendent; by becoming superintendent of that mine he forfeited his membership in the union. He does not now represent the union in any way.

Cross-examination:

Witness was born in Wales and came to this country in 1870; on direct examination the stenographer got his name wrong; it is "G-w-i-l-y-m," the Welch for William; he is George W. Savage the defendant; was less than two years old when he came to this country; came with his parents and located at Church Hill, Trumbull County, Ohio; lived there until he was about nineteen; that was formerly a coal producing country; witness worked in the mine in that county, starting work when he was about eleven years of age, mining coal; continued to mine coal there until he was about nineteen, when he moved to Portage County and mined coal there until he went to Indiana and mined coal there two winters—in 1887-'88 or 1888-'89, at Center Point, Clark County; was there two winters then about 1890 or 1891 returned to his home in Portage County, where he remained until he removed to Columbus about twelve years ago—about 1900; the occasion of his leaving Portage County and moving to

Columbus was that he had been elected secretary-treasurer of the Ohio miners, and the headquarters being there, it was necessary that he make his home there, at least he thought so.

590 Witness became a member of the United Mine Workers in 1890 when they were organized; prior to that he had been a member of the National Progressive Union and of the Knights of Labor; he has been an officer of the union all the time; thinks he was president of the local union first, from 1890, and was in office all the time until he came to Columbus, he had been financial secretary-treasurer of the local assembly of the Knights of Labor during his stay in Indiana; held no other position previous to that or subsequent to it in the Knights of Labor or in the National Progressive Union; since moving to Columbus in 1900 witness has occupied the position of secretary-treasurer of District 6; was re-elected at the last convention and will enter a new term of office April 1, 1911, and run until March 31, 1912.

The United Mine Workers as a body hold national conventions, and witness has attended all of them since 1894; he has also attended the joint conferences of the mine operators of the central competitive states of Western Pennsylvania, Ohio, Indiana and Illinois, and the miners' organization; the first one that he recollects of attending being at Chicago in 1898, and was present when the Chicago agreement of 1898 was agreed upon or made; has attended each of the joint conventions since that time, and was present at the joint convention held in 1910.

Witness states that he is acquainted with Thomas Hughes and that Hughes was in attendance upon the last national convention held in January at Columbus; he was also in attendance at the last convention of District 6; does not know whether he was in attendance at the last convention of sub-district 5 of District 6; witness himself was not there; witness was at the last convention of District 6; it was held January 9-14; the last national convention was held commencing January 19, 1911.

"Q. In the proceedings of the American Federation of Labor—the executive council meeting—which is reported in the American Federationist of March, 1911. I find what purports to be a copy of a telegram sent by the United Mine Workers' organization to Samuel Gompers. The telegram is dated at Columbus, Ohio, January 20, 1911, and at the bottom contains the signatures of a number of persons, amongst them Thomas Hughes. * * *

This is the defendant Thomas Hughes, and witness believes the communication referred to is the report of the committee on resolutions, and believes Hughes was a member of that committee.

591 Witness believes he has attended all conventions of District 5 since 1894; he has also been in attendance at different times at the conventions of all the sub-districts of Ohio, but not all the same year; this year he has not attended one of them, but it is the first time he has missed in his attendance since he has been an officer.

Witness, upon request, produces and filed with his testimony to be marked "Savage's Exhibit No. 1," a copy of a certain strike order issued during the preceding month.

As near as witness can remember, he made the statement attributed to him on pages 112 and 133 of the document filed as "Upstill's Exhibit No. 1." Witness also states that he made the remarks attributed to him on page 114 of the same exhibit, and "the reason I said it was because if we were selling coal we would not sell it for 85 cents a ton, and I wish to say with reference to that extract you read there that the reason my remarks were directed as they were, was, that the coal operators in every convention, as a matter of argument against any attempts that we make, will cite West Virginia. We believe if we organize West Virginia that that would take away the argument they present to us in Ohio and the competitive fields, and we ask their assistance in organizing this State."

Witness recalls certain statements made by Mr. Chapman, contained in "Upstill's Exhibit No. 1," at pages 64 and 65, and says he has heard similar remarks made at various conventions, but that the organization does not agree with these statements.

On page 210 of the same exhibit a statement is quoted, as to which the witness says he believes he has heard such statements, but he does not agree with them.

"Q. On page 211, Secretary Perry of your organization is reported as having made this statement: 'The price paid for mining in West Virginia is not the only cost of production. Those men have bills to pay that you do not, and you know it. It is not necessary that I should mention what they are. As a result of the organization trying to organize that field there is an added cost to the production of those operators.' Do you recall any language of that kind having been used?

Witness: Does he say what the added cost is?

Mr. Gilchrist: No, sir.

Witness: Did you read all of his statement?

592 Mr. Gilchrist: All that related to that particular point. I will hand you the book.

(Witness is here handed "Upstill's Exhibit No. 1.)

A. Yes, sir; he made such a statement. I believe I know what he means but I do not know that I have stated it.

Mr. Gilchrist: Yes, you have.

Witness (continuing): He had reference, as I understand it, that the added cost that the operators of West Virginia were put to, of their own volition, was the employing and paying of policemen or guards around their mines. As I understand it they have such people employed in this state for the purpose—(interrupted).

Q. Of protecting themselves against your organization.

A. We know of our people coming in here to organize and they have been assaulted in nearly every instance that they have come here, and I presume that is what those men are paid for, or at least that is what they do; and if you will go back to my statement before that convention you will find that I asked the operators to see to it that the law protected the miners in this State and that we would then see that the state was organized.

Q. In other words, I understand you to mean that you stated before that convention that if the law could be so fixed that you would

be given a free hand in organizing, that you would soon organize West Virginia?

A. I never made that statement; I do not think I did.

Q. I am asking you if that was substantially what you said?

A. I meant to say that if we had the protection of the law that now exists, that we will organize the state.

Q. Then you claim that you haven't the protection that the law gives?

A. We absolutely know it.

Q. What experience have you had in West Virginia in that line?

A. Personally, none. I know of an instance where men have telegraphed me at Columbus when they were assaulted in the streets of Fairmont, and I know of another instance where two men were assaulted at Welch, West Virginia, and appealed to a justice of the peace for protection and he refused to give it. They were even refused medical attention and were placed on a train and pulled into Columbus and placed in the St. Francis Hospital there, and they remained there for several weeks. They had no medical at-
593 tention until they reached Columbus, Ohio. I would also state that I was in Fairmont—I believe it was two or three years ago—when coming from Morgantown. I got off the train there one night and went to Skinner's Tavern where I met some gentlemen, who were coal operators, in the lobby of the hotel. One of those men being a personal friend of mine when working in the mines, advised me not to walk on the streets of that city that night.

Q. Mr. Savage, you are a man of intelligence in the world, as the world goes and as your opportunities have afforded you a chance for experience and observation. Taking human nature as you find it in the world at large, if your organization seeks to and does do only good things, can you account for it in human nature, why there is such pronounced hostility to your organization in certain parts of the country?"

The witness says there is not so much opposition as there was twenty years ago; that there is not the opposition in his state that there was when he became a member; witness believes a majority of the operators there prefer doing businss with organized labor than without it; there may be some small non-union mines in Ohio; in Ohio the union contracts for a closed shop.

Witness is here read an item in the Wheeling Daily Intelligencer of March 22nd, 1911, on the front page, headed, "Call Troops in Big Strike Demonstrations Prevented in Illinois Town—Strikers are to be arrested." Witness is then handed the paper and says that he is not satisfied with it; that if it is correct his organization had nothing to do with it; that he read an article in a newspaper the day before stating that there were 200 Italians who refused to let the other workers in those mines go to work. And presumes that "the other workers" meant members of the organization, and knows that so far as the organization is concerned, they will direct the men to go to work; that Illinois is a union state, and if the occurrence reported in the paper is a strike it is a strike of men who do not understand the purposes of the union; that members of the union do not engage in riots or assaults, so far as he knows.

Asked as to the Irwin field in Pennsylvania, witness says he knows nothing of it except from reading; in years past it has been considered a non-union field; being asked if "it has not been a thorn in the side of the union" for many years past witness says that any field that is not organized, they desire them to be organized,
594 because it is their purpose to organize the miners of this country, and says "if you think that is a thorn in your side then you can use it as such."

Witness thinks organizers have been sent into the field at different times, but he does not know to what extent they succeeded, he has no direct information from there; has heard different statements but is not in a position to say which is right or wrong; witness has read statement that some of the operators in the Irwin field are operating and has read statements that some are not; the union is now sending money over there to support the idle men because they are idle; if they were working they would not get it. As to there being trouble there and the state constabulary being sent in witness says he is informed—does not know whether it is correct or not—that there was no disorder there until the state constabulary got in there; he is informed (does not know whether it is correct or not) that that institution as organized in Pennsylvania have murdered men there and have even torn down the stars and stripes and trampled upon them when a body of miners was marching in a parade. Witness knows of no acts of violence and disorder caused by the members of the union—believes a man is innocent until he is proven guilty.

Neither the national organization of United Mine Workers of America, nor the district bodies nor the sub-district bodies are incorporated.

Witness says that the strike called in Ohio, according to the notice filed as "Savage's Exhibit No. 1," is based upon the contention that the operators whose mines are closed failed to live up to an agreement made between them and the organization for the operation of mines in another part of District 6; asked if he does not think it would be more conducive to the successful operation of the union if it were *in* incorporated body, he says that is a big question. As to the enforcement of contracts he says the miners, when they sign a contract, have nothing at stake but their honor, as he understands it, and he also understands that the operators are in the same situation so far as it pertains to the organization. He does not think the operator would be responsible, in his or its property, for breach of such a contract; at least, they have never recovered anything of that kind; a coal operator can close his mines at any time he desires and they have no reason to know why he closes his mines; there they could not recover from that coal operator because he could assign different reasons. When asked if they could not recover against an operator who broke his contract, witness says when an operator closes his mine he has no contract.

595 The result of the failure of these operators to keep their contracts has been that the union has suspended work; they have suspended and the men are idle.

"Q. And they are to be idle until you have whipped the operators?
A. The circular don't say so."

Witness was in different parts of the state of Ohio during the 1906 strike; believes it began April 1st, 1906, but does not remember the exact date when work was resumed—it may have been August but witness does not think it was quite so long; witness was not in West Virginia during that time.

When asked if he had not taken refuge under the construction of the word "conspiracy" in denying that he was engaged in a conspiracy against the Hitchman Coal and Coke Company, witness says that as he understands it there is no conspiracy connected with the organization whatever; that their laws do not prescribe anything that tends to a conspiracy, and they expect to carry out the laws of their organization at all times.

Redirect examination:

Witness was an officer of the United Mine Workers since 1890, but continued to work in the mines until he was elected secretary-treasurer in 1900. It was not, in 1907, or at any time before or since, the purpose of the organization of the United Mine Workers of America to form locals and get miners to join the union for the purpose of discriminating against the West Virginia operator and in favor of the Ohio operator; if efforts were made in 1907 to get the employes of the Hitchman Company to become members of the union, it was not for the purpose of discriminating against that company in favor of any other operator, it is the purpose to organize all the workers in the country, and if they were to do that they could never hope of organizing the miners anywhere. The Mr. Chapman to whose remarks attention was called on cross examination was a coal operator.

T. L. Lewis.

Age, forty-five; residence, Bridgeport, Ohio; occupation since April 1, 1908, President of the United Mine Workers of America; from April 1, 1900, until March 31, 1908, Vice-President of the United Mine Workers of America; became a member of the
596 United Mine Workers when it was organized in 1890; transferred his membership from the National Progressive Union of the Miners and Mine Laborers of America; the National Progressive Union was formed and made up of the organized Mine Workers who believed in what was known as the open system of organization; they believed in conducting their meetings openly, so that everybody would know just exactly what business they transacted. That was organized, as near as witness remembers, in the month of August, 1888, at Columbus, Ohio. Before becoming a member of the United Mine Workers witness — in and around the coal mines of Western Pennsylvania, Central Pennsylvania, Ohio and Indiana for a period of twenty years; worked as a breaker boy in the anthracite region; as a trapper boy in the mines of western Pennsylvania; as an oiler, or boy who greases cars on the outside of a mine; dumped the dirt or the refuse that comes from a mine in mining coal; laid track; set timbers; driven mules; in fact, everything that a man could do in what is known as a pick mine.

The preamble to the constitution of the United Mine Workers of America contains a declaration of the principles of the organization; section two of article 1 is a part of the method of adopting or endeavoring to secure the adoption of the declaration of principles; the organization has no other objects, except those stated in the declaration of principles; and in article 1 under the heading "Name, Objects and Jurisdiction."

"I might say in that connection that section 2 of article 1 where it states that 'the objects of this union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes'—that when that clause is understood by the operators and the miners and by the American people, 'conciliation' means the holding of conventions of operators and miners for the purpose of presenting their respective demands. That is the first step in the conciliatory feature of our union and has been practiced ever since it was organized. As to the next step—'arbitration'—it is generally understood by the operators and miners that we endeavor to arrive at intelligent conclusions as to our differences and arbitrate them ourselves. In other words, when we present our respective propositions, we enter into a general discussion of them. We then refer them to a committee of operators and miners, jointly, and under that system when that committee takes the matter up for fur-
597 ther consideration, there are possibly a great many things that come out with regard to the detail or inner business methods of the operators that they do not desire discussed in open conference, because they are private matters. For instance, the operators have no desire to tell everybody the exact amount of profit they earn by their business, but they want to convey that information to the representatives of the miners as an argument against conceding what the miners' representatives may demand in an open convention. But there are times also, when they present those things in order to show that they don't want to let their competitors, or let everybody know that probably they are making no money. There are a gr-at many things in connection with that feature that are purely business matters and yet they are not laid bare to the people any more than such matters are in any other line of business. All these facts are brought out in joint scale committee meetings. After that if we can arrive at conclusions, or we can decide among ourselves that our demands have been unreasonable, and we have not been able to support them by the facts, and the miners have receded from their position, and the operators are unwilling to prove that their claims are correct and the miners incorrect—there have been times when it has taken place when we disagreed, and we failed to arbitrate our differences, and there was no desire to *fer* them to any other source or any other method of arbitration, that it has resulted in what we call 'strikes' or a suspension of work, and the general proposition is to try and bring about a condition to have a wage contract agreed to for fixed periods of time and do away entirely with the necessity of suspending the operation of the mines in any section of the country.

Q. Mr. Lewis, has that method, or not, been pursued, or has it been the endeavor of the United Mine Workers of America to pursue that method since its successful organization?

A. That has been its endeavor, and aim, and object ever since it was organized and it has been very successfully carried into effect."

This method now applies to Western Pennsylvania, Central Pennsylvania, Ohio, Indiana, Illinois, Michigan, Iowa, Missouri, Kansas, Arkansas, Oklahoma, Texas, Wyoming, Montana, Washington, part of West Virginia, part of Kentucky, part of Tennessee, Colorado, and province of Alberta and British Columbia in Canada.

As to that portion of the preamble of the constitution relating to the dangers of mining and the labor performed, the witness
598 says that the organizers of the United Mine Workers believed, and the members now believe that evidence has been produced from time to time to show that mining is the most dangerous occupation in this country outside of that in connection with powder mills. This fact has never been denied in joint conference with the operators, in discussing that phase of it. Witness believes that to secure an earning fully compatible with the dangers of mining and the labor performed, the miner should receive for his labor the highest standard of wages, and until the union was organized the men did not receive the standard of wages paid to ordinary, common, every day labor that required no skill—having special reference to men who work out on the highways, doing common labor, men who work on the sections, who never come into any danger of any kind or character as miners understand danger.

In regard to the second clause, relating to the establishment of the right to receive pay for labor performed in lawful money, the witness says the object of that is that previous to the organization of the United Mine Workers a miner might have worked for a month, or a year or two years and never have seen a dollar that he could call his own, "of Uncle Sam's currency." He was required to buy everything that he needed in what is known as a company store, commonly called by the miners a "pluck-me," and the reason that was given that slang term was because of the exorbitant prices charged by company stores as compared with stores run by an ordinary business man in a community. Since the forming of the organization, recognizing the iniquitous system of paying to miners, first, low wages, because of a disorganized state, and then taking everything from him, because of that disorganized state, and the existence of the company store, the men have been able by legislation—by securing the enactment of laws in various states—to practically wipe out that system of existence everywhere. It exists in some of the non-union districts yet.

As to the frequent and usual consequences of declining to deal at the company store in a non-union district, the witness says there are times when they are discharged from the employment of the company; but the more effective way to get rid of that man and make him voluntarily quit the employment of the company is to give him the worst place in the mine in which to work. In other words, the man who deals the most in the store receives more considera-

599 tion from the mine foreman in getting a better place then the fellow who purchase the necessaries of life wherever he saw fit.

As to the clause relating to the "introduction of any and all well defined and established appliances for the preservation of life, health and limbs of mine employes," the witness says: "Under the non-union system—and I speak now of my own experience, and when I speak of my own I speak of the experience of thousands of others—under the non-union system I have been compelled to go home on more than one occasion because of the failure of the mine foreman to have a sufficient supply of timber either on the outside of the mine or delivered to the inside, in order that I could use that timber to properly timber the place and protect my life. Rather than run the risk I would go home and sometimes bring other men out. That is one of the appliances that we mean under this term—the furnishing of a sufficient supply of timber at the working places in order that we can protect ourselves. Another appliance, as affecting health, is sufficient ventilation. In other words, to provide by artificial means a current of air that can be made as near pure, at the working places, as artificial means can make it. Under disorganized or non-union conditions, and previous even to the creating of mine departments, miners were required to work in an impute atmosphere to such an extent that *me* were required to go home before even a half day's work was done; and I have known men to become ill and remain at home several days, and the result was directly traceable to this condition in the mine. Another safety appliance we believe in is where means can be provided to remove the water from the working places. For instance, if a room or entry is dripping and the water accumulates there, it naturally lies against the face. Under non-union or disorganized conditions you are told that you can work there or you can leave; but under union conditions we make it a part of our wage agreement that that water shall be taken out previous to starting time or the man who works in the place will be paid for bailing it into barrels and as the water hauler comes along he hauls it out, and that creates a condition that is in our favor, because if by using those local means to keep the p-ace dry, it is done. Another thing in connection with the matter: In some of our mining states where we have conditions of that kind the men get wet. Now, because it is impossible to take all the water out, they have to walk home, and in winter weather their clothes freeze on them and that is conducive to injuring their health. We have by legislative enactment, through
600 the influence of the organization, secured laws requiring the building of wash houses near the mines in order that the men may change their clothing as soon as they come out of the mine and go home in dry clothes. There may be other matters besides what I have mentioned but those are the general matters."

The effect of the endeavor of the organization to change those conditions has been very radical—so much so that different states have enacted laws requiring an increased inspection force, imposing heavy penalties on mine owners for their failure to provide sufficient ventilation, and providing every safeguard that artificial means can provide.

The condition itself established the desire for a change. It created in the minds of the men working under those conditions, a desire to have them changed, but they discovered that individually it was a hopeless task, and that was one of the things that prompted the Mine Workers to organize, and the organization grew in strength, by reason of coming together and discussing these things; it educated these men as to the best means of securing remedial legislation; and of course they then, by an organized power, exerted their influence with the legislative branch of the government and secured the enactment of these laws.

As to the advancement of legislative action on the part of the states since the organization of the United Mine Workers, witness says that one of the changes—in union districts especially—has been to require the largest possible volume of air necessary to give the men proper ventilation; the increasing of the inspection force in practically every mining state in the union—even in West Virginia; and the establishment of mine departments in the states where they had none. In addition to this, in order to safeguard the lives of the men, a number of states have enacted and others are considering the advisability of enacting other laws for having the shots fired outside of the regular working time.

In answer to a question by the Court the witness says that the inspection laws of the different states have been enacted at the instance of the United Mine Workers, and a number of them have increased their efficiency since 1890; prior to that time they had mine bureaus in a few of the states; but every mine bureau in this country can be traced directly to an organized effort on the part of the Mine Workers. Previous to the United Mine Workers, there were miners' organizations, but they were never powerful, and went out of existence because of the discrimination of the employer in endeavoring to drive them out of existence.

601 As to clause four: "To reduce to the lowest possible minimum the awful catastrophes which have been sweeping our fellow-craftsmen to untimely graves by the thousands; by securing legislation looking to the most perfect system of ventilation, drainage, etc." the witness says that this is practically outlines in his general review of the third declaration. The word "etc." is added to meet any new conditions that may arise, and the men have discovered in the development of the mining industry in this country that in mines where they generate large volumes of fire damp, or gasses, that it needs the most practical men to work in those mines in order to avoid the risks of these terrible explosions that take place; and they have had for many years an agitation in the organization, and in some states laws have been enacted as a result of that agitation, in favor of requiring men to pass an examination as to their competency before they will be permitted to work in places by themselves in the mines. In other words, they must work with practical men before they assume the responsibility of working alone. That would be a disadvantage to the operator only to the extent that the mine foreman is required to ask the question of a man that he employs, whether or not he can show a certificate to work in a mine where fire

damp is generated. It would be a benefit to the operator in this respect; that if he employed incompetent men and as a result an explosion occurred and would, as an additional result sacrifice the lives of a large number of men, in addition to destroying the property, it would be to the disadvantage of the operator because he would have to stand the loss un- he had the property insured. It would be to the disadvantage of the mine owner because he would have to meet the condition and reimburse, so far as the liability laws would require, for the loss of the lives of these men, and yet it would not bring back those lives.

As to clause six: To uncompromisingly demand that eight hours shall constitute a day's work," etc., the witness says: "That is a matter that is open to discussion and I will state it according to my own experience as a miner. We claim as mine workers, that no man can work longer than eight hours and give the very best possible service, or what he is capable of giving. In other words, if a man goes into a mine and works continuously for eight hours, his physical strength will not stand for any more work than that if he keeps it up one day after another. That is the reason why we claim that, from that standpoint, and then our other reason in meeting the arguments of the opposition is this: If this is permitted, the
602 operators claim there should be no restriction on the number of hours because it may interfere with the production capacity of the mine. Our reply to that is, that the mine workers of this country do not work on an average over 210 or 215 or 220 days in the year—through no fault of their own but because there is not an opportunity to work, for the reason that the coal is not consumed that could be produced in operating the mines 300 days in a year." Witness thinks that in the end the result would be practically the same as if the restriction did not exist.

As to the provision in section seven as to the education of the children "by lawful- prohibiting their employment until they have attained a reasonably satisfactory education and in every case until they have attained fourteen years of age," witness says that so far as the effect on the development of the mine, or an increase of production is concerned, that provision has no effect — all. That the miners do not believe that any boy should be required to go into a mine under fourteen. "If you will pardon me I want to say from my own personal experience that had I had the opportunity of securing an education previous to the time when I was fourteen year- of age, the chances are that I would not be here now. And what is true in my case is true in cases of hundreds of other boys, and this has become so apparent to the nation itself that there is a widespread agitation all over the country by men in every walk of life and every profession, to legislate child labor out of existence.

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"So far as mining was concerned (before the formation of the United Mine Workers) our boys could go in the mines at seven or eight years of age, if they wanted to, and very often the father would take the boy in the mine when he was eight years old in order to get for him half as many cars as a man would get out. The boy

could not mine coal, but because of the number of men employed in the mine, and what they called the 'turn run' system, the father would mine the coal and load his turn and the boy's turn, and the boy was required to stay in there all day and do what he could to help.

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"Gradually we have brought about a change in that respect until there are not many states where boys under fourteen are
603 permitted to go in the mines, and in some states they must be able to read and write and they cannot go into mines until they are sixteen. That is true in Ohio.

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"I think the United Mine Workers had everything to do—in co-operation with members of other labor unions—in bringing their influence to bear upon the legislative branches of the states and requiring them to have those laws enacted by the presentation of facts to the members of the legislature, and of course by bringing pressure to bear on them. If they didn't support such a measure they would vote in the next election for them to stay at home. That might be called coercion but it is politics."

As to the eighth clause: "To abrogate all laws which enable coal operators to cheat the miners and to substitute laws which enable the miners, under the protection and majesty of the state, to have his coal properly weighed or measured, as the case may be", the witness says that declaration was put in there for the purpose of requiring mine workers to recognize the *the* right of their employees to select a representative to go on the tipple and watch the coal being weighed. In other words, he was a check for the weighman, and that is where the term "check weighman" comes from. That was done for the purpose of seeing the coal correctly weighed and properly accounted for, by the miners' representative. Before the organization of the United Mine Workers he was not allowed to see it and it was not practicable for a man to see the result of his own work. A man could not go in a mine and mine a ton of coal, and load it, and follow it out to the tipple and see it dumped and weighed; it was impracticable to do that; and when he expressed a desire that he and his associates should select a competent man to go on the tipple, that right was denied by the mine owners, previous to the time of the organization.

When a mine is operated with the co-operation of the United Mine Workers or under its jurisdiction, the question is not raised at all; they have a check weighman on the tipple at every mine where there are contracts existing between the United Mine Workers and the mine owners, with full authority to see every ton of coal weighed and to properly account for it, and there is no objection.

By the Court:

Q. Do you permit a system of mining by the car and paying by the car?

A. In some places where the car is measured that is done.
604 Q. Is there any objection to that system where is saves the expenses of a check weighman and all that sort of thing?

A. No, there is no serious objection to mining in any manner in which the correct weight or measurement can be ascertained, whether it is by the car, by the ton or what we call solid measurement. We have places where we mine coal at so much a foot.

Q. Well, it has one element of fairness in it—that it enables the man who wants to get out more cars to make a higher wage, and allows the company to ascertain which are the best miners, does it not?

A. Your Honor, I think not, if I grasp your meaning. There is no restriction on mining coal and putting into a car, where we have it by the ton, and a man may load 800 pounds or 2,200 pounds or 3,600, according to the capacity of the car. Some men when they build the cars up on the side—that is, above the body of the car—some men who are practical miners take the chunks of coal and built up more firmly and squarely than an impractical man, and they get more weight on the car. Others simply round up the car and have less weight, and it requires as much expense to haul out a car partly full as it would if it were completely full. Now, as to the other point you brought out there, in regard to loading by the car: If they load by the car there would not be any necessity for a check weighman except to see whether or not the men loaded their cars of a uniform height, and in that instance the weigh-boss, or the company'- weighman who has to keef a record of the car, might say that the car hadn't been loaded up full and he would dock that man one, two, three, or four hundred pounds, in accordance with what his judgment was, for deficiency in weight; then you would have to have a check weighman there to see whether he had arrived at a correct conclusion or not.

The real object of a check weighman is to see that the men get honest weights; the miners pay the expenses of a check weighman.

As to clause nine: "To secure by legislation, weekly payments in lawful money," the witness says that they had a system to pay by the month, and usually they never received any pay. "If I were a miner and I had to wait until the 25th of next month for the money I had earned this month, and I hadn't any credit, being a new man in town and no one knew me, I would have to get the necessaries of life somewhere. And the inducement to go and purchase the necessaries of life from the company's store was strong because I could not earn enough money ahead to enable me to
605 go and buy from independent groceries; and the idea of having weekly pays was to get our pay as often as possible in order that we might purchase the necessaries of life where it suited our convenience and the *the* best advantage."

The weekly pay system is not insisted on anywhere, because the miners do not believe it would be right to insist on the weekly pay system until they have established the semi-monthly system everywhere; at present the contracts provide for semi-monthly payments.

By the Court:

Q. Then practically the "pluck me" stores have been abolished and the semi-*weekly* payment system established, which is satisfactory generally?

A. Your Honor, I might say that the semi-monthly pay is satisfactory as a general rule; the semi-monthly pay is satisfactory, so far as I know, to all of us. The company store system in all of the districts where we have wage agreements entered into between the mine owners and the miners has been abolished. I might say that in that connection, however, that a large number of coal companies have in connection with their mine operations stores that are not directly connected with the company. They are organized under the name of a supply company and as a result of that, why, they naturally do everything they can to get the trade of the men, but they do it now on what we might say is a legitimate basis, because they must depend upon selling their goods as cheaply as anybody else in order to get the trade.

Q. And if they do sell as cheap the miners usually patronize them?

A. Very largely; especially in a community where it is made up solely of miners.

Q. How was this system with reference to the pay of the miners before the formation of the United Mine Workers and the making of the declaration of principles as you have stated?

A. Well, before the formation of the United Mine Workers nearly all the companies had company stores, but there were some exceptions. The exceptions were that some miners did not have company stores because they did not want to be bothered, in some insta-ces, with carrying the accounts or carrying the men, because they would necessarily have to carry them along if there wasn't much work at the mines. That applied usually to the smaller companies, wherever it existed, and the result was that where company stores existed the men did not have the opportunity that they have now to provide for their families the same things that they can provide at the
606 present time. That was due, to some extent, to the higher cost of the necessaries of life in the company stores as compared with the independent stores.

Witness considers that the establishment of the semi-monthly payment and the doing away with the company store system has been to the miner equivalent to advancing his earning power from ten to fifteen per cent. and possibly more.

As to the purpose declared: "To render it impossible by legislative enactment in every state, for coal operators or corporations to employ Pinkerton detectives, or guards, or other forces (except the ordinary forces of the state) to take armed possession of the mines in cases of strikes or lockouts," the witness says: "In the early history of the organization, and previous to the forming of the United Mine Workers, if the mine owners and their employes disagreed and that disagreement resulted in a strike or suspension of operations at the mine, the operators would endeavor to induce their own employes to return to work and on a failure to do so, that they would import other men to take their places, and also employ guards, ostensibly to guard the property but in reality to stir up a disturbance in that community in order that it might reflect on the intelligence of the miners and their peaceful disposition. In Ohio, where I lived, we

had what was known as the Pinkerton system. The Pinkerton agency with its headquarters at that time in Chicago—away back in the eighties—made it their business to furnish guards to any mine owner or to any corporation in the country at so much per man per day. They did that, now, in lots of places in the country. If the guards were employed from among the citizens of the community, or within the state, at those times, our people did not seem to think that there was anything wrong about it, but when they would land in a mining community, in full uniform, with rifles on their shoulders and revolvers strapped in their belts, and drop twenty-five or fifty of those men off of a train in a community where a strike existed and no breach of the peace had been committed, we believed that had a tendency to arouse bitterness and precipitate a breach of the peace. As members of labor unions we regarded it as an armed invasion of the state, because they were employed by private corporations and were not summoned there by any of the authorities of the state. That condition existed in the Hocking district in 1884, to such an extent that—well, it bordered almost on civil war between not only the miners and the Pinkertons but the citizens generally. Growing out of the agitation to abolish that system, through the influence of the labor unions, the Ohio legislature
607 enacted what was called the anti-Pinkerton law, and they cannot in that state import any more guards under that system."

Witness thinks that action or change has improved the peace and good order of the mining communities wonderfully, and thinks the conditions themselves will bear that statement out.

As to the eleventh declaration: "To use all honorable means to maintain peace between ourselves and employers," etc., the witness says the practical purpose of that declaration is to endeavor to meet with the mine owners, through representatives, in what are called joint conventions, to present a proposition embodying what the miners believe they should receive for their labor, and the conditions under which they should be employed. The operators in presenting their side either deny in toto all of their demands, or state that they could not concede all of them and continue to operate the mine. The effect has been that from four states the miners have extended their wage contract mutually agreed to between the operators and miners, to all the states that witness has enumerated. There can be no advantage taken on either side by the voting strength, all parties must agree. The vote on a proppposition must be unanimous, one vote will defeat a resolution. It is the idea of the miners in the clause referred to to maintain peace between themselves and their employers, adjusting all differences so far as possible. It is impossible to adjust all of the differences because the operators have some things that they claim they ought to have and the miners have some things they ought to have, but in the general adjustment those things are waived, and they reach conclusions and sign up contracts, and the purpose of that is to do away with strikes. In other words, to do away with the suspension of mining operations, in the mining industries. To have both the mine owners and the mine workers as nearly

satisfied as human nature can make it. It is impossible to make men perfectly satisfied.

It is not now and never has been the policy of the Mine Workers' organization to use force or coercion or any unlawful methods to promote its jurisdiction or the growth of the organization; the moment they attempt to extend their power of usefulness by that means, instantly they will go out of existence.

In negotiating with a mine owner to employ union labor, "the policy of the organization has always been to get the consent of the mine owner rather than to coerce him, and I might add to
608 that, that coercion may be susceptible of many constructions. For instance, we have had cases where a number of men that were organized at a mine have said to the employer, 'You can employ whoever you see fit, union or non-union, but if you want our services we reserve the right to say whether or not we will work there while that man is working there.' Some people say that is coercion. If it is, everything in life is coercion.

Q. In other words if you do not desire to have a mine filled up with non-union men you reserve the right to quit.

A. If we have a contract of that kind, yes, sir; and if we have a contract with the employer at that mine, and there isn't any agreement signed up, and there isn't any agreement existing verbally between us, then we reserve the right to quit; but we have never attempted to say to the other fellow that he shall not work there. That is his business."

Each local union is a part and parcel of the national organization, and receives its charter existence from the international organization; the national conventions are made up of representatives of the local unions.

The international convention has power to add to the constitution of the national organization, through representatives from the local unions; it cannot be changed otherwise; the constitution of a district is framed by representatives of the local unions in district conventions; the constitution of a sub-district is created and amended by the representatives of the local unions attending the district convention from within the territory covered by the sub-district organization.

The highest authority in the organization is the international convention. They formulate the general demands for the various districts throughout the country, and they deal with questions of a national or international character only. If there are scales of wages already existing throughout the different districts, the national convention decides whether there shall be a general increase or a general reduction.

When the national convention has decided to change the scale, when it comes to questions of detail, the district or sub-district directly affected has power to take up what are known as the internal differences, and agree with the operators in these respective localities as to what they shall be. As a general proposition, the international convention finding an existing scale as already applied and adopted in the various districts, decides either to let it alone as it is, or to in-

crease it or to reduce it; except they add this: When they are
609 considering that feature of it, there is a clause usually in the demands that internal questions both as to prices and conditions shall be referred to the respective districts for adjustment. The reason why they say "prices and conditions" is, that it may be a condition of employment that they want to take up in the state or sub-district, or it may be a question of price outside the mining rate, the day wage scale and the hours of labor. It may be a question of paying for this water that has been described; in some districts they are not paying for it, in others they are; and there is a discrimination there in favor of one operator against the other. The matter is taken back to the district in order to have that adjusted. One operator might say "I won't pay for it because operators in other states are not paying for it." The miners may say "We want pay for bailing this water out because they are paying for it in another district." That is the detail; that is the internal difference; it is internal as it applies to that state. That is adjusted locally as applied to the districts or sub-districts.

The district can adopt such constitutional provisions as it may deem wise and proper, so long as that does not conflict with the national constitution; a sub-district can adopt its constitution to its locality so long as it does not conflict with the district and national constitution, according to article 12, and article 13 of the constitution of the international organization.

Witness is acquainted with the coal fields of West Virginia in a general way; the mining districts of West Virginia are designated as the Fairmont region and there is one section of that east of Fairmont known as the thin vein section. There is the New River field, the Kanawha district, the West Virginia central field, the Elkhorn region, and a thin vein of the Elkhorn known as the Thacker field. The Pocahontas field, located on the Norfolk and Western Railroad, is what is known as the Elkhorn field; the New River field is on the C. & O.; it is of the same character largely as the Pocahontas, except there are veins in the New River section known as smokeless coal. The Kanawha field is located west of New River, on the Chesapeake and Ohio and Kanawha and Michigan railroads; the northern panhandle is not a distinctive West Virginia field, and until recently most of its coal was consumed locally. In the development of the district, however, there has been a great deal of coal shipped out of the district.

In West Virginia the United Mine Workers operate at the present time in the Kanawha District and in the panhandle; at one
610 time they had locals in every mining district in West Virginia; at present there are fifty or sixty locals in the Kanawha field and at one time there were eight or ten in the panhandle; in the Kanawha District approximately three thousand miners belong to the United Mine Workers; there are no mine- in the Kanawha District proper that have union men that are run non-union; there are some in what is known as the Cabin Creek section of the district. The coal in the Kanawha section finds its market west, either Cincinnati, Chicago or the lakes. It is shipped to the lakes over the

Kanawha and Michigan railroad. They (the K. & M.) could handle all the coal from there for the last several years that they could mine. There is a report being circulated now that the C. & O. railroad is connecting up with the Ohio Central in order that they can ship coal from the C. & O. side of the Kanawha Valley to the lakes via the K. & M. From one side of the valley, the C. & O. side for instance, they ship their coal to Cincinnati and it goes into the northwest that way, if it goes at all. The K. & M. is on the north side of the Kanawha River and they ship their coal by way of Pt. Pleasant. They cross the river at Pt. Pleasant and connect up with the Ohio Central lines, and they go into the northwestern territory that way. There is some coal shipped from the Kanawha District down the Kanawha River and Ohio River to Cincinnati. It is transferred at Cincinnati from the boats to railroad cars and shipped into the western territory.

The New River coal is shipped east, principally—some of it to Norfolk and there loaded on vessels and some of it is shipped up to the New England states. Some of the New River coal goes west because of its peculiar qualities. It is called smokeless coal and burns to an ash and hasn't any clinkers in it whatever. It is peculiarly adapted to certain purposes.

The Pocahontas coal goes both east and west, and a large part of it is converted into coke right on the ground. If the iron and steel industries are in a prosperous condition, they convert more of that coal into coke than if there is a stagnation in the iron and steel industries. It is generally understood that all the product of the Pocahontas field can be converted into coke, but there is not always a market for it; it is a splendid fuel coal, however. A large percentage of the product of the New River and Pocahontas fields finds its way into the use of the United States Navy at the seaboard; both coals are peculiarly adapted to navy fuel; also, there is some of the New River coal converted into coke.

611 In the last few years the Virginia Railway has been constructed connecting the sea board with the New River and Kanawha fields; it is to transport coal from those districts to Norfolk to be there transferred to vessels to supply the New England trade. Witness's own opinion is that it was built for the ultimate purpose of shipping coal from West Virginia via the Panama Canal to the eastern countries. That road comes into the Kanawha field at Deepwater, about forty miles from Charleston.

The Fairmont coal is shipped east and west both; some of it is reduced to coke; witness does not know about its coking qualities; it is more adapted to fuel purposes; it is a good quality of coal, known as the Pittsburg vein.

The unionizing of the Kanawha field has had no effect whatever upon the ability of the Kanawha people to compete with the Ohio people; it has not interfered with the development in that territory, nor with the marketing of the products from the mines in that district.

Witness remembers the unionizing of the Hitchman mine, but does not remember the exact date; does not think that the union-

izing of that mine had anything to do with its ability to ship coal to the lake trade. Witness is acquainted with J. C. McKinley and has known him for several years, first met him in a conference with the miners. Mr. McKinley was an officer in the eastern Ohio association of coal operators, and took part in its deliberations.

The dues and assessments of the United Mine Workers' members, that they pay to the organization, are collected through the office and deducted from their pay and turned over to the officers of the local union, with some exceptions; in the Massillon District of Ohio and the block coal district of Indiana, they pay direct—the members do—to their own local union.

There are two funds, one called the regular monthly dues, and the other is the assessment. The monthly dues are paid for the purpose of defraying the running expenses of the organization, and the assessments are paid for the purpose of taking care of the members when they are idle, on account of a suspension of work or from other causes. They have no such fund collected by the national organization regularly; they collect a fund of that character by levying an assessment on the members to take care of men in some districts that are involved in a suspension or a strike; it is only periodically collected. There is one uniform assessment—apparently so—of one-half of one per cent. That is not a na-
612 tional affair. *That is not a national affair.* There is monthly dues of fifty cents per month that is collected by the local union, and of that twenty-five cents per month is paid by the local unions to the national secretary-treasurer, known as the per capita tax, to pay the current expenses connected with the conduct or running of the organization—office rent, stationery, printing, salaries and expenses of international officers, the executive board members, and international organizers who may be appointed to work in non-union districts or in union districts. The work of the international organizers is not alone a work of organization, but it is an educational work, or explaining to members, especially to our large foreign speaking mining population, why they should be members of the organization, and why they should be conversant with all the reasons for organizing in order to make better citizens of them—men of their own nationality. The railroad fare of the delegated from the local unions to the international convention is paid out of that fund; the international secretary-treasurer has charge of it; he is under a forty-five thousand dollar bond approved once a year; the president holds that bond; a certain sum of money, over a stipulated amount, is deposited in bank in the name of the international executive board members, that board is composed of a representative from each district.

The duties of the board are as they appear in article 2, section 5, of the international constitution:

"Sec. 5. The Executive Board shall constitute an International Board of Conciliation and Arbitration; shall execute the orders of the International Convention, and between conventions shall have full power to direct the workings of the organization, also to levy and collect assessments when necessary. It shall hold in trust for the United Mine Workers of America all moneys deposited in the

name of the Executive Board by the Secretary-Treasurer, but under no circumstances shall said money be drawn upon except upon the written order of two thirds of the members of the International Executive Board."

"Sec. 6. The International Executive Board shall have power to order a general strike or suspension by a two-thirds vote at any time during the year that they deem necessary, and each member shall have one vote, and one additional vote for every two thousand members in good standing they represent, or a majority fraction thereof; provided, that *as* District Presidents, Vice-Presi-
613 dents and Secretaries be called into joint conference for consideration before any general strike or suspension order be issued."

The international executive board has jurisdiction over international questions affecting the entire organization; the district branches and sub-district branches have certain jurisdictional rights and the executive boards of those districts have authority to act within their territory, subject to the approval of the international executive board. For illustration: The district board of district six fixes the rate of assessment for that district; the money is paid the district secretary-treasurer, who gives bond for the faithful accounting and application of the money; it is then under the control of the district executive board; the district board is made up somewhat differently in district six. In the smaller districts, a state that has five or six thousand mine workers of the organization, for instance, they have their board members elected from the entire membership. In some of the larger districts, in order to have a distribution of the executive board, there is one elected from each sub-district. In Ohio the president of the sub-district organization is a member of the district executive board, for the reason that the man who is president of the sub-district, being required to keep going around all the time to see that the members live up to the laws of the organization and the terms of the contract, is better able and more competent to pass judgment on questions coming up from the sub-district and enlighten the other members of the district board than a man who might be elected and is not required to go around and learn all these things. The executive board members of district six and the international board members are constantly employed.

When an agreement is made with an operator, it is usually signed by the officers of the district and the representatives of the operator; or when it is a sub-district agreement that has terms that the district organization will not deal with because of their peculiar local character, the officers of the sub-district and the representatives of the operator sign that agreement; in addition to that they have what is known as a scale committee that has taken part in all the deliberations during the time that this contract was being negoti-; ated; they are also called upon to sign this agreement. This shows the men at home that not only the officers have participated in the negotiations but also the men direct from the mines.

When a man seeks employment at a mine and is employed, it

is generally understood, and used to be written in the con-
614 tracts made between the Mine Workers and the operators, that when a person accepts employment he agrees to conform to all the rules governing that mine, so far as the operator and the miner jointly are concerned; if the miner violates the constitution or the terms of the contract, the mine boss can dismiss him; then the representatives of the miners' organization will go there and investigate as to whether that was a personal matter that prompted the discharge, or whether there had really been a breach of the contract; when a man violates the contract the operator has the right to discharge him instantly; then the miner has the right to be heard for the purpose of ascertaining whether the cause of his discharge was just or not; if the mine boss who has direct charge of the mine, and the person who is discharged, are unable to agree or settle their points of difference, the mine committee is called in to investigate the causes that led to the discharge of that man. If it finds the man was justly discharged that is the end of it. If the mine boss and the mine committee are unable to agree, the mine committee takes the matter up with the superintendent, and upon their failure to agree the officers of the sub-district are called in. From them the dispute may go to the officers of the district and a representative of the employers, known as a commissioner, for final judgment. If they find after a thorough investigation, that the man was wrongfully discharged, he is reinstated; otherwise he is let go. In some districts they have a clause in their contract, agreed to and signed by the operators and the miners' representatives in joint conference, providing in the event the employe was wrongfully discharged, his reinstatement carries with it the payment of three or five days' wages for the time lost. In other words what is a penalty for the bad judgment of the mine foreman.

It is understood, and the contract requires that it be done, that when the United Mine Workers engage to work for an operator, they are to see that their men live up to their agreement; the organization must see that the men report for work on time, and that they attend to their work and perform it carefully and faithfully in every respect. They contract to work eight hours a day when a mine is in operation and are expected to be there, and any employe who does not perform his work faithfully, can be dismissed, subject to an investigation, as before states. If he does not demand an investigation nothing is done about it. It is the object of the organization to see that the members receive fair treatment, and that they also treat the operator fairly. The mine foreman
615 is selected by the superintendent, the United Mine Workers having nothing to do with that; witness has known instances, two or three, where the employee complained to the superintendent of the conduct of the mine foreman, but witness does not care to say anything about mine foremen as a general proposition, and charge them all up with the weaknesses of one man; as a rule they are good men and consider the welfare of their employes. Witness has frequently been brought in contact with them and worked under many of them of all nationalities.

Witness's attention being directed to the testimony of J. C. McKinley, a witness on behalf of the plaintiff, speaking with reference to the different organizations known as the international, district, and sub-district organizations, wherein he says that every one of these bodies, from the international down to the local, has power to levy assessments, says that the United Mine Workers is divided into four branches; that its organization is patterned somewhat after the United States government; the international organization, which was called the national until a part of Canada was organized, deals with international questions with the international officers; then there are the state or district organizations that are patterned after the states of the country; then the sub-district organizations, patterned to a greater or less extent on the county system within the states. Then there is the local union that in a sense might be compared to our township organizations. The local union gets its authority direct from the national organization, through a charter from Indianapolis, the headquarters, or wherever it may be. It is delegated with certain functions, and among them is the levying of monthly dues of fifty cents per month on the members; they have no authority to levy any dues outside of that, except where there is a desire to create a funeral, sick or benefit fund; that is not granted by the international organization, but is accepted, and a great majority of our local unions have a sick, accident and death benefit fund, kept up by the payment of fifty cents per month into that fund by the men, voluntarily; and in many cases the mine owners, aside from the provisions in the contract making an express agreement with the employes to collect the regular dues, also collect this sick and benefit dues and turn it over to the board of trustees and treasurer, who is placed under bond. Then, when there is a certain number of local unions organized within a given territory—take for instance an entire state—they form a state or district organization. In time, as the indus-
616 trial development advances, more men are employed and they find it will best conserve the interests of the miners, they divide into sub-districts. The object of that is to keep in close touch with the membership, and to impress upon their minds the necessity of living up to the laws of the organization and comply with the terms of the contracts that may exist. In other words, it becomes more of an educational institution than otherwise, and they are able to put into effect their educational ideas as an organization, and create an understanding as to the rights of the employer to absolutely manage his own mine as he sees fit, and at the same time to try and adjust all differences without having any clash that would lead to a suspension of the operation of the mine. The assessments are all collected by the local union. They pay so much per month, to the international organization as a per capita tax; they pay so much per month to the district organization as a per capita tax. The per capita per member that they pay in Ohio is five cents a month per member, and that is paid to the district officers at Columbus. In Ohio, in addition to that, they pay one-half of one per cent of their earnings into a fund from which members who are forced to suspend work in order to require employers

to comply with the contracts, are paid three dollars a week benefits. The amount to be distributed to the men who are idle is sent to the local officers by a representative, sometimes of the sub-district, or a committee selected by the district officers. A reliable and trustworthy man is selected to disburse those funds or dispense them. Then, in addition to that, the local men themselves give the name of every man and the number of his family to the persons who are distributing this relief, in order that they can see that it is equitably distributed. The amount that goes to the local depends on the membership; if there was a membership of one hundred there would be three hundred dollars per week paid.

As to the statement of Mr. McKinley that "they term a union mine as one over which they have absolute control and a non-union mine is one which is worked open shop, or one in which the United Mine Workers are not recognized," and that the term "non-union" is in a sense descriptive of contempt on the part of the United Mine Workers as applied to a man who is not connected with their organization, witness says he does not believe that statement is correct, and goes on as follows: "We have mines that we regard as union mines where all the men are not members of the organization. A non-union man is one who does not belong to a labor union and a union man is a man who does belong." There
617 isn't any such thing as a closed shop—*—there is no such thing as an open shop in the sense that some employers interpret that term—* * *—and the reason for that is this: That when a mine is organized and the miners and employers agree to the terms of the wage contract, it is for the employes in that mine. When the mine owners kick against having the contract to include all of the men working in the mine, we say, 'If you are willing to make a contract only for the men who are members of our union, and we are now going to secure an advance of five cents a ton in the mining rate, we want you to stipulate in the contract that it is only union men who are going to secure this advance in wages, because we are negotiating only for the union men. They tell us very promptly, 'Why, that is absurd. All these men that don't belong to the union would immediately go on a strike or join your organization in order to get the advance.' Then you admit that we are negotiating for all the men in your mine? and as a matter of right we should negotiate for all of those men to see that they live up to the terms of the contract, and we cannot make them live up to the terms of the contract unless they are members of our organization; we cannot deal with them; then the other proposition is when they say they want to have an open shop agreement. I claim that there isn't any such thing, because if it is open to do as they please, they will gradually get rid of all the men that belong to the organization and it becomes an absolutely closed shop from a non-union standpoint. The only difference in the two situations is that we want a closed shop where we can jointly negotiate a wage contract for a stipulated time and be responsible for all of our men who are members, who work in that mine, and hold them responsible for their part of the contract that we negotiate. There is the whole situation. And coming back to the proposition of regard-

ing a non-union man with contempt, there is nothing to that, because there isn't any of our men but would go to a non-union man and talk to him and try to induce these men to join with us; it is not likely that we would go and associate with them if they were men that we have the greatest contempt for, and for that reason I think that is an incorrect statement."

By the Court:

Q. What is the origin of these *o*pprob-ious epithets of 'scab' and 'black sheep' during labor troubles?

A. Your Honor, that arises from a condition where men take the places of other men who have quit work.

618 Q. Does it arise under a condition of this kind—that men refuse to work?

A. Yes, sir.

Q. And when they have been given an opportunity to work and refuse to do it, other men come in and are employed by the mine owner and then the men who refuse to work, but who are still there, apply these epithets?

A. Yes, sir; there is where the term arises. They are not called non-union men because they have taken the places of the men formerly employed there; and I might say that is not used as a general term. They use that in getting into discussions and arguments, when one word leads to another. They don't, for instance, ever talk in a slanderous way to the men. Say we were working there in a mine—four hundred of us—and all of us had suspended work on account of some complaint we had, and that we had taken the matter up, and other men had taken *their* places. We let them take our places—(interrupted)——

Q. Practically, doesn't it establish a 'dog in the manger' situation where one set of men won't work and won't let any one else do so?

A. It establishes this condition: That when the men who are idle endeavor to persuade the men who have come to work—men who have been induced to come to work—and who have been induced to come to work at a place where they don't know anything about the conditions, and if a union man can explain to them what the condition is, in ninety-nine times out of a hundred those men will quit work. They have come there to work because they have been misled and deceived in accepting employment. But some men will not do that; then when they get into a discussion and talk on the highways and in the saloons and a hundred and one places, they refer to them, or to that fellow, as a 'scab'—that he took a fellow's place down there. That is just how the term comes about, and it puts that stigma on a man who takes that job just *just* the same as anywhere, in any community, we find people who have a stigma on them. For instance, we would say, 'There is a notorious gambler going down the street.' 'How do you know that?' Everybody knows it, and yet if you undertook to prove it, it would be quite a difficult thing to do."

There are agencies established throughout the country who make it their business to furnish mine owners, or any other employers of labor, with strike-breakers at so much per day. For instance, they furnish those men for five dollars a day to the employer and the employer has those men t[illegible]ork for them at a rate of $2.50 or
$3.00 per day, and the agency gets the difference. They
619 are established in New York, Chicago and Pittsburg as the witness knows personally. They gather up any kind of men that they can get hold of, not for the amount of labor they will perform, but for the irritation they can create in the community by going around among the men who are on a strike and breeding trouble and breaches of the peace, because when anything of that kind occurs it brings discredit on the men who are on a strike. It creates prejudice against the men who are on strike. These strike-breakers are English speaking foreigners, many of them—the riff-raff of the large cities; they make a business of going from one place to another, and just as soon as a strike is over these people are gone.

In answer to a question by the Court witness says that, speaking for himself, he has not heard of any good reason why the United Mine Workers of America should not be incorporated. It may have its advantages and it may have its disadvantages. Under the present system the mine owners realize they cannot sue for a violation of the contract any more than the men can; and witness believes it is just as much to the advantage of the operator not to have the organization incorporated, as it would be to have it incorporated. Witness has always believed that contracts should be complied with in every particular by every party to them, to the limit, and positively opposes strikes as the best method of settling difficulties.

The United Mine Workers had an organization in Alabama until 1903, when a difference arose in respect to the terms of the wage contract. This was submitted to a board of arbitration of which witness was a member, and on which Judge Gray was a member. A decision was handed down that was a compromise. After that the operators made war on the organization the following year and exterminated it in Alabama with the help of the Governor of the State. During the time the organization operated there, they held the usual joint conferences and negotiated contracts, but when this arbitration board handed down its decision that was the last contract the organization had in Alabama.

It is a provision of the contract made by the organization that members of other craft who work in and about the coal mines, who have their own peculiar organizations, must be members of the United Mine Workers, with certain exceptions. Originally the contract did not provide for the wages of the men working outside the mine, but in time the United Mine Workers learned that if they
negotiated a contract with the mine owners, the engineers,
620 for instance, would come along and organize an engineers' union, and they would make demands and look to the miners to sustain them in their position, and in the middle of a contract period would cause a general suspension of the operation of the

mine—just one or two or three men at each mine. In Illinois, before the United Mine Workers absorbed the engineers by contract arrangement, the engineers organized the Coal Hoisting Engineers Brotherhood. There were in that brotherhood probably five hundred men in the state, or maybe less, and in the midst of a contract period, when the mines were working steadily and everything going on smoothly, they made demands and caused a general suspension all over the state of Illinois, affecting sixty thousand people. The United Mine Workers resented it and told the operators that they would not stand for that kind of business, and told the engineers that they were wrong and that they should have negotiated their contract when the miners did; and from that the United Mine Workers absorbed the engineers, a number of them unwillingly, into the miners' organization. That arrangement has not interfered with the regular system of operation of the United Mine Workers. It is now provided in the contracts, in order to safeguard property, that the engineers and pumpers must continue to work even during a suspension or strike. In addition to that the contract provides for any other men necessary to protect the property; they are required to work during the strike. If they refused to work the union would supply their places. Witness would not keep a man in the union who refused to work under those circumstances, but there has never been a case of that kind. At first the operators were not inclined to believe in the system of including all these men in the contract relations and rather resented it; but after the experience referred to they wanted them all in the same organization, so that it has now become a part of the system with the operators and the coal miners, and the reason is that if they could organize the engineers into a separate organization, they could organize the blacksmiths into another, the electricians into another; the firemen into another; and the result would be that instead of having one organization about the coal mines, there would be as many as there are occupations. Now, instead of the mine owner harmonizing these elements composed of these different classes of employees, the miners' organization has got to do that, and the United Mine Workers fix their demands whether they like it or not, in the interest of the industry. The stationary steam engineers
621 have an organization with branches all over the United States; the carpenters have an organization with locals all over the country—two hundred and sixty or two hundred and seventy thousand members; the blacksmiths are organized and the electricians have their organization. Witness knows positively that they have labor unions, and are seeking from time to time to induce members of the United Mine Workers to join their organizations, but the United Mine Workers will not permit it. The object of that is to secure harmony in the mine among the employes. That is one of the agencies illustrative of the part of clause 11 of the preamble, which says: "To use all honorable means to maintain peace between ourselves and employers; adjusting all differences, so far as possible by arbitration and conciliation, that strikes may become unnecessary." If the United Mine Workers simply confined themselves to the men directly connected with the production of coal, the other fellows would organize and there might be a strike at any time. The

United Mine Workers does not prevent these other men from becoming members of their own organizations, but the rules of those organizations are not permitted to interfere with contract; they must comply with the rules of the United Mine Workers so long as they stay in the mine.

As to the statement of Mr. McKinley: "Up until September 1, 1903, the United Mine Workers, although they had claimed it, were never given any jurisdiction over the firemen and engineers, but during the fall of 1903 the question was raised vigorously by the United Mine Workers. The late Senator Hanna was in politics at that time and quite influential in this coal district," (sub-district 5, district 6) "and he got the operators to give the control of the firemen and engineers, to a certain extent, to the United Mine Workers. After his death, the operators refused to allow the mine workers control of the firemen and engineers, and put the status of these two classes of labor to where it was before September 1, 1903;" witness says:

"A. Why, if that statement were not thoroughly understood it might be misleading. As a matter of fact the United Mine Workers, in the sense sought to be conveyed in that statement, never had control over the engineers, firemen and electricians, but we have always exercised control over these men wherever we could organize them, ever since we have been an organization. We have not always been able, as I stated a moment ago, to get the mine owners to make contracts that would incorporate in them the wages to be paid
622 those men, and we could not get that for the reason that the operator said, 'This class of men we will not surrender over to the jurisdiction of the United Mine Workers.' In other words, they did not want the miners' organization to be placed in a position to tell the engineers, firemen, pumpers and electricians to suspend work in the event we disagreed and called a general strike. We recognized the force of that because if we took the position that we must have jurisdiction over those men, and our people (human nature is the same the world over and I want to say right now that the officers of the miners' organization are not any more perfect human beings than any other men in other walks of life)—I want to say that if we got men at the head of the organization who were injudicious enough or foolish enough to order these men out along with the body of the men when they stopped work, there would be danger of the property going to destruction, and that was the argument used by the operators. It was the strongest kind of an argument and one that could not very well be refuted by our representatives, of course. That argument was made year after year and several years until we had that experience in Illinois that I recited, and the same thing occurred in Indiana. Then when we made contracts and incorporated the wages of these men in it, we were not able to make it uniform, but we would provide in the contract that they would get the same advance as the other employees around the mine, with the stipulation that they were under the control of the mine owner in their work. * * *

"Q. I call your attention to Mr. Upstill's exhibit No. 1, at page 437, in which the following appears: 'It is further agreed that any

interference on the part of any member of the U. M. W. of A. of a mine committee, or local officer, with the duties of engineer, fireman, electrician or machinist, shall subject such member or members of the U. M. W. of A., of a mine committee, or local officers, to suspension or dismissal by the operator, with the understanding that the engineers, firemen, electricians or machinists who are now members, shall remain members of the U. M. W. of A., and those who are not members shall not be compelled to join.' Is that a provision that relates to district six of the United Mine Workers of America?

A. That is a provision of the contract in what is known as subdistrict five of eastern Ohio. And I desire to say that there is also an implied contract, by understanding, that if there are any men who do not belong to the organization in any of the mines of east-
623 ern Ohio, named in this section, and they go on a strike, that they will not be responsible as an organization. In addition to that, if they import non-union men to take their places, we are not responsible for what transpires."

That is one of the internal matters which was referred to the particular parties interested in that sub-district, for the reason that we never made the engineers, or firemen or electricians contract in the international conventions.

As to the statement of the witness J. C. McKinley that he thinks probably the first method of promoting the growth of the United Mine Workers, is to ask the operator to compel the men to join the union, Mr. Lewis says he never heard of that before; that the organization has never in its history sought to compel men to join it; that its policy is to go into a community where there is a mine and get acquainted with some of the men who work there, and talk to them about the organization and get them interested in joining; and after a sufficient number could be gotten together to agree that it was a good thing to join the union, a meeting would be called to organize those men, just the same as any other fraternal society; and if ten are gotten—it requires ten to form a union—they elect a president, vice-president, secretary and treasurer, and they would be obligated—the obligation is an open book, because anybody can get it that wants it—they would be obligated to conform to the principles of the union. Then they would go ahead and endeavor to induce other men working in that mine to join the union, until they got all the men, if possible.

After the organization of the union, if the men believed that they were not being paid a proper rate of wages, or if there was anything in the condition of the ventilation that was wrong, or in the conditions of the employment surrounding those men, they might call a meeting and select a committee and go to the mine boss and talk to him, but they would not talk about the union, and they would not ask the operator if he had ever recognized the union; they would simply go there with their petition and grievances and take them up and try to adjust them. After the operator discovered that the men were unionized they might be discharged. Then they would have a meeting and the rest of the men would go on strike, possibly, if they cannot get the other men reinstated, and the cause of that strike would be in that case the discharge of those men for belonging

to an organization, and denying to them what the union believes to be their rights.

624 "I might add to that that we have non-union districts where, if they would endeavor to go and talk to a man, the companies have men employed to assault our people with clubs or anything else they have got—in this state and other states. I might say that I could not go down to Fairmont and remain in that city. That is the situation and I am prepared to prove it. * * *

I was in Fairmont a few years ago when we had organizers there, two of our men were walking along the street and were assaulted on the main street. One of them had two ribs kicked in and the other had his face cut clean open. There was quite a lot of excitement there, and if had not been for—there was an Odd Fellows celebration there that day and one of these fellows belonged to the Odd Fellows—one of the two assaulted—and appealed to that society to protect him, or he would not have come out of it alive. I was telegraphed for and that is how I came to Fairmont. I was telegraphed for and went to that city and the moment I stepped off the train four or five fellows walked up street with me. I says: 'What do you want?' and they said: 'What are you doing here?' I says: 'I don't know as that is anybody's business but my own.' I had been warned what was going to take place and the first thing I did was to walk up to the mayor's office and I said to him: 'I want protection while I am in this city.' And he says: 'What do you mean?' I says: 'I am a representative of the United Mine Workers, and two of our men have been assaulted here on the main street and I don't propose to be hurt, and I will hold you personally responsible if anything happens to me while I am in this city.' He asked me if he should furnish a policeman to walk along with me, and I says: 'No, I don't want a policeman to walk along with me; I am no criminal; but,' I says, 'I hold you personally responsible for anything that happens to me while I am here, remember that.' I was in his office. I went down street and I noticed there was a policeman walking not very far behind me. I went over to where these fellows were laid up and took them away from there. There is a man in this building who was assaulted not so very long ago walking along the street, not in Fairmont, but in Clarksburg. And that is the situation. If anybody is even suspicioned of being a representative of the miners' organization in the Fairmont region, he is deliberately assaulted in broad daylight on the streets of that city.

I would consider that if I went into that region to talk to the miners at Monongah, Shinnston, or any of the mining towns
625 in that section of the state, that the moment I went to talk to anybody, either individually or collectively, I would be assaulted, and I would not consider that my life was worth five cents."

Practically the same state of affairs exists in the New River section of this State. It also prevails in the Norfolk and Western field, the Thacker field and the Holden field, that is a new section on Sandy River.

When representatives of the organization visit a non-union field it is their policy to see the men; they could not hope to organize them in any other way; they never try to do so in any other way.

The condition of the mines in Ohio that are operated union, with regard to ventilation and the safety of the men, are fairly good; they are very much better than they were before they were unionized; witness has not been in the mines of West Virginia except two or three in the Kanawha District; knows nothing personally of the physical condition of the non-union mines in the Fairmont district.

Witness says he helped organize the United Mine Workers in the first place; was president of the eastern Ohio sub-district in 1895; was afterward secretary of district six, was elected vice-president of the organization in 1900; was elected president April 1, 1908; but he never heard of the system of organizing known as "blocks of four," as described by the witness J. C. McKinley—knows that it does not exist, so far as the officials and representatives of the United Mine Workers are concerned.

Being asked if the men demand recognition by the operator immediately upon the organization of a local union the witness says:

"A. No, sir; the only way in which a mine foreman, if at all, would know that it was organized, would be by asking the mine committee by what authority they came to him to settle any grievance in the mine. The other method would be through talk from some friend of his that they permitted a local union there. We never think of going to a mine boss and saying to him: 'Now, we have organized and demand that you recognize us.' Why, the very fact that he had treated with the committee is a recognition of the union."

"I have believed and believe now that the mine owners of West Virginia would get better results if their mines were operated under the union system. My reason for that is that they would instill
in the minds of the men who are now working in the mines
626 a desire for greater efficiency. It would give them better opportunities to educate the men, and the better a man is educated the better citizen he makes, and in my opinion it would raise the standard of efficiency of labor in this state. And I might add that with the natural conditions in West Virginia in the mining industry, they would always have among the best of the mine workers of this country, if they had their mines worked and operated under the union system. Now that is not sentiment at all. It could be borne out by things I could explain but I haven't any desire to do so. "When we had non-union conditions in the older mining districts there was no control—in the sense there is now—on the part of the mine management. Men who worked by the day had to be watched a great deal closer in performing their labor than in mines governed by joint contracts. In addition to that, in communities where men can associate together and have free speech and opportunity to discuss labor conditions, that raises the level of the people in that community; there is a community of interest that has a tendency to elevate those people and make the men more responsible in the performance of their work. In addition to that

they contract to work a certain number of hours in a day when the mine is in operation, and a certain number of days in a week. They cannot go away whenever it suits their convenience; and I believe that in addition to that—and it is borne out by making comparisons between a non-union mining community and a union community—that the people take greater pride in their surroundings and home comforts and everything else that goes to make life better."

As to the state- of the witness McKinley that from a union standpoint, a union man is a fair man and a non-union is an unfair man, witness says:

"A. Well, not knowing what Mr. McKinley had in mind, I am not able to give an intelligent answer to that. But I might say this: That I know of non-union men working in the mines that are absolutely as fair as union men. They have not been convinced in discussing the matter that the organization is of any benefit to them. And we are all more or less selfish and prompted by selfish instincts. I am one of them who believes that we are prompted by selfish instincts in doing a great many things in life.

Q. He was asked then to explain and he said this: 'An unfair man is, just to put it in a polite word, a 'scab' or 'black sheep' stating as a fact that you regard a non-union man as a 'scab' or 'black sheep.' What have you to say about that?

627 A. Well, in my judgment, that is a mistake. The fact of the matter is that I do not regard some of the men who are called 'scabs' as being such. In order to thoroughly understand that, a 'scab' is a man who knowingly and deliberately goes to work and takes another man's place, knowing that he is doing wrong. He has been brought into the community from some outside community. They do not, understand, come in there seeking employment. He has been hired to come in there. That is the man who is looked upon by the representatives of labor unions as a 'scab.' And I want to say here that there are 'scabs' so called, who can be fair outside of that particular line they are engaged in. There are two kinds of scabs in union parlance; one is the fellow who is deceived into coming into that community, and the other is the professional. But so far as a non-union man being a scab is concerned, there is just as much variance between the non-union man and the scab as there is between black and white."

The word "scab" is not intended as an appellation to non-union men; it is not so applied by the organization; witness does not know of an occasion in all his experience where any one could apply that language to men.

There is nothing secret about the United Mine Workers, as was stated by Mr. McKinley. The only thing as to which there is any secret is what is called a joint meeting, when there is a joint scale committee meeting; then the operators request that the representatives of the press be kept out. That is for the purpose of keeping the representatives of the press from knowing their inside business. A stenographer takes the proceedings of the district and national conventions, and they are published, records of the meetings of the

local unions are kept by the secretary; and any person wh is interested who desires may go and examine the records of a local union. (Witness used the expression "any gentleman here.")

The initiation of a member into a local is practically public, because the *application* is printed in the manual and everybody can get a copy. It simply goes through a form of complying with the laws of the organization. The obligation appears on pages seven and eight of "Plaintiff's Documentary Exhibit No. 2," and any person in the United States, man, woman or child, can get a copy of it. It is not material where that obligation is administered; in fact, it is not really essential that it be administered at all, for there is a provision in the constitution that men whose dues are
628 checked off under joint contract relations, are regorded as members of the organization: affiliation with the organization and compliance with the regulations makes a man a member. The obligation witness considers a remnant or relic of the secret branch of which the organization was a part in the organizing. The miners of the country felt that the only way they could organize was secretly, and they finally organized what was known as the National Trade District Assembly 135, within the Knights of Labor with a membership extending from the Atlantic to the Pacific ocean, wherever mining was done. Then came into existence the American Federation of Miners and Mine Laborers. A dispute arose as to which organization or society was the most effective in protecting the rights of the miners, and out of that dispute a quarrel developed that became very intense. Finally there was a conference called in Indianapolis on the 12th of December, 1889, and it continued between the 12th and 18th of the month. The ground work of the United Mine Workers was laid there, and in January, 1890, the United Mine Workers of America was formed in every mining community where there was a local of the National Protective Association and a local assembly of the Knights of Labor. It was agreed as a part of the consolidation that the work of the organization should be conducted in the open, but that the president, vice-president and secretary of the local union of the United Mine Workers should become the master workman, worthy foreman and secretary of the local assembly, in order that they could gradually assimilate these two unions. There had been such intense feeling created between the advocates of the open organization and those of the secret organization that it took time to wipe out that feeling and bring them together, and the result of that was this obligation was placed in the manual for the members to take—the Knights of Labor in secret and the United Mine Workers of America in the open—until gradually the Knights of Labor dropped out of existence, and it became the United Mine Workers of America.

As to the card system employed by the Mine Workers, as stated by the witness McKinley, the witness says it is provided for by the constitution and:

"A. The purpose of that card system is this: If I hold my membership in local No. 13—that is my number by the way, and I am working in the Wheeling Creek mine, and I desire to secure employ-

ment, say in Barton, Ohio, under our rules I am compelled to transfer my membership there. A card is made out by the presi-
629 dent and financial secretary of my local union, in which my name is filled in giving a description of me. I take that card—it also certified that I am paid up in that local union—and I hand it to the local union at Barton, and they accept it and enter my name on the record book and I am a member of the organization—transferred membership." That is done to prevent men from imposing on the organization. A copy or fac simile of this card is found on pages 22 and 23 of Plaintiff's Documentary Exhibit No. 1, except that the card is printed on pink paper with the seal of the organization in blue printed in the center. When this card is deposited, the local secretary tears off a part of it and returns it to the local union issuing it; that is a further check on the matter.

A local strike may arise from any number of things; the failure to agree upon the cause of the discharge of an employe may lead to a local strike, but should not, under the contract; or a local strike may result from having an organization at a mine having no contract. A local strike cannot be instituted without the investigation and counsel of the district and sub-district officers. Such a srike might take place, but it would be in violation of the laws of the organization. The purposes and one of the objects of the organization is to avoid the necessity for strikes under any consideration.

Witness says there is no foundation in fact for the statement by the witness McKinley that it is the purpose of the United Mine Workers and the operators who meet with them in convention to so place the West Virginia non-union operators that their coal cannot come in competition in the same markets where they now compete in the west and northwest; that the miners' organization is not attempting to do this by organizing the mines of West Virginia. In conventions the operators of the central competitive field, including western Pennsylvania, Ohio, Indiana and Illinois, have always urged against improving the condition of the miners and against advancing the wages of the mine workers from the standpoint of their unability to do so and earn a profit on their investments, taking into consideration the cost of producing coal and the selling price of coal. When that argument is met by the miners and they find that they are not able to defend their position, they then always bring up as a bugaboo the argument of coal being shipped from West Virginia, and that if they advance the wages of the men and add any more to the cost of producoion, it will simply drive the trade to West Virginia; and incidental to that, they say that we should organize the miners of West Virginia in order that
630 their trade will not be taken away from them. The reply of the miners to that is that if West Virginia is organized, they are as much entitled to their share of the general and northwestern markets as operators in Ohio and western Pennsylvania or anywhere else. Consequently there can be no foundation for any such statement.

All the coal from the Kanawha district is shipped either into the northern northwest or the southern northwest. Part of it goes

by the Kanawha river to the southern market. There isn't any coal from the Kanawha district that goes east; it all goes west in competition with the coal produced in western Pennsylvania, Ohio and Indiana; the Kanawha district is operated union under a contract agreed upon between the operators and miners in that district.

At this point the following questions were asked and answers given:

Q. Mr. Lewis, are you in any conspiracy or combination to organize the mine of the Hitchman Coal & Coke Company against the consent of the owners of that mine?

Witness: Would that question apply to me individually or to the organization?

Mr. Hogg: To yourself individually and to the organization.

A. Personally I never was in such a conspiracy or in any such a movement, and to my knowledge the organization has never been in any conspiracy to organize the men employed in the Hitchman mine to take any advantage of the company. They have endeavored or would endeavor to organize those men, provided they could get the consent of the men themselves, but have refrained from doing so since, I believe, the injunction was issued against the employes and against the organization.

Q. Now, when you say you have tried to organize those men, do you mean that you sought to have them become members of the United Mine Workers?

A. I can only answer that question by saying I believe so, because I had nothing at all to do with attempting even to organize the men at the Hitchman mine and none of our national representatives have taken any part in the effort to organize it.

Q. Have you, as president of the United Mine Workers of America, directed or counseled the formation of any conspiracy
631 or combination having for its purpose the organization on a union basis and operating an a union basis of the Hitchman mine, against the consent of the owners of that mine?

A. No, sir; not at any time.

Q. Have you individually, or as a member of the United Mine Workers of America, done anything to get the employes of the Hitchman Coal and Coke Company to quit and leave the employment of that company?

A. No, sir; not at any time.

Q. In seeking to get men to join the union, who are working at a non-union mine, is it the purpose or policy of the United Mine Workers' organization to get them to quit, either in attempting to organize them or after they have organized them?

A. It is a direct violation of the customs, the laws and the principles of the United Mine Workers to organize men to suspend work.

Q. Would that be of any advantage to the organization, to have them quit work at the mine after they had become members of the union, and do nothing more?

A. No, sir; it would be a distinct disadvantage, because it would create the impression immediately that we were a strike institution,

and it would create an impression that we were doing that in order to favor some one else.

Q. One of the witnesses—I believe his name was James Stewart—stated in his testimony given in this case last week, that he, as a member of a committee representing the then local union at the Hitchman mine, visited you in your official capacity, at Bridgeport, and stated to you that the Hitchman mine was ready to sign up the scale of 1903, as proposed by the national convention of 1906, and that you refused to permit the Hitchman Coal and Coke Company to sign that scale. Is that true or not?

A. That statement is partly true and part of it is not true.

Q. State in what respect?

A. It may be that he was one of the men who visited my home; I do not know; I would not pretend to say who the committee were that came there. At that time I was vice-president of the organization, with no authority to direct the executive work of the organization, and my recollection of the statement made, either by that man who has testified or some one else there, is, that the Hitchman Coal and Coke Company were willing to sign an agreement, but that it was to be a temporary arrangement and for no fixed period of time; and I directed him to take the matter up with the president of the Ohio organization, or with the president of the na-
632 tional organizaion, both of these men having executive authority in the matter. In other words, the vice-president of the national organization of the United Mine Workers of America has no authority unless it is delegated to him direct by the president. He is simply an international organizer, and his work is confined to general organizing.

Q. Then, you could not refuse to let them sign the scale?

A. I did not refuse because I had no power to permit them to sign or to direct them to sign. That, in itself, was self-evident.

Q. Do you know whether or not District 6 of Sub-District 5 did permit the mine to resume operations upon signing the proposed scale?

A. I would not be able to say definitely as to that.

Q. You were not familiar with the locality there?

A. My recollection is that when I was at home it was on a Sunday, and I had dropped in the same as I always do when I have an opportunity to spend Sunday with the folks, and I probably left on that night or Monday. I am not positive of the date when these men came over there.

(End of direct examination.)

Cross-examination:

Upon cross-examination of the witness, T. L. Lewis, the following questions were asked, answers given and proceedings had:

Q. Where were you born, Mr. Lewis?

A. I was born in Wanamie, Lucerne county, Pennsylvania.

Q. Is that in the anthracite coal region?

A. Yes, sir.

Q. Did you live many years in that region?
A. Nearly seven. That is not in Wanamie, but in that region.
Q. And from there where did you go?
A. Pardon me; I want to change that first answer. I want to say that I was born in Locust Gap, Northumberland county, Pennsylvania. I lived so long in Wanamie that I made a mistake in stating that I was born there. We lived in the anthracite region nearly seven years, and from there went to the Mahoning Valley, in Ohio, to a place called Mill Creek, outside of Youngstown.
Q. About how old were you at that time?
A. Between six and seven.
Q. You then never worked in the mines in the anthracite region?
A. No, sir; I worked in a breaker in the anthracite region.
633 Q. When you came to Mill Creek, in the Mahoning Valley, what did you do after that?
A. I did not do anything there; we did not live there very long.
Q. And from there where did you go?
A. To Church Hill, Ohio. That is on the other side of Youngstown. We did not live there very long.
Q. And from there where did you go?
A. To Midway, Washington county, Pennsylvania, on the Panhandle, west of Pittsburg.
Q. And how long did you live there?
A. About three years, to the best of my recollection.
Q. When you went there about how old were you?
Witness: To Midway.
Mr. Gilchrist: Yes, sir.
A. Between seven and eight.
Q. How old were you when you left the anthracite region?
A. Well, probably a few months past seven. As a family we migrated around a good deal, owing to the persecution by the operators of the mine workers on account of them having no union.
Q. You did not then reside long in any of those places?
A. No, sir.
Q. Were you a member of a union when you were in the anthracite region?
A. No, sir; but my father was.
Q. What was his business?
A. He was a coal miner.
Q. Had he lived long in the anthracite region?
A. Well, he lived in the anthracite region from the time that he came from the old country up to the time that we moved to Ohio.
Q. You say from the time he came from the old country. What country was that?
A. Wales.
Q. Now, at Midway you were seven or eight years of age and you lived there about three years?
A. Nearly three years, I think.
Q. And from there where did you go?
A. We went from Midway to Clearfield county, Pennsylvania.
Q. Still in the coal mining business?

A. Yes, sir.
Q. How long did you live at Clearfield, Pennsylvania?
A. To the best of my recollection about ten months.
Q. And from there where did you go?
A. We came back to western Pennsylvania.
Q. What part of western Pennsylvania?
A. Back on the Panhandle railroad. Well, wait just a moment.
We left the Panhandle to go to Clearfield in 1876 and we
634 came back from Clearfield in 1877, to the best of my recollection, and we lived at a little place called Snipesville in 1877; that was on the Panhandle railroad between Midway and McDonald. The reason I am so sure about it is, that that was when they had the great railroad strike and the railroad riots in Pittsburg.
Q. Now, from Snipesville you went where?
A. In 1878 we went to McDonald.
Q. And from there where?
A. In 1879 we moved to Shawnee, Perry county, in the Hocking district, in Ohio.
Q. About how old were you at that time?
A. I was just past fourteen.
Q. How long did you live in the Shawnee district, of Ohio?
A. We lived in Shawnee continuously until 1889, with the exception of nearly a year that we were out in Indiana at a place called Cannelburg, in Davies county, and then we moved from there to Bridgeport, Ohio.
Q. Wou removed from which place?
A. Shawnee. Of course, in the meantime I had worked at other places. I had worked at Redfield, near the Mahoning field, in northern Perry county. Well, I will not be sure whether it is in northern Perry, but we called it that anyhow; then at Maxahalo, on the Ohio Central road, or right above that, where there is a little place called North Paron. I also in the time that we lived in Shawnee worked at Gloucester, Ohio, in three different mines.
Q. What year did you move to Bridgeport, Ohio, was the question?
A. I came out there first in 1888; then I went back home, and after going back home I went to Lebanon, Ohio, and spent eight months in school; then I came back to Bridgeport in 1889, and after being out there a short time I moved the family out. I was the head of the family at that time.
Q. About how old were you when you moved to Bridgeport?
A. Well, the difference between '65 and '89 is about twenty-four years.
Q. And you have lived there continuously ever since?
A. Yes, sir.
Q. What was the first union you joined?
A. The Knights of Labor.
Q. When did you join the Knights of Labor?
A. In the early part of 1882.
Q. About what was your age then?
A. I was between sixteen and seventeen.

Q. What was your occupation during the time you were
635 a member of the Knights of Labor?

A. Coal miner, driver, tracklayer, timber man, and a dumper, as it is called.

Q. During the time you were a member of the Knights of Labor, the Knights of Labor was the union body which had control of mining operations, was it?

A. Principally. There was an organization along about the same time—while I was a member of the Knights of Labor they existed in Ohio—known as the Ohio Amalgamated Association of Miners. They were an open association, but it was practically governed by the Knights of Labor. It was not a national organization. Later it became a part of the National Federation of Miners and Mine Laborers. That only had a secretary; it did not have executive officers.

Q. Did you ever work in the non-union fields?

A. Oh, yes.

Q. About what times did you do that?

A. As regards union and non-union fields, now, we worked in a non-union field on the Panhandle, in Clearfield county, in the Hocking district, and, in fact, we worked in a non-union field in eastern Ohio.

Q. That is, when you say "we" you mean you?

A. I mean myself. Well, of course, I used the word "we" because my brothers were working there, too.

Q. Were the mines that you worked at in those fields non-union mines or were they union mines?

A. They were regarded as non-union mines. In some instances probably the majority of the men belonged to the organization, but if any man took an active part in the organization he was told that he must not show any activity, or if he did that he must take his tools out and leave.

Q. The closed shop union arrangement, as it is now applied by the Union Mine Workers of America, did not then exist at those mines where you worked?

A. No, sir; and did not exist until by contract arrangement it was established by the operators and miners.

Q. Between the operators and the miners. You mean in what are called the joint conventions?

A. Yes, sir.

Q. Between the competitive districts and the United Mine Workers?

A. That is true.

Q. And that came to pass about what year, as nearly as you now recall?

A. Well, we established that system—it was first established in isolated cases on a small scale back as long ago as 1885-86, and what we call the present joint movement was established by contract arrangement in Chicago in January, 1898.

636 Q. When you were being interrogated by Dean Hogg in your examination in chief he asked you a question relative

to some matter which I will not now take the time to look up, in your examination, because it has not yet been written up by the stenographer, but it was relative to some matter which he found in "Upstill's Exhibit No. 1," which purports to be the "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8-29, 1910," and in answering, you answered from a copy that you had in your hand at the time. Have you that copy with you, or a similar copy?

A. I have a copy of the same here; I haven't that copy, though.

Q. Look on page 472 of that duplicate copy of "Upstill's Exhibit No. 1;" on that page there is a contract headed, "Chicago Agreement, 1898." Is that the Chicago agreement you referred to just now?

A. Yes, sir; that is. This has the general terms of the contract as arranged there. The day-wage contract which afterwards became a part of this was arranged in Columbus at a later date and the details of the contract were arranged in the different districts.

Q. On page 474 I notice amongst those who signed in behalf of the miners that the name of T. L. Lewis is signed from Ohio. Is that your name and are you the T. L. Lewis?

A. Yes, sir; and I desire to say also right here that there is an omission in the print in this document because it has not got the operators' names printed in there.

Q. Let me understand you.

A. Well, here are two headings—one "In Behalf of the Operators" and the other "In Behalf of the Miners." When you come down here to Ohio you find that in behalf of the miners it is signed by W. E. Farms and T. L. Lewis, but there are no signatures in behalf of the operators.

Q. And immediately opposite those names of W. E. Farms and T. L. Lewis there are no names printed in behalf of the operators? That is what you are calling attention to, is it?

A. Yes, sir.

Mr. Hogg: That is an omission.

Witness: Yes, sir: an omission in printing.

Mr. Gilchrist:

Q. Do you recollect who they were at that time?

A. No; but I am trying to discover them and I will see in a moment.

637 Q. Would they be J. S. Morton and J. L. Mullins?

A. I will not undertake to say because I think I have the record here.

(Witness here examines record.)

A. (continued). No, I haven't got that here and I would not care to say definitely who they were. It seems to me that Mr. Morton was one of the gentlemen and yet I could not say positively.

Q. Now, you said that at the time this agreement was entered into in Chicago in 1898 it was supplemented by another agreement or scale which was subsequently and shortly thereafter adopted at Columbus, Ohio?

A. That is true, and the scale adopted there had reference to establishing what is known as the day-wage and fixing it.

Q. On page 474 of the same book to which I asked your attention a moment ago, corresponding to "Upstill's Exhibit No. 1," I find printed what purports to be a day-wage scale, headed "Columbus Day-Wage Scale, Columbus, Ohio, March 10th, 1898." Is that the agreement you speak of?

A. Yes, sir.

Q. So that with the Chicago agreement of 1898 a movement was started which was a joint movement between the United Mine Workers of America, as a body, and the operators in the convention belonging to the central competitive states of Pennsylvania, Ohio, Indiana and Illinois. Is that correct?

A. The meeting at Chicago re-established the joint movement that had gone out of existence in the latter part of the '80's. It was not entirely new.

Q. In the latter part of '80?

A. No; in the latter part of the '80's. I think it went out of existence in 1886 or '87.

Q. The United Mine Workers of America were formed in January, 1890?

A. Yes, sir.

Q. So this agreement at Chicago in 1898 was simply an agreement between the United Mine Workers and the operators of the central competitive states named, and on the same line as an agreement which had at one time existed between the Knights of Labor and the operators of that district. Is that what you mean?

A. No; it was not known as the Knights of Labor. But the Knights of Labor were in existence. It was the Amalgamated Association in Ohio, and they went under different names in different states. As I stated it was under distinct organizations at that time practically controlled by the Knights of Labor in local as-
638 semblies, but it was the re-establishment of the same methods for negotiating and agreeing upon wage-contracts.

Q. But that method went out of existence in about 1888, I believe you said?

A. Yes, sir; or probably in 1887; I won't be sure of the exact date.

Q. But while it did exist it was not between the Knights of Labor —which was the main body controlling the mining operations in that *action* of the country—and the operators, but it was between the operators of a particular state and some other organization which had more or less members in the territory in which the operators were doing business?

A. No; the joint movement that had been established in the '80's was established between the representatives of the operators of the central competitive field—that is, western Pennsylvania, Ohio, Indiana and Illinois—and the representatives of these miners' organizations. They called them the open organization because they held their meetings in the mines or near the mines. In reality for the first two or three years they were transacting business with the representatives of what was called the open organization, but the directing forces of the open organization were the Knights of Labor. Then

before the movement broke up and passed out of existence they made contracts direct with the open organization and the Knights of Labor jointly. That is, there were some of the officers of the Knights of Labor signed the contracts. They did in 1886, sign the contract as representing the Knights of Labor.

Q. As to those contracts, were they contracts for the closed shop, as you now recall?

A. Yes, sir; as far as they could get the operators to agree to them. There were some places that did not agree to the closed shop and others that did; notably in the Hocking district—they had the closed shop there—but in other sections of Ohio, as far as I know, they did not have.

Q. Was this joint convention arrangement which went out of existence in 1887 in operation in sections of the state where you were working at non-union mines?

A. Yes, sir; the mines were non-union so far as the closed shop was concerned. We had an organization but we did not have the closed shop system and in that respect, of course, they were looked upon as non-union mines.

Q. The closed shop arrangement, then, was not strictly enforced by the Knights of Labor or the other bodies that were affiliated with them?

A. Only in sections; not as a general proposition.

639 Q. And at that time, then, as I gather from what you have said, the union miners might work in a non-union mine without hindrance, and they also might work in a union mine that was closed shop?

A. Not where there was a closed shop. If they were in closed shop mines they would be required to conform to the laws of the organization. They could take their choice and join either the secret or the open branch of the organization as represented by the Knights of Labor or the Ohio Amalgamated association in our state.

Q. To what branch of the Knights of Labor did you belong?

A. I belonged to the Local Assembly 169, claimed to be one of the most historical assemblies in the order.

Q. I will ask you to identify that further because it does not have any meaning to me.

Witness: In what way?

Mr. Gilchrist: I cannot identify it by the number.

A. Well, the charters issued by the General Assembly of the Knights of Labor began at No. 1, which was formed in Philadelphia, and then the numbers were given out consecutively after that. Of course if a local assembly passed out of existence that number would be given to a local assembly organized somewhere else.

The Court:

Q. Where was your local situated?

A. At Shawnee, Perry county, Ohio.

Mr. Gilchrist:

Q. You came to Bridgeport in 1889, I believe you said?

A. We moved there the first time in 1888, as I stated, and then I went to Lebanon and went to school and returned in 1889. Pardon me; I do not want to say that I moved there. I came to Bridgeport first in 1888 and then went back home; my home then was with my people in Shawnee; then I went to school and then I moved back—moving the family in 1889, to Bridgeport.

Q. When you did become finally established at Bridgeport, Ohio, were you engaged in mining?

A. Yes, sir.

Q. You were at that time then a member of the Knights of Labor?

A. Yes, sir.

Q. Of both branches?

A. I was a member of the Knights of Labor and I was also a member of a local union of the National Progressive Union that
640 had been organized. I described that here the other day. That was an open organization that existed. In other words, briefly, the National Progressive Union was in existence during the time that I came to Bridgeport. It was a consolidation of the Knights of Labor and the old National Federation of Miners. They failed to consolidate completely in 1888 but a completed consolidation took place in 1890 and that is what formed the United Mine Workers of America.

Q. Did the Knights of Labor go out of existence in 1890 upon the formation of the United Mine Workers of America?

A. No, sir.

Q. Did they still retain any jurisdiction over the coal miners?

A. A number of local assemblies still maintained their existence and reported a per capita tax to the general assembly.

Q. Of the United Mine Workers?

A. No; of the Knights of Labor; but they owed their direct allegiance, so far as mining affairs were concerned, to the United Mine Workers of America.

Q. So their membership was subordinated to their membership in the United Mine Workers of America?

A. Yes, sir.

Q. Do any members of the Knights of Labor—if that organization still exists—belong to the United Mine Workers and yield paramount allegiance to the United Mine Workers instead of the Knights of Labor?

A. I do not know of any Knights of Labor that are now members of the United Mine Workers.

Q. Then the United Mine Workers have absorbed all other organizations for the mining of coal?

A. Yes, sir; as far as that is true, at least.

Q. Now, this joint convention that was had in Chicago where the joint movement originated so far as the United Mine Workers were concerned—that joint convention movement has been extended, has it, from time to time, or has it been curtailed?

A. In one sense it was extended. At the Chicago meeting western Pennsylvania, Ohio, Indiana, Illinois and West Virginia miners were represented, and the operators of western Pennsylvania, Ohio,

Indiana and Illinois were represented, and I believe there was one operator at that meeting from the Kanawha district but I do not know as he took any part in the deliberations; and from time to time the movement was extended until they included in their inter-state joint movement in the southwest the states of Missouri, Kansas, Arkansas, Oklahoma and Texas. They have endeavored
641 to establish another inter-state movement in the Rocky Mountain mining district but have not succeeded, although they have joint movements in Washington, Montana, Wyoming and Northern Colorado.

Q. The formation of the joint inter-state convention system in the state of Missouri and the other states named by you, was along the same lines, was it, as the joint convention arrangement agreed upon at Chicago between the central competitive states?

A. Yes, sir; and for precisely or for practically the some purpose.

Q. And the purpose was to do what?

A. To arrange a wage agreement to govern mining rates, the day-wage scale and the conditions of employment; and the reason that there have been no efforts made to have one national joint convention was on account of the diversified conditions in the different mining states due to the different character of the veins of coal; and it would be a physical impossibility to work out all the details of wage agreements in a national joint convention. Eventually, if they establish it, they would have to deal with the national organization and still refer back for district or sub-district arrangement, all de-ails of any wage contract that might become effective.

Q. Now, the object in trying to organize a joint convention of the same character in Colorado, I believe you said—(interrupted.)

A. In the inter-mountain states.

Q. (continued). And other states in that section, was for the same purpose?

A. Yes, sir.

Q. And was it contemplated that these joint conventions when agreed upon should themselves constitute another higher or larger body?

A. No; the object was to try to establish—as near as the natural conditions of the veins would permit—uniformity within the district as between the mining districts.

Q. What was taken as generally the base of the wage scale—the scale of wages—that might be agreed upon between the operators of the central competitive states and the United Mine Workers in their joint conventions?

A. The basis of negotiating and agreeing upon contracts was taken from the physical condition of the mines, the selling price of the coal and the earning power of the mine. Those are the three elements that enter into the negotiations of wage contracts.

Q. But in a preliminary way the members of the United Mine Workers in national convention formulate scales which take into consideration these different peculiarities of districts or sections of country and conditions of coal?

A. Yes, sir.

642 Q. And then when the joint convention comes on to be held between the United Mine Workers and the joint convention, the scale agreed upon for that territory represented by the operators in that particular joint convention, is the one that is dealt with as between the parties who come together in the convention?

A. That is, as it applies to the particular territory that they represent; yes, sir.

Q. Now, you have said that there were two joint convention arrangements: One between the United Mine Workers and operators of the central competitive states growing immediately out of the original agreement at Chicago in 1898, and the other a joint convention arrangement between the United Mine Workers as a national body and the operators in Missouri, Kansas, Arkansas, Oklahoma and Texas; inter-state you called it.

A. The one interstate convention in the southwest includes Kansas, Missouri, Arkansas, Oklahoma and Texas.

Q. These two joint convention arrangements, then, for the sections you have described, constitute the only joint conventions that are now held?

A. No, sir; and I desire to correct your statement as it applies to my statement. I stated that at Chicago there was a convention held (naming the states) to agree upon a wage contract, which was supplemented by another joint convention of the same people at Columbus, Ohio, to arrange the day-wage scale that grew out of that. The joint movement had been extended into various states throughout the country and I stated that an inter-state joint movement had been established in the southwest and that an effort had been made to establish an inter-state joint movement in the Rocky Mountain states. We have joint conventions in Michigan and Iowa and Central Pennsylvania and Tennessee and Kentucky and down in Alabama and in the Kanawha district of West Virginia; so we have a large number of joint movements outside of these two that we have now under consideration.

Q. These other joint movements, then, are movements simply between the United Mine Workers of America as a national body and the operators of a particular state—not in the competitive states and not in the southwest joint movement?

A. No; they are joint movements between district organizations of the United Mine Workers and the operators in the states affected.

Q. Between the district organizations?

A. Yes, sir.

Q. And those district organizations are part of the United Mine Workers as a national body, are they?

A. Yes, sir.

643 The Court:

Q. Do I understand you, Mr. Lewis, that you combine the states and hold these joint conventions, where that can be done, and make one contract, and if that is not convenient you hold conventions between the district organizations and the operators in local fields?

A. Yes, sir; your Honor, that is the purpose and the idea. In order to make it probably a little more clear we will take the states of Illinois, Indiana, Ohio, Western Pennsylvania and a part of West Virginia. They find markets for their coal in the northwest outside of what they sell for fuel purposes in a domestic way. Then in the southwest those states are competitive with each other and more so than they would be with the states in the central competitive field. The states in the Rocky Mountain region are competitive with each other and more so than they would be with Kansas or Oklahoma, or Ohio, Illinois, West Virginia, and Western Pennsylvania.

Q. You make a different contract in different sections?

A. That is the purpose of the movement. For instance, if we had a Maryland organization, and what is known as the Myersdale section of Pennsylvania, and central Pennsylvania, and in the Irwin field along with eastern West Virginia, we would have those operators and miners get together because their markets are on the eastern seaboard. Their markets are competitive and they would have a joint movement. Then, again, the southern states would have a joint movement—Tennessee, Alabama and Kentucky—if they were organized.

Mr. Gilchrist:

Q. Now, in these joint conventions, such, for example, as the joint conventions you have held under the Chicago agreement down to date, has there been any regard paid to the markets to which the coal of these operators is sent with respect to the competition those operators might meet with from any other coal producing area in the United States?

A. I presume there is. In a general discussion of the matter the operators usually in joint convention—if the miners ask for an advance in wages, for instance—use—use the argument that they are not able to pay it on account of the price they receive for a ton of coal. The miners present the facts in connection with the matter and point out that they are able to pay the wages that the miners are asking for and still earn a profit—a fair profit—on their investment. Then the argument is very often used by the operators of the competition of some other states, and that is always brought in as their last argument and as a boogaboo to hold down the wages of the miners.

644 Q. As a matter of fact do you recall whether wages have been held down—take for example in the conventions which — been held pursuant to the Chicago agreement—in the central competitive states?

A. No; wages have been very materially advanced since the Chicago meeting was held, in the central competitive field. I might say the reason for that is this: that the Chicago joint convention grew out of the general suspension of work in 1897 when the miners were not able to live—even with working every day in the year—on the wages they received, and the operators were going into bankruptcy and hailed the entire movement as a Godsend to the industry.

Q. Between pages 374 and 375 of the "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8-29, 1910," otherwise "Upstill's exhibit No. 1," and a copy of which you have in your hand, there is a yellow sheet containing a tabulation headed "Twenty Years Record of Hocking Valley Mining," and in fifteen columns printed in larger and bold black type there are figures indicative of the mining price during the particular periods covered by the statement in the horizontal columns. Is that correct?

A. Yes, sir; and in those columns beginning with the year 1892-'03 and up to 1894 the mining rate is 70c. per ton. It ran, farther down to 45c. per ton in 1896, during the panic, because of the passing out of existence of the miners' organization. That was the time when the Hocking operators as well as operators in many other sections of the country were going into bankruptcy and were not even able to raise the money to pay the wages of the men—what *did they* earn. At that period we had a system—agreed to by the miners—of accepting sixty days' script in payment of wages in order to meet the extraordinary condition that had developed in the industry; and further on, in the middle of 1897, on July 4th, out of pure desperation and with starving miners everywhere, they declared a general suspension and they secured a compromise in the fall of that year and out of that grew the joint movement of 1898. I desire to say that previous to 1893 or 1892 the miners in the Hocking district for a number of years received a mining rate of 80c. per ton in the winter and 70c. per ton in the summer. In the fall of 1879, in the Hocking district, the miners received a dollar a ton for mining coal.

The Court:

Q. Under this Chicago scale, now, which you say is practically the same, Mr. Lewis, what is the price that a miner gets in the Hocking district per ton?

645 A. For the items enumerated here, screened lump coal, pick mining, is 95c. a ton.

Q. Is that a long or a short ton?

A. It is a short ton—2,000 pounds.

Q. Is that subject to a reduction in any way or does he get that straight?

A. He gets that straight. The coal is run over an inch and a quarter screen.

Q. What proportion would be that rate for run-of-mine coal?

A. Under the pick mining system in the Hocking district it is recognized that two-sevenths off of the run-of-mine, which leaves five-sevenths—seven-sevenths being screened coal—it is two-sevenths for any coal over an inch and a quarter screen.

Q. You take two-sevenths off of 95, then?

A. Yes, sir.

Q. Now, you state that to be for pick mining?

A. Yes, sir.

Q. What is the effect of these cutting machines—mining with

these cutting machines—upon the price of coal that the miner gets?

A. There is quite a difference, your Honor; that is, there is quite a reduction from that rate.

Q. Can you state what a miner would get for loading coal where the coal is cut by a machine?

A. For loading coal, where they receive the 95c. per ton for pick mining, screened coal, they receive for loading and hand drilling—that is, either drilling under the old churn drill process, of if a man buys his own power drill, by drilling that way, they receive 54.70 per ton. That is in what is known as room work which is just the same as where the 95c. rate is paid for pick mining.

Q. Can you give what would be the average cost of the production of a ton of coal in a machine mining mine, counting the cost of machine cutting and loading f. o. b.?

A. The cutting rate for coal in rooms where they pay 95c. is 10.30, making the total mining rate in what is known as wide or room work 65c. The difference between 65c. and 95c. of course is 30c. and that is the actual mining cost. I would not care to say what the actual cost of producing a ton of coal f. o. b. in a machine mine is, because I might say something that would not be absolutely accurate.

Q. It might depend on local conditions?

A. Largely. Take the Hocking district, for instance: There are part of the mines down there that are still being operated in a vein of coal that runs seven or eight feet thick. That, of course, has some impurities in it. Then, down in the southern or lower end of the Hocking district that vein is considerably thinner and
646 has more impurities in it than where the coal is thick. I would not like to venture my opinion about that.

Mr. Gilchrist:

Q. In this tabulation last referred to I find that 56c. was the rate from September 13th, 1897, to April 1st, 1898. That period covers the time in which the Chicago joint convention arrangement was gotten up?

A. That is correct. In September, 1897, is when the compromise was affected with the operators of the different states and the general resumption of work took place, and that was the rate paid in the Hocking district during the time the meeting was being held in Chicago.

Q. And that was the basing rate and has been ever since?

A. Yes, sir; Hocking is the basing district for Ohio.

Q. Is it the basing rate for all mines in the central competitive states?

A. No, sir; what is known as the thin vein section of the Pittsburg district is the basing rate for western Pennsylvania; (it is the same rate as the Hocking), and the bituminous field of Indiana is the basing rate for Indiana, because they have the block coal in that field. If we had a contract here, I think Fairmont would be one of the basing rates, New River another and Kanawha another. We would have to have several basing rates.

Q. Looking at that tabulation I find following the 56c. rate that the next rate established was 66c.; the next rate 80c.; the next rate 90c (that was from April 1, 1903, to April 1, 1904); then in the two-year scale from April 1, 1904, to April 1, 1906, it dropped to 85c.; then it next advanced to 90c. from April 1, 1906, to March 31, 1908; and then it advanced to 95c.; and at the head of that column appears this matter: "April 1, 1910, to March 31, 1912. Cincinnati convention demoralized but 5.55% advance forced on Ohio." Is that 95c. with or without the 5.55% advance?

A. Oh, that is with the advance.

Q. That is explanatory of the 95c.?

A. Yes, sir; but we did not accept that; that is not included in the official record; that is just the opinoin of Mr. F. S. Brooks who tabulated this yellow sheet. As a matter of fact the representatives of the Ohio Operators' Association, in the joint convention, before we broke up, proposed and endorsed an advance of 5c. a ton which would raise it to 95c. a ton. That is the reason we did not accept that scale.

Q. Then there is a difference of opinion between the United Mine Workers, or at least some of them, including yourself, and
647 members of the Joint convention who participated in this convention as to the result of the convention?

A. There is a difference of opinion between us and Mr. Brooks as to this statement appearing here. I might just as well have written my views out and had them put in the minutes, because this is no part of the official record. It was simply inserted by Mr. Brooks himself.

Q. The balance is the official record but this sheet is not?

A. It is a tabulation of the record of the mining rates in the Hocking district kept by Mr. Brooks. He was in their employ as its secretary, and probably in an advisory capacity is regarded as one of the best posted men in the Hocking district among the operators.

Q. So that that portion of the book is subject to—(interrupted)——

A. That portion of the book is not in the official record of the Cincinnati conference at all.

The Court:

Q. A thought has just come into my mind and I would like to ask you this question: In cases of this kind—for instance, here in this county there are three coal working veins—the Pittsburg vein, which is the Fairmont seam, and the Upper and Lower Freeport. As I understand it the Upper and Lower Freeport do not sell by possibly twenty-five or forty cents a ton in the market as high as the Fairmont seam. Over the river, in cases like that, do you require the same rate of mining in the Freeport veins that you do in the other? Do they have the same rate of mining that they do in the Pittsburg vein?

A. No, sir; that fact would be taken into consideration in negotiating a contract, and as in other states that is the best evidence we can offer.

Q. There would be a difference made in the mining rate in the Freeport vein from that paid in the Pittsburg vein in a county, or in a situation like this, where both of the veins come in and are mined?

A. That is true, but in order to explain another feature of that I will say this: Take, for instance, in western Pennsylvania, there is a peculiar condition existing over there in what is—. Well, I haven't any desire to take up the time of the court, but I think this information might possibly be of some value. There is in the Pittsburg district what is known as the thin and thick vein sections of the Pittsburg vein. The thin vein, it is claimed by geologists and by others, (I do not know whether it is a fact or not) that the thicker vein over there is not quite as good a quality of coal as the thinner vein. Mind you I am not saying that that is true. However, when they had the locks on the river and were paying toll for pass-
648 ing cargoes through the locks of half a cent a bushel, I think from three and four,—the first and second pools—in consideration of that fact and as there were no railroads there, there was a thirteen-cent per ton differential between the coal in the upper pools and the lower pools. In other words, the miners mined the coal for 13c. a ton less. Of course it was practically a freight rate embargo. And notwithstanding the government has finally abolished that toll in passing the coal down, that differential in the mining rate still exists and the operator has changed his argument from a toll obstacle in the way to the fact that the coal was so much thicker, and a miner could mine so much more and consequently could mine it cheaper; and that is the reason assigned and that has existed all through our negotiations. The result is that we fixed the mining rate on what is called the thin vein; they always insisted upon that. As a matter of fact the basing rate ought to, seemingly at least, be the lowest rate, and if there are any conditions requiring a higher rate, then those conditions ought to be met; but in this instance the basing rate is higher than it is up in the thick vein section.

Mr. Gilchrist:

Q. Between pages 288 and 289 of this same book there is another tabulation. Is that a part of the record which you recognize as a part of the proceedings, or is that like the yellow sheet referred to?

A. That was offered as evidence in the joint convention by Mr. Chapman, of Ohio, and is a part of the official record.

Q. So that the book is just subject to one exception—that yellow sheet?

A. That is the official record with the exception of that yellow sheet placed in there by Mr. Brooks, as a matter of information. I haven't looked the matter over carefully, but I say I think it is. I would have to look over it to see whether that is correct or not.

Q. If there is anything incorrect in it will you, call my attention to it before you leave the stand?

A. Yes, sir; if I have time to find it; it is quite a large volume.

Q. Mr. Lewis, you are acquainted with John Mitchell, are you?

A. Yes, sir. If you will pardon me I want to make this correc-

tion: All of these agreements that are in this book, beginning with page 366, are not a part of the official records that are incorporated in there. They are, so far as I have been able to determine by glancing hurriedly over them, the official contracts agreed to in the various districts, because we failed to reach any agreement in Cincinnati, and the miners outlined a general proposition to
649 guide them in negotiating contracts in the various districts, and these agreements from page 366 have been added to this book, or this volume, as a matter of information to show what the different contracts are. I want to make that clear. And while as to those districts, so far as I can tell by glancing over them hurriedly, they are the official records of these districts, and the negotiations of the operators and the miners in making the contracts, so far as I am able to determine by glancing hurriedly over them, they are not a part of the stenographer's record taken at Cincinnati, because the convention at Cincinnati adjourned sine die before these agreements were made up.

Q. But for the purpose of the United Mine Workers and the Operators for these particular districts covered by these particular documents, they are accepted as the correct statements of what they purport to be?

A. So far as I can determine by hurriedly glancing over them, subject to any typographical errors.

Q. And they are put in there, as you say, for the purpose of aiding the United Mine Workers' officials, and the operators in those districts, in coming to agreements?

A. Oh, no; they have their separate contracts; it is only as a matter of general information to anybody who wants to get a copy of these records. I say that for this reason: Whoever proof reads this may not have taken the same care that they would in proof reading the actual contracts that existed in these districts. I am assuming for that reason that these are correct, subject to any typographical errors.

Q. So far as you know, however, they are correct?

A. Yes, sir.

Q. You say you have known John Mitchell for how long, or did you say?

A. I first became acquainted with John Mitchell in January, 1898, at Columbus, Ohio.

Q. What was he doing there?

A. He was a delegate from a local union of the miners in Illinois, attending the national convention of Mine Workers. I could not say what local he was a delegate from.

Q. What was the first position you held in the United Mine Workers?

A. I would not be positive whether it was secretary of the local union or vice-president of the local union.

Q. Do you know when you were elected and about how long you remained in office?

A. No, but I think I was elected secretary of Local Union 13 and served temporarily in 1890.

Q. Local Union 13? Where is that?

A. At Bridgeport, Ohio.

650 Q. Did you ever work in any mines at Bridgeport?

A. Oh, yes.

Q. What mines?

A. I worked at the Wheeling Creek mine and the Aetna Standard mine.

Q. Most of the time in what mine—I mean of those two?

A. Most of the time in the Wheling Creek mine.

Q. Is that the place you last worked in a mine?

A. No; the last place I worked in the Aetna Standard.

Q. The Aetna Standard mine is not a commercial mine, is it?

A. No, sir; it supplies coal to—at that time to the Aetna rolling mill; now the Aetna Standard. The same mining rates apply there, though, as at commercial mines.

Q. Are you acquainted with W. B. Wilson?

A. Yes, sir.

Q. How long have you known him?

A. I have known him longer than I have known Mr. Mitchell. I think my first acquaintance with Mr. Wilson was in 1886.

Q. And how did that acquaintance come about?

A. By meeting him in a convention of miners who were members of the Knights of Labor, at Columbus, Ohio, as near as I remember.

Q. Are you acquainted with William Green?

A. Yes, sir.

Q. How long have you known him?

A. I cannot just exactly say; I have known him a number of years; I cannot recall, though, just where I first met him, and that is the reason I say I am not positive.

Q. And in what connection have you had anything to do with him?

A. I have known him as president of the sub-District and I have known him as president of the United Mine Workers of Ohio. I have met him in conventions of the delegates in national conventions, and I have met him as a member of the scale committee and the joint committee, and have known him personally and intimately, I might say, for several years—I would not say how many.

Q. As to Mr. Sullivan, who is here—how long have you known him?

A. Oh, I have known him quite a number of years.

Q. And in what connection have you dealt with him, if at all?

A. I have known him as a delegate to conventions, as vice-president of the Ohio miners, as president of the Ohio miners, as a member of the scale committee and joint committee, and I have known him intimately for a number of years.

651 Q. You are acquainted with Mr. Savage, who is here?

A. Oh, yes; quite well.

Q. How long have you known him?

A. I have known him a great number of years, too,—intimately.

Q. And in what connection have you dealt with him?

A. I knew him as a delegate to the miners' conventions, as a mem-

ber of the scale committee and as secretary-treasurer of the Ohio miners' organization known as District 6, and I have served with him as a delegate to conventions of the American Federation of Labor.

Q. You are acquainted with A. R. Watkins, are you, who is here?

A. Quite well.

Q. How long have you known him?

A. Well, for quite a number of years, also. I have known him as a delegate to conventions and I knew him as president of the Sub-District. I have also known him as a member of our international executive board and by serving on committees with him in joint conventions.

Q. You are acquainted with John Zelenka, are you?

A. Yes, sir.

Q. And how long have you known him?

A. Well, I haven't known him as long as I have the other gentlemen mentioned, but I have known him for some time.

Q. What have you had to do with him, if anything?

A. Well, I have known him, also, as a delegate to conventions, as vice-president of the sub-district and as president of the sub-district, the position he now holds.

Q. Of Sub-District 5 of District 6?

A. Yes, sir.

Q. Are you acquainted with Lee Rankin?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for quite a number of years.

Q. In what connection? As a member of the organization, as secretary-treasurer of the sub-district, as a delegate to conventions by serving on committees in joint conventions with him, and recently as a mine manager of the Y. & O. Coal Company. That means Youghiogheny and Ohio.

Q. Are you acquainted with Thomas Hughes?

A. Yes, sir.

Q. How long have you known him?

A. I haven't known him for a great length of time—probably two or three years. I would not be positive about that; probably it might be a little longer or a little less.

Q. Well, in what connection have you had dealings with him?

A. I have known him as a delegate to the miners' con-
652 ventions, and to joint conventions of operators and miners in the sub-districts.

Q. These gentlemen who participated in this joint conference of coal operators and coal miners of western Pennsylvania, Ohio and Indiana, at Cincinnati, Ohio, March 8-29, 1910, about which we have been talking, and whose names appear on the different pages as taking part in the convention, are men that you have known and dealt with more or less since you have been connected with the United Mine Workers and have participated in conventions of that character?

A. Some of them are and some of them I do not know.

Q. Do you recall being acquainted with Mr. Maurer.
A. Yes, sir; I am acquainted with Mr. Maurer.
Q. You have met him in different years past, in conventions?
A. I have met him in joint conventions of the operators and miners and in outside conventions.
Q. When do you suppose you first met him in a joint convention?
A. Well, I would not be able to say positively; I met him, though, several years ago. I have met him in more than one joint convention, but to state the exact time, I would not care to do that, because I am not sure about it.
Q. Mr. Osborne, from Ohio: You have met him, I suppose?
A. Oh, yes; I have met him for a number of years; I met him in Chicago in 1898.
Q. And Mr. Zerbe?
A. Yes, sir; I met him in Chicago in 1898.
Q. And Mr. Chapman?
A. I have known Mr. Chapman, also, since 1898.
Q. He and you attended these conventions, did you, regularly?
A. Yes, sir; I have attended all of them.
Q. Is that true of Mr. Zerbe and Mr. Osborne?
A. I would not say for sure about Mr. Zerbe. It seems to me that he rather dropped out of the movement for some time and had somebody else, probably, represent him. Mr. Osborne, I believe, endeavors to attend all of them unless he is called away by business or laid up ill for some reason.
Q. Mr. Jones—how about him?
Witness: Which Jones?
Mr. Gilchrist: Was there more than one at that convention?
Witness: Well, I do not know. Yes; I think there was.
Q. I mean as an operator?
A. I think George M. Jones was a representative there from Ohio, and John H. Jones is a representative from western
653 Pennsylvania. As to George M. Jones, I cannot say that I am acquainted with him; I have met him, though.
Q. The Jones from Pennsylvania is the one I have in mind?
A. That is John H. Jones; I know him.
Q. And you have attended these joint conventions with him from time to time?
A. Oh, yes; and have served on scale committees with him.
Q. Mr. Schluederberg, from Pennsylvania: Do you know him?
A. Yes, sir.
Q. Have you met him off and on in these joint conventions during past years?
A. Yes, sir; for a number of years.
Q. Are the United Mine Workers, as an organization, a part of the American Federation of Labor?
A. Yes, sir; we are affiliated.
Q. They have a representative in the American Federation of Labor then?
A. Yes, sir.
Q. The United Mine Workers of America have probably the largest voting power of any labor organization affiliated with the American Federation of Labor?

A. Yes, sir; it has the largest voting power; its delegation has the largest voting strength of any delegation from any other union, affiliated.

Q. The Western Federation of Miners, is now a part of the United Mine Workers of America, is it not?

A. No, sir.

Q. What has prevented that, if anything?

A. Well, I do not know that anything has prevented it outside of the fact that we have not endeavored to bring about any consolidation of the two unions.

Q. You attended the last convention, did you, of the United Mine Workers of America?

A. Yes, sir.

Q. When was that held?

A. In January, 1911.

Q. Do you recall any action taken at that convention relative to the Western Federation of Miners?

A. Yes, sir.

Q. What was it?

A. Action was taken to have them granted a charter by the American Federation of Labor.

Q. Was it granted?

A. Subsequent to that time; yes, sir.

Q. What had been the reason why it had not been granted a charter?

A. There was a question of jurisdiction arose.

Q. Between whom or between what labor bodies?

A. Between the Western Federation and the machinists.

Q. And that question of jurisdiction related to what?

A. To the machinists employed in the metaliferous mines.

654 Q. Objection was made at that convention to the continued refusal theretofore of the American Federation of Labor to grant a charter to the Western Federation of Miners?

A. Yes, sir; and the United Mine Workers believed they were entitled to the charter to govern the jurisdiction that they wanted incorporated in the charter.

Q. The purpose of that was to give the Western Federation of Miners control of the machinists who might be employed about the mines, rather than to have that control remain in the hands of the machinists' union?

A. No; the purpose of that was to give the Western Federation jurisdiction over all men working in and around the mines without reference to whether they were machinists, blacksmiths, engineers, firemen, electricians or miners.

Q. And that was done so as to make the Western Federation of Miners occupy a position analogous to that occupied by the United Mine Workers with reference to men employed about a mine, about being required to belong to a particular union?

A. Yes, sir; not only so far as it applied to the United Mine Workers but so far as it applied to other organizations affiliated with the American Federation of Labor.

Q. So as to make that body supreme in its own jurisdictional line?
A. Not exactly supreme, but to give it jurisdiction over the employes in and around a mine.
Q. All of them?
A. All of them; so that wherever there were any contracts existing, there would be no fear of those contracts being violated by one class of men going out on strike when the other men had a contract. It was to safeguard the employes.
Q. Now, to have an organization have control of all the labor about a mine, while ostensibly it may be, as you say, to provide for the fulfilling of contracts, yet that same condition brings about a result such that on occasions that power might be used to the destruction of an operator, might it not?
A. No, sir.
Q. A mine is injured more — less, is it not, by being shut down?
A. If all the men in the mine were taken out that might be true of some mines, but some mines you can close down for a period of years and never need to bother anything about them. They can start up immediately; it requires no attention to start.
Q. What kind of mines are those?
A. Coal mines and metal mines.

Q. Where would there be a mine that you could close
655 down for years and resume at once, without doing anything to it?

A. In the Hocking district.
Q. Any other place?
A. I think there might be a large number of places named.
Q. Can you name some more?
A. I think such would be the case in the Jackson district, and I know such would be the case on New River.
Q. Why is that?
—. Because of the peculiar natural conditions and the excellent roof that is not damaged by being idle; and there might be one hundred and one reasons. The damage to a mine is the possibility of a place caving in for want of being timbered, or because of bad roof or some other conditions, and where the natural conditions of the vein are not of that character, why, there is not so much danger of damage.
The Court: It never will apply to a shaft mine?
A. In some cases.
Q. Wouldn't the water flood them out?
A. Outside of the water; that would be the only exception; and that would not be the case there if there was no water.

Mr. Gilchrist:

Q. That would not be the case in a shaft mine if there was no water?
A. Yes.
Q. But in all shaft mines there is water, isn't there?
A. Not necessarily.
Q. Not necessarily?
A. No.

Q. Can you give the name of one?

A. As a general proposition there is some water in all shafts but there may be exceptions to that and I would not undertake to name them just now. I have worked in shafts where you could not get a barrel of water while working there. They may strike, though a vein of water in developing that shaft.

Q. There are in all large developments places in shaft mines where the coal is very dry, and then again there may be places where it would be very wet?

A. That is true.

Q. But generally speaking a shaft mine encounters water because there is lots of water in the earth and *if* it percolates through and into the openings caused by the mining of the coal?

A. Generally speaking shafts have water in them but I will not admit that they have lots of water. Of course some shafts are drowned out by water.

Q. But they have such an amou[illegible]f water that all shaft mines are equipped with pumping machinery or devices?

A. As a rule that is true.

656 Q. Now, if in a mine of that kind all of the employes were members *if* your organization, and if your organization choose to exert its power, could it not cause the mine to be flooded and ruined?

A. No; I think not.

Q. Why?

A. For the reason that if the members of our organization were to suspend work, it is none of our business who they put in our places. We would not undertake to prevent them from saving their property.

Q. Do you know whether, as a matter of fact, the question of the continued employment of pumpers to safeguard the mines does not often arise in cases where the United Mine Workers have general strikes on?

A. No, sir; it is not often; it is the exception if anything of that kind occurs.

Q. But that does occur sometimes, does it not?

A. I could not name an instance. I know of a threatened instance in Illinois.

Q. Threatened by whom?

A. By the men locally.

Q. Do you mean members of the United Mine Workers?

A. Yes, sir; the local men wanted to call the pumpers off and the organization would not permit it.

Q. Do you know whether that same condition was the subject of discussion during the time of the hearing of the anthracite strike in 1902-03?

A. I think it was.

Q. Do you know what position the commission took with reference to that feature of the United Mine Workers' organization?

A. My recollection is that the position of the commission was similar to the position of the United Mine Workers—that pumpers and engineers and men necessary to protect the property should remain

at work even during a suspension. So in that respect they were no different from the organization.

Q. So that the fact is that the danger to an operator has been recognized by the United Mine Workers, as well as by the anthracite commission, when considering that feature of the organization of the United Mine Workers?

A. That is true; and it is likewise true that in every walk of life we must anticipate the possible dangers in committing any kind of an act.

Q. And your union, as a national body, you think, as a general proposition has refrained from enforcing its power in that respect?

A. Not as a general proposition but as an absolute certainty it has refrained from doing that. They have always discountenanced anything of that kind.

Q. But such acts have been done in different localities and under the jurisdiction of some branch of the United Mine Workers.
657 Is that not true?

A. I think not. If it has occurred locally in isolated cases the organization has promptly ordered the men back. I am not sure that it has occurred, however, even in isolated cases.

Q. Part of the money that is collected by the union is applied in the payment of salaries and other general running expenses of the organization, is it?

A. Yes, sir.

Q. Do you publish a newspaper?

A. Yes, sir.

Q. Does that go to the different locals?

A. One copy goes to every local union under the jurisdiction of the United Mine Workers. That is a requirement of the law—of the constitution.

Q. That is a requirement of the constitution of the United Mine Workers?

A. Yes, sir.

Q. Does the local subscribe for that or is that a publication that goes free and is authoritative?

A. The local is required to pay one dollar subscription annually for that paper and the United Mine Workers' organization, nationally, publishes the paper, and circulates it, and gets the income which is derived in part from the dollar subscription which each local is required to pay. In that way they extend their circulation in other directions wherever they can.

Q. In that paper you generally print the proceedings of your conventions?

A. Yes, sir.

Q. And matters of various kinds which are of interest to the organization as a whole and in some respects of interest to the different locals where the paper may be circulated?

A. Yes, sir; and also the financial accounts of the national organization and the districts, showing the receipts and expenditures of the funds.

Q. Are you in favor of strikes, Mr. Lewis?

A. No, sir; I believe that strikes can be done away with entirely if the operators and miners had a little more confidence in each other.

Q. That is, do you mean if the operators had more confidence in what the miners want to do?

A. No; I mean by that if the operators would go into a joint convention and tell the miners frankly what their position is, the miners would meet the situation just as frankly as the operators would present it. The operators then would consider the position of the miners and deal with facts, without seeming to cloud the issue in any way. I think that is the first thing necessary in order to have absolute confidence.

Q. If there is a lack of confidence on the part of the operator in dealing with the miner, is there a lack of confidence on the
658 part of the miner in dealing with the operator?

A. Oh, yes; it applies both ways. That is really the basis of all contentions that arise and that is really the cause even of local strikes.

Q. And when you have your conventions—these joint conventions that you have—difficulty arises amongst you owing to your believing that the operators are not frank with you and the operators thinking that you are not frank with them. Is that the situation?

A. No; the same difficulty is experienced there as in the case of a man going out to sell a lot or to sell a horse. The joint convention is a clean proposition of bargain and sale. We are there to sell our labor at the best possible rate we can get, and they are there for the purpose of buying it. We must consider the different elements that enter into that, and the operator, naturally, being human, is unwilling to tell what profit he is making on his investment and he will only concede that we are right in the presentation of our argument and the facts, when we furnish the proof. In other words, he is not going to furnish proof to us to support our contention. He will meet our argument by presenting such facts as he can. He retains such facts as might be detrimental to his own interests and presents such facts as will enable him to drive the best possible bargain.

Q. You said that the Chicago agreement was a case of bargain and sale, did you not?

A. No, sir.

Q. You never said that?

A. No, sir. What I did say—in order to facilitate this hearing—was that these joint conventions are conducted on that basis, but I made that statement just now. I haven't referred to it previously.

Q. On page 170 of this copy of "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8-29, 1910," a copy of which you have in your hand, I read from what purports to be the language of Mr. Lewis this sentence: "When I said that the outcome of the Chicago conference was a bargain and sale, I told the truth."

A. That is correct.

Q. Then you were mistaken a moment ago—(interrupted).

A. No; I will admit that but the question directed by you to me was that I had said that here.

Mr. Hogg: In the previous part of your deposition?
Witness: Yes, sir.
Mr. Gilchrist: No, I think not.
659 Witness (continuing): I have stated, as I have stated here, that these joint conventions were a system of bargain and sale, but those may not have been the words used. I have always so regarded it. You said that I said that here (referring to Chicago). It is true I said it at Cincinnati but I haven't said it in presenting any testimony heretofore here.

Q. I did not mean that you had. I said you said the Chicago agreement that it was an agreement of bargain and sale.

A. I am not going to undertake, if your Honor please, to carry in my mind, in giving testimony here, what may have been said in twenty-five or thirty joint conventions that I have attended throughout this country, and I am not going to deny anything that I ever said, and if I inadvertently make a statement here and it is called to my attention, I desire to correct it instantly, because I want to tell the truth here.

Q. That is the reason I called your attention to that language—because I believed you would correct yourself when your attention was called to it.

A. Certainly.

Q. Now, Mr. Lewis, how much money has your organization spent in strikes, well, say, since 1900?

A. Oh, probably eight, ten, twelve, fourteen or fifteen million dollars, since 1900.

Q. Some to pay for peace? Is that what it was for?

A. Yes, sir; for peace. It is not such a large sum when you stop to consider that it is distributed between half a million men and their families.

Q. How many members has the United Mine Workers now?

A. About three hundred thousand—maybe a little more or a little less.

Q. Do you recollect the membership of the organization during the different years, or can you give it from recollection?

A. No, I cannot; we had approximately somewhere in the neighborhood of twenty thousand men when we organized. The United Mine Workers' organization in the year 1897—which was seven years after it was organized—I think fell off to about ten thousand members, more or less; I think that was the membership we had when the national suspension took place on July 4, 1897—and from that time there has been a gradual increase in the membership up to the past year when, on an average, it had reached its highest average of paid membership. I might say also, as a matter of explanation and information, that when a man is idle one month—for instance during the month of February—he would not be required to pay any dues during that month, or assessments, if there were any
660 assessments levied; and we base our membership on the paying membership. That is the reason why I say we have practically three hundred thousand members more or less. We had on an average last year, I think, a paying membership of something

like two hundred and sixty-five thousand men, but we have always got a large number who are idle.

The Court:

Q. It is not possible, therefore, for you to have an absolutely correct list of your membership?

A. No, sir; but I might say this: We received a per capita tax from, I believe, three hundred and eight or three hundred and ten thousand members one month last year.

Mr. Gilchrist:

Q. Mr. Lewis, I have here and hand you a copy of the "United Mine Workers Journal," Indianapolis, Indiana, Thursday, January 19, 1911, pages one to eight. On page one is President Lewis's report and your picture appears on the page. On page three there is a statement headed, "Amount paid out Annually in Support of Strikes." I wish you would look at this paper I now hand you and say whether it is one of the copies of your publication and then tell me whether that statement on page three of the amount paid out annually in support of strikes is correct or not?

A. This is a copy of the official journal of the United Mine Workers and the statement on page three is correct, subject to any typographical errors that may appear.

Mr. Gilchrist: I will read these figures into the record:

"The Amount Paid Out Annually in Support of Strikes.

Year 1900	$144,462.50
" 1901	202,202.71
" 1902	1,834,506.53
" 1903	301,922.44
" 1904	1,065,435.47
" 1905	753,626.02
" 1906	805,599.92
" 1907	105,045.56
" 1908	744,897.19
" 1909	600,267.39
" 1910	1,532,020.42
Total	$8,089,986.16"

661 Q. Mr. Lewis, on the same page—page three of the same paper there is another list having a total of $8,089,986.16, which is headed this way, "Amount paid to each District for Strike Relief." Please look at that list and say whether those figures are correct?

A. They are; subject to any typographical errors.

Mr. Gilchrist: I will read this into the record:

"Amount Paid to Each District for Strike Relief.

District 1, Anthracite	$705,830.94
District 2, Central Pennsylvania	497,987.48
District 3, Irwin Field	329,900.00
District 5, Western Pennsylvania	44,016.17
District 6, Ohio	216,566.13
District 7, Anthracite	261,500.00
District 8, Indiana	500.00
District 9, Anthracite	501,100.00
District 10, Washington	59,500.00
District 12, Illinois	74,250.00
District 14, Kansas	122,500.00
District 15, Colorado	707,576.45
District 16, Maryland and Myersdale	421,335.21
District 17, West Virginia	669,938.81
District 18, British Columbia	49,800.18
District 19, Tennessee	461,306.01
District 20, Alabama	1,286,031.32
District 21, Arkansas and Oklahoma	293,061.00
District 22, Wyoming	3,439.30
District 23, Kentucky	312,222.26
District 24, Michigan	7,700.00
District 25, Missouri	95,000.00
District 26, Nova Scotia	968,775.00
Total	$8,089,986.16"

Q. Referring to District 3, Irwin Field, $329,900: When was that money expended?

A. Last year.

Q. And for what purpose?

A. To support men on strike, and men that were being evicted from their homes—to supply food.

Q. That strike is a strike for the recognition of the union, is it not?

A. No, sir.

662 Q. What is it?

A. For an increase in wages and a reduction in the hours of labor and to put checkweighman on the tipple in order that they may get honest weights.

Q. That was a non-union field, was it not?

A. Yes, sir.

Q. Before this strike?

A. Yes, sir.

Q. And it was unionized by the district officers, was it?

A. Local unions were organized there by the district officers. We do not regard that the district is unionized yet; there is a conflict on that.

Q. Are the mines running there?

A. As far as I know they are. I have not been over there and consequently cannot say. They may all be idle, too, so far as I know.

Q. Have you visited that section since that strike was inaugurated?

A. No, sir.

Q. Have you visited Pittsburg since that time?

A. Yes, sir.

Q. Have you taken up the work of organization with the district officials in that district?

A. No, sir.

Q. You have not met Mr. Fehan in connection with that strike?

A. I have met Mr. Fehan but not in connection with that strike.

Q. Haven't you discussed that with him there?

A. No, sir.

Q. Did you approve of that strike?

A. I cannot say that I did.

Q. Why, not?

A. Oh, I do not know. In a general way—so far as my opinion is concerned—I think it was ill advised and I think possibly it could have been avoided. That is only my opinion, however, and my judgment may be in error about it.

Q. By whom was that strike called?

A. As far as I know, by Mr. Fehan and his executive board, but I could not say positively; I would not say positively that it was; not being a party to it I am not in position to say positively who called that strike.

Q. You said, did you not, during the proceedings of your last convention, that that strike never would be won, or words conveying that impression?

A. No; I do not think I used those words, and I would not be sure what I did say, as we had a stenographer present and a stenographer's record taken in regard to what we did say. I do not believe, however, to the best of my recollection, that I used that language. I might say that my reason for believing that I did not use the language is, that I would not take a positive stand of that kind in the convention unless I had all the facts to justify me in taking
663 that stand. I may have said something that would convey that impression, but I do not remember it.

Q. On page three in your report to the convention as it appears in the United Mine Workers' Journal of January 19, 1911, I find this language with reference to the Irwin strike: "Those men have been misled and deceived long enough and the international organization has contributed to their support without authority to settle the strike." Does that represent your views?

A. I think, in order to get my views on that entire situation, that all of that ought to be read. I decline to state that that represents my views because it is not a complete statement.

Q. Well, you did use that language?

A. In connection with other language; yes, sir.

Q. Now, to be entirely fair to you, Mr. Lewis, I would read, if I had time, your entire report into this record, but in order that you may be fairly represented, I will offer all of this report as it appears in this paper in evidence and will ask to have it marked "Lewis's Exhibit No. 1."

(The paper is marked accordingly.)

Mr. Hogg: If your Honor please, that report is rather a voluminous one and the only part that Mr. Gilchrist is concerned in is that part relating to the Irwin strike, because he has only interrogated as to that. There are many things in the report that would not be of interest to the Court and I will kindly ask Mr. Gilchrist—unless the witness desires all the report in—that only so much of it as relates to the Irwin strike be inserted in the record.

Mr. Gilchrist: Have you seen this paper?

Mr. Hogg: No, I have not, but I am assuming that there are other things in the report besides the Irwin strike.

Mr. Gilchrist: I would say that the Irwin strike figures largely throughout the entire report, and I do not see how I can accept your suggestion. I would be perfectly willing to do so if I could.

Mr. Hogg: My suggestion is that so much may be copied by the stenographer from the report as pertains to what the president said in regard to the Irwin strike.

Mr. Gilchrist: To cut that short I will ask that the report go *in*.

664 The Court: It can go into the record and be marked as an exhibit, and when you come to making up your record for another court you can agree upon what is to go in. I do not see how we can stop to pick it out now. Mr. Gilchrist is going to file it as an exhibit.

Mr. Hogg: You just simply file that as Exhibit 1, with Mr. Lewis's evidence?

Mr. Gilchrist: I introduce that, as I have stated, as Exhibit No. 1, with Mr. Lewis's testimony.

Q. What were your total receipts reported for the year at that convention held in January, 1911?

A. I am not able to determine that.

Q. About what were they?

A. I am not sure of that and I would not put my answer up against the records because the records are there somewhere.

Q. Look at another copy of the United Mine Workers' Journal, Thursday, January 6th, 1911, on the front page of which appears the picture of John Mitchell, ex-president, and say what the expenditures for the year 1910 amounted to, so far as they are shown by the tabulation appearing on that page?

A. Subject to any errors that might be here, typographically, the total reading here is $1,979,661.64.

Mr. Gilchrist: I will not take the time to read it but I will introduce this tabulation marked "Expenditures," and have it marked "Lewis's Exhibit No. 2."

(The paper is marked accordingly.)

Q. How long has the Nova Scotia territory been organized under the United Mine Workers?

A. I am not positive of the date but they were organized in 1907; it seems to me they were; there may have been locals instituted there in 1906; I won't be sure about that.

Q. What caused that expenditure of nearly a million dollars in that district?

A. The strike; the most of it was taken up in feeding people who were evicted from their homes.

Q. And why was there a strike?

A. Because the men had asked for an increase in wages and it was denied by the operators, and they suspended work in order to try to secure the increase in wages.

Q. Was there not a miners' organization there when the United Mine Workers undertook to bring them under the control
665 of your body?

A. I might say yes and no. There was supposed to be a miners' organization there but it developed afterwards that it was a part of the operators' organization.

Q. That is, it was not a part of the United Mine Workers?

A. No, sir.

Q. And following that your organization called the men out on strike, and are you still on strike there?

A. No; the organization did not call the men out on strike; the men struck without being called out.

Q. Then did they get any benefits?

A. Yes, sir.

Q. You approved of the strike, then, did you?

A. Later, yes, sir; after an investigation of the merits of the claims of the miners, which is always done before there are any strike benefits paid to anybody.

Q. Now, the miners are still on strike there, are they?

A. Not in Nova Scotia—that is, in the Cape Breton end of Nova Scotia; there is in Spring Hill. Cape Breton was the strike where all the money was spent.

Q. And the strike at Spring Hill, Cape Breton, is still on?

A. I am not sure that Spring Hill is in Cape Breton. Spring Hill is out from the main land—that is, where the mines are—but the strike at Spring Hill is not regarded as a part of the Cape Breton section of the mining district.

Q. You say the Spring Hill strike is still on?

A. Yes, sir.

Q. Are the mines there working?

A. No, sir.

Q. What became of your Cape Breton strike?

A. It was settled.

—. How?

A. By representatives of the miners' organization, and representatives of the coal company, indirectly, and representatives of the business interests in that section.

Q. Did you visit that section?

A. I visited that section previous to the strike.

Q. And afterwards?

A. No, sir.

Q. Is that section now under the control of the United Mine Workers?

A. We have local unions.

Q. I mean in practice—in dealing with the operators, is that section unionized?

A. It is not unionized in the same sense that it is in Ohio. In other words, they have not got what they call the joint contract signed up by both parties?

Q. Then that strike has not been entirely successful, as I understand you?

A. Well, now, that depends entirely on the view point. If the men continue to organize there and finally secure a joint
666 wage agreement there without any further suspension of work, we would regard that strike as having been a complete success. If they do not, we would not regard it as having been a complete success.

Q. Passing to Alabama where you spent $1,286,031.32. Is that the state that you say your people were run out of by the state militia and the governor?

A. Well, I do not know as I said that they were run out of that state.

Mr. Gilchrist: Well, substantially so; we will not quibble about the exact meaning of the word.

A. (continued). That is the state in which the executive authority of the state was used, and all the troops in Alabama to destroy the property of the miners—and they were told—I mean the miners' representatives—that they would have to leave Alabama, and if necessary they would drive the miners back into the mines at the point of the bayonet. The governor of Alabama told me that himself.

Q. Mr. Lewis, on page 21 of the United Mine Workers' Journal of January 19, 1911, I find this matter: "Card Invalid.

Peru, Illinois, January 11, 1911.

Editor Mine Workers' Journal:

DEAR SIR AND BROTHER: We, the undersigned, would like to have you publish in the journal the name of Frank Steinbach, who has a transfer card which is not in good standing. He has paid the ten dollars for card but not the fifty dollar fine which is attached to it for working in the Hegler scab mine in La Salle, Illinois, Local No. 2741. After working four months there drew his card and tried to get in with it in Local 649, Peru, Illinois.

Hoping you will attend to this matter, I remain,

Yours truly,

M. N. LOEBACH,

1368 *Chartress Street, La Salle, Illinois.*

Secretary Local 649.

I believe you said in your direct examination that a non-union mine was not called a scab mine?

A. That is true.

Q. What is a scab mine, if it is not one not under the
667 jurisdiction and control of the United Mine Workers? It is either under or not under, and according as it is, it is union or not union, and according as it is it is fair or unfair.

A. It may be a union or non-union mine and not a scab mine.

Q. And might it be a fair or unfair mine?

A. And not a scab mine.

Q. Where does it cease to become a scab mine?

A. I do not know; I never heard tell of a scab mine.

Q. This, then, is the first card of that kind that you ever saw, is it? I will hand it to you to look at.

A. Yes, sir; that is the first time I have ever heard a mine called a scab mine, in that sense. I desire to say, in addition to that, that a transfer card when issued by a local union cannot have attached to it anything that there is printed in this statement, to be collected by a local union somewhere else, under the laws of the United Mine Workers.

Q. Then it would seem there is either a misunderstanding on your part about the union or there is a misunderstanding on the part of this secretary of Local Union 649?

A. I would certainly say it was a misunderstanding on his part.

Q. Do those misunderstandings often arise?

A. No; I do not think they do often—not any more than they do in any other business institution, considering the fact that we have in our organization every nationality of men including Japs and Chinamen.

The Court:

Q. Is there any authority for assessing a fine against a man for working in a non-union mine, where it is not unionized, when he is out of employment?

A. No, sir; we never attempt to do that. They do it locally but there isn't anything in the national constitution or district constitution authorizing it. There are local unions that have attempted to assess a fine against a man for taking another man's job when there is a strike existing. In fact, local unions have gone so far as to attempt to impose fines when there would not be very much hope of collecting them, in order to have the individual leave rather than pay the fine. Local unions have attempted to impose fines on men who have absconded with funds of the local union, rather than go to work and say to the operators that they have got to dispense with those men. The higher author-ties of the organization on the appeal of any individual would investigate the case, and if the local union was wrong, they would discipline the local union for exceeding its authority.

668 Q. In one of these local union constitutions—in the sub-district constitutions, if I remember rightly—attention was called to the fact that by their by-laws they provided for a fine for

a union member who worked outside. Don't your supreme organization have to approve all their by-laws before they *before they* become operative?

A. No, sir; they do not do that except when brought to their attention that they have gone out of the way and violated the law. In other words, local unions have authority to make their local laws and as quick as it is called to the attention of the higher authorities of the national organization, they have got to set any of their local laws aside that are in conflict with those of the national organization. Section 2 of article 14 of the constitution of the international union, reads as follows: "All locals shall be under the jurisdiction of the International, District and Sub-District Unions, and may make such laws for their government as they deem necessary, provided they do not conflict with the International, District and Sub-District Constitutions or agreement entered into. Any Local Union or members thereof violating this section shall be subject to a fine of not less than $5.00." As I said a moment ago when the local unions make their local laws they are not passed up to the higher authority for approval, but the moment anything develops that is in conflict with the law, then, of course, it is brought to the higher officials to investigate it.

Mr. Gilchrist:

Q. I believe you said, Mr. Lewis, that some locals might undertake to penalize a man for working at a non-union mine, but that that was not authorized by the constitution?

A. No; what I believe I said was that local unions would undertake to penalize a man for taking another man's job when he was out on strike.

Q. Well, getting back to the subject of your exhibit No. 2, which showed that that man Steinbach had been fined fifty dollars for working at a scab mine, you said, I believe, that there was no such regulation and no authority on the part of the local union to make any such fine?

A. I would like to have the stenographer read my answer on that.

Q. I hand you "Plaintiff's Documentary Exhibit No. 2," and will call your attention to section 17 of article 9 which reads this way: "That a fine of $10.00 in each individual case where it can be proven that a member of the union leaves his district for West Virginia, or any other unfair mines, and remains there one month or more without having deposited his transfer card, and returns without giving a satisfactory account of why he has not
669 deposited his transfer card; and a fine to be collected by the local union where he works." What have you to say about that section of that article in the light of your statement a moment ago that under the provisions of the contitution of District 6 there is no penalty attaching to a man for working in a non-union or an unfair mine?

A. I understand that section in the constitution to impose a fine upon a man because he does not take his transfer card away to the mine where he is going. It so reads; it says: "A fine of $10.00 in

each individual case where it can be proven that a member of the union leaves his district for West Virginia, or any other unfair mines, and remains there one month or more without having deposited his transfer card, and returns without giving a satisfactory account of why he has not deposited his transfer card; and a fine to be collected by the local union where he works." A fine is not imposed even if he gives a satisfactory reason why he did not conform to the first part of this section?

Q. Where is he supposed to deposit his transfer card?

A. He may deposit it anywhere in the State of West Virginia.

Q. At a non-union mine?

A. At a non-union mine. We have local unions in non-union mines, even in this state. In other words, a mine is not unionized, your Honor, under our understanding of the organization, unless it is completely unionized and recognized as such by the mine owner. We have unions in West Virginia where they can deposit their transfer card. The mine foreman does not recognize that there is a union there. We recognize there is a union there but it is looked upon as an unfair or non-union mine.

Q. As an unfair or non-union mine?

A. Yes, sir; unfair in the general acceptation of the term.

Q. What is the meaning of that?

A. Because it is not unionized it is unfair. Because the mine foreman refuses to recognize the representatives of the members of the union who want to continue to work there. He permits them to work there only when he cannot get men that do not belong to the organization.

Q. Mr. Lewis, you are in the prime of life, are you?

A. I think so.

Q. And a well read man?

A. Well, I do not know; that would depend entirely on what interpretation you would place on that; I consider that I am pretty well read so far as the mining industry is concerned.

Q. Well, generally, on all subjects, you have endeavored to make yourself a well read man?

A. Reasonably so.

670 Q. You have, I suppose, read the history of industrialism throughout the world's history?

A. No; I cannot say that I have.

Q. To a greater or less extent you have, I suppose?

A. No, sir; but I know a good deal about it. We come in contact with men, probably, from different countries and talk to them about their conditions and have endeavored to learn from them as much as we could.

tact with men, probably, from different countries and talk to them

Q. Is it not owing to the fact that you have been recognized as an able man, and well informed, that you have succeeded in your life in rising from a boy working on the breakers, I believe you said—(interrupted).

A. First I was in the breakers in the anthracite coal field.

Q. (continued). And up and up and up until finally you have

reached and have occupied with a successful administration of your office, the position of president of the United Mine Workers of America?

A. Well, I would not care to say that. It would be too much like tooting a fellow's own horn. I presume that is probably what the miners had in mind.

Q. If I were to say that I believe that to be a fact, you would not resent it as being impertinent on my part?

A. No, I think not; although on the other hand, I believe there are other men who could fill the position just as well as I have. In fact, I am one of those people who believe there was never a man occupied a position but what there was another man who would be just as good if he had the opportunity.

Q. I do not mean to disparage any other man, at all, but simply to express my belief that it is owing to your energy and your ability that you have risen from the ranks to the head of this organization?

A. I think that has had something to do with it.

Mr. Gilchrist: I agree with you that in this world there is no man who cannot be duplicated many times over.

Q. Now, this organization, I believe you said had a membership of over three hundred thousand men?

A. About three hundred thousand more or less; I believe that is what I stated; yes, sir.

Q. And I believe you said in your direct examination that you had occupied this position as president of the United Mine Workers since 1900?

A. Oh, no.

Q. Since when?

A. Since April 1st, 1908.

Q. And that you were to retire on April 1st, 1911?

A. Yes, sir; and I expect to go back to digging coal.

671 Q. You expect to go back to digging coal. That is certainly very much to your credit.

A. There are some things I want to learn about it.

Q. Were you a candidate for re-election as president?

A. Yes, sir; but I didn't get enough votes.

Q. Who is to take your place?

A. Mr. John P. White, of Oskaloosa, Iowa; a very fine fellow.

Q. Is your labor organization the largest labor organization in the world?

A. As far as we know it is. It has the largest membership of any single national organization in the world. There may be organizations that are regarded as labor unions in China, or some part of it, composed of laboring men, that have a larger membership and that we do not know anything about, but so far as we know the miners' organization in this country is the largest organization in the world.

Q. And it aims, does it not, to control the mining industry of the country?

A. No; I think not. We aim to organize every mine on the American continent; at least that is one of my aims, and I believe that that is the ultimate object of all of those who are familiar and

have endeavored to acquaint themselves with and to study the mining situation of this country.

Q. You stated during the course of your examination here, I believe, that there was a difference in organizing the men at a mine and in organizing a mine. I wish you would explain to me that difference, as nearly as you can.

A. I desire to state, first, that to the best of my recollection I made no reference to that feature of the organization; I think it was another witness; however, I am willing to explain my opinion in regard to the matter; when we organize the men in a mine we may organize a dozen, where there are two or three hundred employed, or we may organize fifty or we may organize a majority or we may organize all of the men in that mine, and if they become members of our union—membership in the union in itself does not constitute organizing the men. To have the men organized thoroughly they must understand all the purposes for which they have become members of the union. In organizing the men we take them in as members and then we seek to educate them in regard to what their duties are not only as members of our union, but their duties to the government under which they live, as citizens of the country, and those who are not citizens as to what is necessary for them to become good citizens, when they take out their papers. That phase of the situation is not discussed in all local unions, but the well organized
672 local carries into effect all of those ideas. An organized mine is a mine which is organized and worked under a mutual contract between the mine owner and the representative of the men in that mine. In other words, they do not sign a contract with each individual working there. There is a committee, or the representatives of the sub-district or district, or the national organization that treat with the mine owners' representative. All of the operators, for instance, in the district, don't necessarily take part or participate in the negotiating of the contract. They have their associations the same as we have ours only they are probably more perfect, because there is a less number of them and there are fewer men take charge of and look after their interests and there are not so many individual opinions to harmonize. When we have an organized mine that means that all the men in that mine are governed by the contracts under which the mine is operated, and the men are paid their wages and governed by the laws of the organization. The operators understand what our laws are when they make contracts with our people.

Q. When you speak of the operators, what operators do you mean, those who join with you in the interstate convention arrangement that you have?

A. No; I have reference there to any mine owners—and operators and mine owners are synonymous terms—to any mine owners and operators that will negotiate, agree upon and sign up the terms of the contract to govern the organization of the mine. I might explain further by saying that there is not any operators' association and there is not an association of operators even governing, for instance, the central competitive field which includes western Pennsylvania, Ohio, Indiana and Illinois, and West Virginia if it were par-

ticipating in those negotiations. We always consider that those operators in West Virginia that ship coal west should be a part of our central competitive field, and the fact that we have not got in our organization the operators controlling those states, or representing all the operators within those four states. * * * They come into the interstate meeting and they participate in the deliberations; they hold their meetings during the sessions and may before and after that, so far as we know. We are not aware whether they hold preliminary meetings or not, but if they do they hold those meetings merely to outline their plan of action in negotiating with the miners' representatives. They haven't got an organization, although there are efforts being made now and efforts have been made to form organizations of operators to include all the operators within
673 certain competitive territory. I hope myself that the time will come when they will be organized.

The Court:

Q. I want to ask you this question: If you were tendered the superintendence or management of a mine would you be required to withdraw from the union?

A. Yes, sir.

Q. Why is that?

A. The reason for that is that there was a time when they believed that if a mine foreman, for instance, retained his membership in our organization, that there was not that community of interest that should exist, and that mine foreman would come into the miners' meetings—not because of any secrecy but because of their influence with the men—and would govern the organization. On the other hand, members of the miners' organization had no right to become members of the operators' organization. They believed that the two interests in a sense being diametrically opposed to each other—the one the employer and the other the employe—that the man who had charge of directing affairs in working men in and around the mine—that he would use his influence in the interest of certain classes of men, probably to the detriment of the miners' organization, and in the long run they would show favoritism to some men who would do certain things, and necessarily create friction, and it would be up to the miners' organization to establish that discipline necessary so that everybody should be treated alike.

Mr. Gilchrist:

Q. You spoke yesterday as knowing Mr. Rankin as a mine superintendent?

A. Yes, sir.

Q. He has withdrawn from the association, has he?

A. Yes, sir.

Q. It was currently reported in the newspapers that your organization had required Mr. Mitchell to withdraw from the Civic Federation. What reason was there for that, under your laws?

A. Well, that is a mistake; our international convention did not require Mr. Mitchell to withdraw from the Civid Federation. Our

international convention amended the constitution and specified that members of the National Civic Federation could not retain membership in the United Mine Workers' organization. They had already amended their constitution so that mine foremen and company weighmen—top bosses, as they are called in some places—could not retain membership in our organization. They had also amended the constitution that any one engaged in the sale of intoxicants of any kind could not retain membership in our
674 organization: and that carries with it this idea: If we had a picnic or celebration there is not one of our members—even though he had a temporary license that could go out to the picnic ground and sell intoxicants without forfeiting his membership. The purpose of that is to try and confine our membership to the men who are actually working in or around the mines, engaged in the production of coal, and the officials and representatives directly connected with the organization. In other words, to divorce the organization from any outside influence. I want to say also, in order to make it clear, that as a result of the amending of the constitution with reference to membership in the National Civic Federation and the United Mine Workers, Mr. Mitchell being one of the men who is a member of the Civic Federation would be required to withdraw his membership from our organization. We did not say to him that he had to withdraw from the Civic Federation, but he could not hold membership in both. It was optional with him, then, to decide what he would do. I will say frankly, that if it were me, and I was in his place, and I honestly believed that I could do the labor people of this country any good and do anything to bring about a better feeling between the employers of labor and the laboring men, I would have given up my membership in the United Mine Workers and staid with the Civic Federation, to prove my belief. Of course I do not know what he will do in that respect, outside of what the newspapers say.

Q. As a matter of fact, was not that action at that convention—which was the last convention you had—taken with direct reference to Mitchell?

A. No, sir.

Q. Are you sure of it?

A. The matter had been up in previous conventions.

Q. And also in direct reference to Mitchell, was it not?

A. No, sir.

Q. Was Mitchell's membership in the Civic Federation not the principal subject of comment in the passing of that resolution amending the constitution, at your last convention?

A. No, sir.

Q. Was he the subject of discussion at all?

A. He may have been, but only as an incident.

Q. Can you tell me what other man in your organization was mentioned during your convention proceedings, during the discussion of that proposed amendment, that belong to your organization and was connected with the Civic Federation?

A. I do not know that there was any. I desire to state in that connection that there was less discussion of individuals than
675 there was of the organization itself. There was more discussion of the men who composed the Civic Federation, and who were its supporters and who contributed to it—a great deal more that there was of Mr. Mitchell. The fact of the matter is that the records will show that practically all the discussion had reference to the failure of the Civic Federation to carry out its declared purposes, and that had especial reference to the trade agreement department. We know, and I know myself, that the men who can, if they would, bring about a better understanding between employers and employes in our industries in this country, and who are the principal officers of the National Civic Federation who contribute to it and keep it in existence, have done practically nothing to put into effect the declared purposes of the National Civic Federation. It is results we want and—not talk; and as a matter of fact the leaders of the Civic Federation in every industry in which they are interested have wiped the labor organizations out of existence.

Q. Is it not true that John Mitchell in all of his actions relative to the adjustment of disputes since he has been one of the officers of the Civic Federation, has decided in favor of union labor?

A. No; for the reason that he never has decided any question in dispute since he has been with the Civic Federation—not one—and the reason he has not decided any, I presume, is because he has not been permitted to.

Q. Has he not performed any service for the Civic Federation in the adjustment of disputes between employers and employes?

A. Not to our knowledge; we do not know of any.

Q. From personal knowledge, therefore, you are not able to say whether he has or has not decided with labor as against capital when in controversy?

A. No; we are not prepared to say that because we haven't any information where he has, and he has not made known that fact if he has.

Q. John Mitchell has severed his connection with the Civic Federation, has he not?

A. No, sir.

Q. Are you sure of that?

A. Positive.

Q. And from personal knowledge?

A. I am positive of that.

Q. And he is still a member of the United Mine Workers, is he?

A. Yes, sir.

The Court:

Q. Then the report in the newspaper that he had withdrawn from the Civic Federation is incorrect?

A. In explanation of my answer to those questions I would say that he has resigned as chairman of the Trades Agreement
676 Department, to take effect the last of this month; consequently he has not left it; and it does not state in that resig-

nation that he is withdrawing from the Civic Federation, but the presumption is that he will. We do not know what may transpire between now and the first day of March to bring about a change in that whole situation. That is the reason I made those statements in the manner that I did. In other words, he has up to the first of April to decide what to do. He may be prevailed upon to withdraw his resignation.

Mr. Gilchrist:

Q. Mr. Lewis, I gathered from your direct examination that the real object of the formation of the United Mine Workers of America, and the real object of its existence, is, to benefit the men employed in the mining industry by raising their wages and surrounding them with such influences in life as will conduce to the better citizenship of this country. Is that true?

A. That is true.

Q. Do you know of any other reasons why the United Mine Workers exist today, than that humanitarian reason?

A. I do not know as I exactly understand your question.

(The question is read by the stenographer.)

A. (continued). Well, that would depend on what you would include in the word "humanitarian." The reasons for the existence of the United Mine Workers is, as has been stated, to raise the standard of wages to such a point that it will provide the miners and their families not only with the necessaries but with some of the comforts of life to reduce the hours of labor to that point where they are not required to work any longer than necessary to produce all the coal that will meet the requirements of the nation; and to improve the working conditions of the men in the mines to the highest possible standard that artificial means can make those conditions good; to educate the mine workers in order that they may understand their own wants and requirements, so that they will know how to secure what belongs to them, by intelligent methods, and to do everything that will make of them better citizens and help, of course, to make of the nation a better nation of people.

Q. Taking the objects of the organization to be those you have set out in your last answer, it would seem that the object of the organization is a most laudable one, would it not?

A. We think it is.

Q. Has it ever occurred to you that with an organization of the magnitude of your organization and with an organization
677 seeking only to do such things as you have described in your last answer, that it is strange why there is such opposition manifested by employers in the coal mining industry, to your organizing methods and to coming under control and jurisdiction in the operation of their mines?

A. It is not in the least strange to me, and for this reason: The mine workers of this country, in my opinion, have been the most misrepresented people on the American continent. Naturally, when the miners are organizing to establish the things that we have ex-

plained, the mine owners, being human and more or less selfish the same as the rest of us, believe that every improvement secured by the miners either in the way of better wages or less hours of work, will add to the cost of producing a ton of coal, and without going into the matter thoroughly, they figure incidentally that the added cost to produce a ton of coal means decreasing their op-ortunity to earn large profits on their investment. That is one phase of it. The other phase of it is that operators in the different states have either deceived themselves into the belief, or have been led to believe by the enemies of our organization, that the organization is not built on as broad a standard as we claim, and that we are seeking to organize the mining industry of the country in order that we may discriminate against operators in some states and in favor of operators in other states. The mine owners who are not thoroughly familiar with our purposes, or at least have not got confidence in the real intention of our movement, and being governed by their own selfish instincts to a greater or less extent, made war on the organization. As we have grown older—as we have extended the organization and the operators have become better acquainted with our methods—that position is becoming less intense and in its place is a greater desire to get together and understand each other. Now, in that connection, I want to be perfectly frank and say this: That with all of the different nationalities of men that we have within the ranks of our organization, made up of every religious belief and every political belief—and, as I stated, I believe, yesterday, or at one time during the giving of my testimony, we have every kind of men, including Japanese and Chinamen, as members of our union, and it is a tremendous work to educate these men to understand the real purpose of the organization. We do not claim to be perfect and we never will be; we do not claim but what we have er-atic men within our ranks—men who do things they should not do and men who commit offenses that are in violation of the law. While there is no excuse for me doing that, the fact is that it is done. That is
678 true of men that belong to no organization; that is true of business men—; that is true of men in every walk of life. They do those same things; they violate the laws and we have laws to punish them; and we want our people punished when they vio-ate the law. That is the feeling of the leaders; that is the feeling of the men within our organization who are looked upon as the best educated men and the most thoroughly acquainted with the principles of the organization and the purposes for which we are organized.

Q. You and the other defendants in this suit, with the exception of Thomas Hughes, are the leaders of the United Mine Workers, are you not?

A. Yes, sir; we are looked upon as the leaders of this organization—or some of them, at least.

Q. Now, Mr. Lewis, the operators have had a good long while, have they not, to become acquainted with the objects of your organization?

A. Some of them have and some of them haven't.

Q. Your organization has been in existence since 1890, has it not?

A. That is true; but there are a number of men in the mining

business right now that were not in the mining business five years ago.

Q. Naturally so. The Chicago agreement of 1898 between the operators of the central competitive states and the United Mine Workers of America, as a national body was gotten up, was it not, for the purpose of securing to those operators—members of that operators' convention and in the joint movement as it was called—security of markets for their products?

A. No, sir.

Q. Not in any sense?

A. No, sir; not for any special markets. The Chicago joint convention was the outgrowth of a condition. Previous to 1897 and after the old interstate joint movement had passed out of existence, the operators, with no organization, started out to sell coal everywhere they could, and in their keen competition with each other they discovered that on the one hand they were earning nothing on their investments, and turning to the point of least resistance, the only thing was to reduce the wages of the men. They succeeded in doing that—because of the very little organization that existed—until they reached the point where the miners in the state in which I lived were not able to meet their obligations with the business men where they purchased the necessaries of life—where they were not able to live, it didn't matter how many days they worked; and the mine owners themselves discovered that they were not even earning any money under that condition, because one operator was
679 competing against another and they were practically giving their coal away, making no profit and starving their men; and that condition brought on—as I stated, I believe, yesterday, or one other day when I was on the stand—a request from the operators of the Hocking district, where we had the best part of our organization at that time, to give them an opportunity to pay the men in script or sixty-day notes. They had no method of raising the means—of raising the money—for what little they did owe them, but in those sixty days the leaders got together and they agreed that under the conditions that existed—which was also intensified because of the panic existing throughout the country at the time which made it a great deal worse everywhere—they agreed to accept those sixty-day notes, and when they used those notes in the business houses throughout the Hocking District, they had to discount the notes again, even though it amounted to very little in the way of wages, and after that period had passed away and conditions were no better, they finally got back where they could raise the necessary amount of money to pay what little money the men earned; but there were a number of companies on the verge of bankruptcy and some that had gone into bankruptcy. That condition continued until July—or rather the summer of 1897—when out of pure desperation the miners of the country decided that they might just as well starve in idleness as starve by work; and I do not know, but there was probably some sentiment connected with the movement of declaring a general strike on July 4th.

Q. Of what year?

A. Of 1897; and we had, I think, less than ten thousand men in the organization. The meeting that declared that strike appealed to the men in the mines throughout the country to respond in their own behalf, and I think there were over a hundred and fifty thousand men engaged in that struggle. It is true in some places it became very bitter and we discovered that where the men were unorganized was where the clashes were the bitterest; but out of that contest came a conference that was held in Columbus, Ohio, in September of that year. A compromise was effected and an advance of five cents a ton in the mining rate was granted, and at the same time it was agreed that there should be a joint convention of the operators and miners of the country—not of the central competitive field and the operators of Pennsylvania—not of the western part but all of Pennsylvania—and they were invited there and the operators everywhere else were invited. It was an open invitation. That convention organized with operators from western Pennsylvania, Ohio,
680 Indiana and Illinois, and West Virginia, which was recognized as a part of that central competitive field because of the shipping of the coal from West Virginia into the northwest. However, there was, as I stated the other day, only one operator from West Virginia and I think he was from down in the lower part of the state. I have no recollection of his taking any part in the deliberations. We had no stenographer at that convention and consequently haven't a complete record of the proceedings.

Q. What convention was that?

A. In Chicago in 1898—the first convention that restored the joint movement that went out of existence in the eighties.

Q. Who brought about the holding of that joint conference in Chicago in 1898—the miners or the operators?

A. Both; both the miners and the operators.

Q. It was not, then, done at the instance of the miners' organization?

A. No; that was the outgrowth of this meeting held between the operators and the miners' representatives at Columbus, in September, 1897.

Q. Was that agreement which was entered into in Chicago in 1898, at this joint conference, in any sense a co-operative partnership between the miners' organization and the operators of the central competitive states consisting of western Pennsylvania, Ohio, Indiana and Illinois?

A. Well, it was co-operative in the sense that they finally agreed upon the terms of the wage contract in the preliminary proceedings of that convention. If a person were to go into their meetings you would naturally conclude that they would never get together on any common basis. The discussions at times were very acrimonious and bitter; then they would quiet down again and present each side intelligently as the respective representatives there could present it.

Q. There was nothing done there, was there, that had for its purpose the securing of the operators of the central competitive states referred to, against competition against unfair mines?

A. No; I have no recollection that that feature of the discussion

came up. I think, possibly, when they were discussing the uniform day-wage scale and the eight-hour day, that the operators argued that their competitors in other states should be required to conform to the condition that would not drive the operators in the central competitive field entirely out of the market. I am not sure that that was the trend of the discussion and yet I believe that that took place either at Chicago, in the general discussion, or at Columbus when the uniform day-wage scale was established. I might say
681 so far as the day-wage scale is concerned—so you will understand it—that at the time of the Chicago meeting we had in the Massillon district of Ohio an eight and one-half hour day; we had in eastern Ohio a ten hour day; in Indiana a nine hour day in the Hocking district of Ohio a nine hour day; in Western Pennsylvania a ten hour day; and in arriving at the wages of the drivers, which is the largest body of any single class of day labor in the mine, we took the wages in western Pennsylvania, Ohio, Indiana and Illinois, and struck an average, because there were different prices paid everywhere, and then the uniform rate of $1.75 a day for an eight hour day was the rate fixed for the driver. That is my recollection. The records, of course, will show what the rate is, and I think it is $1.75.

The Court:

Q. Mr. Lewis, I would like to ask you for an explanation of the justifying causes of what is commonly called a sympathetic strike, which is calling out as I understand it, the men in the mines where they are complying with your rules and under your control, in *other* to compel other sections and other mine operators to sign the scale or become members of the union, or to perform their obligations under their contract with you?

A. I do not think, your Honor, that there is any justification that can raise for a sympathetic strike. That is my position.

The Court: That is a very frank and nice statement of it and really I think that is one of the main reasons why there is a prejudice against your order in the mind of the public, possibly.

Witness: I believe that you are correct in that. In fact, I know you are, because there have been instances where sympathe-ic strikes have been declared—there is a difference of opinion among some of the leaders of labor unions on that particular question. Some of the leaders believe that a sympathetic strike is justified if it is necessary to prevent the annihilation of the union. Of course, that is an extreme contingency and if that were admitted to be a justification (and I do not admit that it is a justification), if that were admitted to be a justification then it would be quite an easy matter for representatives of labor unions to justify, in their own minds, the conclusion that their organizations were going to be wiped out of existence, and that is the reason why they order a sympathetic strike. But I do not agree even on that phase of it. Anyhow, as I stated, there is a difference of opinion among the leaders of labor unions on that question.

682 Q. Mr. Lewis, on page 473 of "Upstill's Exhibit No. 1," being the "Proceedings of Joint Conference of Coal Operators

and Coal Miners of Western Pennsylvania, Ohio, and Indiana, Cincinnati, Ohio, March 8-29, 1910," in the eighth section or item of the Chicago agreement of 1898, there is the following language: "That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade, and to the other parties hereto, against any unfair competition resulting from a failure to maintain scale rates." Do you recall that provision as being a part of the contract that was made between the United Mine Workers, as a national body, and the operators of the central competitive states who met you in joint convention at that time?

A. Yes, sir.

Q. Yesterday evening, Mr. Lewis, I asked you about section 17 of article 9 of the constitution of District No. 6 of the United Mine Workers of America—"Plaintiff's Documentary Exhibit No. 2"—and you gave an explanation stating your understanding of what that provision meant. I will ask you to look at section 2 of article 9 of the constitution of the United Mine Workers of America for Sub-District 5 of District 6, "Plaintiff's Documentary Exhibit No. 3," which section reads as follows: "That a fine of $10.00 in each individual case where it can be proven that a member of our union leaves his district for West Virginia, or any other unfair mine, and remains one month or more without depositing his transfer card and returns without giving a satisfactory account of why he has not deposited his transfer card; and a fine to be collected by the local union where he works." Is your explanation which you gave to my question relating to section 17 of article 9 of the constitution of District No. 6, the same for the meaning of section 2 of article 9 of the constitution of Sub-District 5 of District 6?

A. I think they are both precisely the same sections and for that reason the explanation is just exactly the same.

Q. How do you figure that that sort of a provision aids in the accomplishment of the general purposes of your organization as outlined to me a while ago?

A. For the reason that it is necessary for us to have control over our members and when a man leaves Ohio and leaves his transfer card or his membership in a local union in Ohio, we do not know where he goes nor what he does, and the purpose of that clause in addition to the explanation made, is, that when a man leaves a mine he must take his transfer card with him—that is another provision of the international constitution—and whenever
683 he goes to West Virginia or any other mining district that is not thoroughly organized, by depositing his card in the local union where he goes, it helps to strengthen that particular local union, and his failure to do that must be followed by an explanation when he comes back to the local union, and if a satisfactory explanation is given, there is not any fine imposed.

Q. Then that section has application to instances where a man goes to a locality and works at a mine where there is a local of your order, but which mine at which he works is not operated by contract between the operator and your organization?

A. It may apply to that and it may apply to other mines.

Q. Now, if applied to a union mine you would aim to keep tab on the man, would you, by that procedure?

A. We would endeavor to do so; yes, sir.

Q. But suppose there were no union men there, and suppose there was no local of your order there, what would the man do?

A. The man could go to work in that mine, if he desired. Suppose, for instance, a man came from an Ohio local to West Virginia (say down to Fairmont), and went to work, and he worked there two months—he can carry his transfer card with him for three months before the card becomes void, and he came back to Ohio with his card, if he were disposed to or wanted to misrepresent the facts he could say that he had not secured any employment while — had been away from his home; but if it was learned afterwards that he had misrepresented the facts and that he had been working in Fairmont, why, they would impose a fine of ten dollars on him. And for what? For misrepresenting the facts without any explanation. If he had come back home and stated that he had been working in the mines in the Fairmont region, the men in that local might want to know what the conditions were over here and he would explain to them. They would ask him, "Well, did you make any effort to organize the mine?" and he may have made an effort to organize the mine and that would have caused his discharge, and he then would go back over into Ohio with a satisfactory explanation and there would not be any fine imposed, notwithstanding he had worked in a mine where there wasn't any union at all.

Q. But if his explanation was not satisfactory?

A. There would be a fine imposed.

Q. Suppose he had been working there and had not sought to unionize the men that were there working with him?

684 A. If he gave no satisfactory explanation, why, then, a fine would more than likely be imposed.

Q. So that a man, then, is fined for working in a non-union mine?

A. He may be, without giving proper explanation.

Q. Now, will you point out to me the same provision in the international constitution?

A. No; I did not say there was any.

Q. It is not in the international constitution?

A. No, sir.

Q. If that is an important provision for the advancement of your order, and if it appears, as it does, in the constitution of District 6 and in the constitution of Sub-District 5 of District 6, how do you account for the fact that that important provision does not appear in the constitution of the international union?

A. For the reason that I don't consider it an important provision for the advancement of the organization, and that clause is in those constitutions because they have certain—I do not just remember the word they use—but they have certain rights over their membership that are not in conflict with the international law. In other words, the same as a state government would have certain prerogatives in the enacting or making of certain laws as long as they were

not in conflict with the national government. I haven't admitted that those clauses in those constitutions read, are an important factor for the advancement of the United Mine Workers of America or the extension of the organization. In fact, I do not believe that they are.

Q. You said, I believe, in answer to one of my questions yesterday, that you did not believe in strikes?

A. I do not believe in strikes.

Q. Have you called any strikes recently?

A. Yes, sir.

Q. What one did you call?

A. There was a strike ordered over in eastern Ohio not very long ago.

Q. You remember the time you called it, don't you?

A. Oh, it was just a few days ago.

Q. Well, what day?

A. I am not prepared to say.

Q. Take time and refresh your recollection and answer.

A. I could not do it.

Q. Do you mean you won't?

A. No, sir; I won't answer a question under oath that I am not positive about.

Q. To the best of your recollection what date did you call that strike.

A. I do not know.

Q. Have you no recollection at all?

A. No; not of that particular date.

685 Q. To the best of your recollection about what date did you call that strike?

A. I think it was week before last.

Q. Was that when you called it or when you said you were going to call it?

A. No; that was when it was called or decided to be called.

Q. Which is it—called or determined to be called.

A. Determined to be called.

Q. Then, when was it called in point of fact?

A. Practically at the same time or as near to it as preparation could be made.

Q. Is it not a fact that that strike was called by you within the last two or three days?

A. No, sir.

Q. Do you know whether that strike is being obeyed?

A. I do not.

Q. Have you any information on that subject?

A. No, sir.

Q. Mr. Lewis, I have in my hand a copy of the Fairmont Times, a paper printed in Fairmont, West Virginia, Tuesday, March 21, 1911, and on the front page I find an article purporting to be a dispatch from Wheeling, W. Va. The article is headed "More than Nine Thousand Miners Obey Lewis's Strike Order. Wheeling, W. Va., March 20. More than nine thousand men went on strike in the eastern Ohio and Pittsburg district coal fields today in response

to an order issued by President Lewis of the United Mine Workers of America. All but eight hundred of the ten thousand ordered out obeyed the order, though meetings held at various points in the field yesterday resulted in a vote of more than three to one again- striking. National officers threaten to revoke charter of the locals refusing to obey." Please look at that article. (The paper is here handed witness.) Is that the first information you have had about whether that strike has been obeyed or disobeyed?

A. The information contained in that article is not true, in the beginning.

Q. Neither in whole nor in part?

A. Part of it may be.

Q. What is the part that is true?

A. I do not know: I did not carry that all in my mind.

Q. What is the part that is not true?

A. The part that is not true is where it says that Lewis ordered the strike.

The Court:

Q. Just explain. How was the strike called.

A. The strike was called by the orders of international convention of the United Mine Workers, last January, by its authority and by its instruction.

Q. You mean to say that you were simply carrying out the instructions of your miners' convention?

A. Yes, sir.

686 Q. Regardless of your own views as to the advisability of it?

A. Yes, sir.

Mr. Gilchrist:

Q. What is the contention over that strike, Mr. Lewis?

Witness: I would like to ask the Court if it is necessary to go into details.

The Court: I think the question is proper for the reason that this investigation in a measure involves the principles, procedure and practices of your organization, under the charge that they are illegal. I think under the circumstances you ought to answer the question in detail, so far, at least, as they may throw light upon the practices and principles of your organization.

A. When we adjourned the conference at Cincinnati without reaching any agreement between the operators and the miners, the central competitive joint movement was dissolved; it went out of existence this year on March 29th. "On a roll call of the representatives of the operators and miners of Western Pennsylvania, Ohio and Indiana the convention by a unanimous vote adjourned sine die." That action carried with it the dissolution of the central competitive field joint movement of operators and miners. After the joint conference had adjourned the miners met in separate convention and outlined a policy to govern them in negotiating wage contracts throughout the country. On the 5th and 6th days of April the operators of Ohio met the representatives of the Ohio

United Mine Workers at Columbus and signed agreement of which the following is a copy:

Columbus, Ohio, April 5th, 1910.

Agreement for Hocking District.

It is hereby agreed by and between the United Mine Workers of America and the Coal Operators of Hocking District of Ohio:

That for a period of two (2) years, viz., from April 1st, 1910, until April 1st, 1912, the price of mining be increased five cents per ton, viz., from ninety to ninety-five cents, pick mining, and four cents per ton on machine mined coal; 1¼ (inch and quarter) screened lump coal.

The inside day wage scale shall be increased 5.55% with the conditions of the Columbus day wage scale of 1898.

687 That all narrow and dead work, room turning and outside day labor shall be paid a proportionate advance with the pick mining rate.

That internal difference both as to prices and conditions shall be referred for adjustment to a joint convention of Hocking Miners and Operators to be held at the earliest date possible.

Signed this fifth day of April, 1910, at Columbus, O.

On behalf of Hocking Operators:

W. K. FIELD, *President.*
F. S. BROOKS, *Secretary.*

On behalf of U. M. W. A., District 6:

D. H. SULLIVAN, *President.*
JOHN MOORE, *Vice-President.*
G. W. SAVAGE, *Secretary.*
T. L. LEWIS, *President.*

A. (continued.) This copy was signed by myself and the next day the operators of the Tuscarawas and Sherrodsville districts met the representatives of the Ohio miners. They signed an agreement precisely the same as this one, changing the names of the districts. The mines resumed operation over there, as they resumed practically all over Ohio. The operators and the miners' representatives in the Tuscarawas district met in conference to adjust their internal matters that we have described here several times. The operators proposed a reduction of six and a half cents per ton in the screened coal mining price; nothing was said about reducing the pick mining rate. In addition to that they proposed other propositions that carried with them a reduction in the wages of the miners. The miners refused to accept the reduction and among their claims, was, as I understand (I was not present at this meeting, but this matter was reported to me) that a contract had been signed to pay an advance of four cents a ton in the mach-ne mining rate and that they would not accept a reduction of six and a half cents in the same machine mining rate, which would be equivalent to a reduction of

two and a half cents per ton less than the mining rates they had received the previous year. In other words, in our opinion the operators repudiated their own contract and the mines sus-
688 pended work on the 11th of June, in the Tuscarawas district, and they have continued idle until the present time. The main issue involved is the machine mining rate. Efforts have been made to have those operators comply with the terms of the contract they signed last April. Conferences were held and the matter was taken up to the Ohio district convention, in January, and explained, and the position of the Tuscarawas miners received the endorsement of the miners of Ohio. The matter was then taken up to the international convention, and after explanations were made, again the position of the Tuscarawas miners was endorsed. Their position had also been endorsed last August in a special convention of the United Mine Workers of the entire country. The matter was then taken up by the representatives of the Ohio miners' organization before the international board after the adjournment of our international convention, in the early part of February. The matter was gone over and in order to try to get a settlement two of the international board members and myself were instructed by that board, in conformity with the action of the convention to take the matter up with the Ohio officials and endeavor to get a settlement, and in the event of failure we were authorized and instructed to order on strike the employes of the same companies operating mines in other parts of the district, for the reason that those companies after having signed an agreement repudiated the contract for a part of their mines. We consider that they have repudiated their contract with the United Mine Workers' organization. The mines were permitted to continue working with the hope that a settlement would be reached. We arranged a conference with the operators of the Tuscarawas district who were the same men that owned the mines that have recently become involved in the strike. We failed to reach an agreement there. Then we asked for another conference, which was held at Columbus, Ohio, and there was some prospect, at least, it seemed to me, that we might be able to settle that controversy without extending that strike, but that hope vanished on account of subsequent developments; and in order that the miners themselves again might understand the situation, a convention was called of the mines that would become directly involved. Three of them are in western Pennsylvania. That convention was called and the representatives of the miners were throughly apprised of the situation; and after that convention another effort was made with the operators to bring about a settlement, and failing to induce them to comply with the terms of the contract that they had already
689 signed last April and repudiated subsequently, a circular was issued to their employes at the other mines asking them to suspend work. That is the history of it.

The Court: Mr. Lewis, I will instruct the stenographer and clerk to see to it that none of your statements made here are given out to the press and made public, if you desire me to do so.

Witness: I will appreciate that very much.

The Court: We haven't any newspaper reporters here and the matter will be kept within the limits of this record.

Witness: I want to say frankly that I do not understand the methods of procedure in court and especially in regard to the taking of testimony of this character, and that is the reason I asked the question of the court, in the first place. I haven't any desire to withhold any information from you; any information I have will be freely given. I want to say now to the attorney conducting the examination, that a moment ago that I stated positively (and probably I sometimes get emphatic if I think there is doubt in the mind of the man to whom I am giving the information) that I could not swear at this moment the very day we decided to have this circular drawn up, and I meant this: It was drawn up one day, printed another day, and mailed another day; so it was not all done in one day. It was simply a part of the arrangement that was being carried through all the day. I would like to be able to remember the date on that circular, but I cannot do it. Have you got a copy of it, Mr. Savage?

Mr. Savage: Yes.

(Hands circular to the witness.)

Witness (continuing): March 13th is the date of the circular issued.

Mr. Gilchrist: Have you any objection to me seeing that?

Witness: Not if you hand it back to Mr. Savage.

Mr. Gilchrist: I will hand it back of course.

690 Q. Mr. Lewis, in the official notice for the call for this strike, a copy of which has been handed to you by Mr. Savage, and which you permit me to read, I find this language: "Failing to induce the operators to comply with the demands of the Cincinnati convention, we are authorized and instructed to request the employes of those operators in other mines to suspend work. Acting by authority and instruction of the international and district executive boards and the instruction of the international and district conventions, you are advised and instructed to suspend work on Monday, March 20th, 1911, and remain idle until such time as you are further advised and instructed by your international and district officers." That notice is signed by the following: "T. L. Lewis, President; A. R. Watkins, Thomas Cairns, International Board Members; D. H. Sullivan, President; John Moore, Vice-president; G. W. Savage, Secretary District No. 6." The T. L. Lewis is yourself?

A. Yes, sir.

Q. The A. R. Watkins mentioned is the Mr. Watkins who is here?

A. I think so.

Q. The D. H. Sullivan, President, is the Mr. Sullivan who sits here?

A. I think so.

Q. And the G. W. Savage, Secretary, is the Mr. Savage who is here?

A. I think so.

Q. Now, Mr. Lewis, you were one of the three men to execute this order and you were depending upon what the op-rators concluded to do. Is that correct?

A. No; we were given instructions that under certain developments and certain conditions—if they were not done—then we were to act.

Q. But if those operators in the Tuscarawas field had come to your terms, you would not have called the strike?

A. Not to our terms; if they had complied with the terms of their own contract that they had agreed to and signed, there would not have been any suspension of work.

Q. In other words, your organization came to the conclusion that the operators in the Tuscarawas field hadn't lived up to the contract, as you understood it?

A. They hadn't lived up to the contract that they had signed.

Q. As you understood it?

A. No; not as we understood it. The document was there. They had agreed to pay an advance in wages and then refused to continue to pay it, and they had agreed to pay it for a period of two years.

Q. That is your contention?

A. That is the document itself; I am not contending that; I am merely stating that that is the document to which they attached their signatures.

691 Q. Passing that point for a moment and assuming that you and your organization are correct in claiming that those operators have dealt with you in bad faith, this strike then, as I understand it, is called by your organization so as to affect the same operators, but who have different employes and who are doing business in another and entirely different section of the country. Is that true?

A. That is true.

Q. Then that action is in a sense punitive, is it not?

A. I do not understand what you mean by that.

Q. By that action you mean to punish those operators, do you not?

A. No; I do not regard it in that sense unless you regard it as punishing a man for violating a law. If we accept it in that manner, why, then, it is punishment; it is rather the means of punishment for violating a law that they mutually and without any coercion helped to create.

Q. All punishment is supposed to be corrective in its nature, is — not?

A. It is not always.

Q. But it is supposed to be, is it not?

A. That may be; I am not sure about that.

Q. In this instance do you mean the calling out of these men at these mines in other sections of the country is intended as a punishment or coercive measure applied to those operators who broke their contracts with you, or not?

A. No; we consider that those men are working for the same companies and those same companies signed their agreements for all their mines at the same time. When they repudiated their contract for a part of their mines they practically repudiated their contract for all of their mines; but the men have been permitted to

work during all these months at their other mines with the hope that they would be able to settle their business without asking their other men to join their fellow miners in a joint suspension.

Q. Have you ever heard this sort of an expression used among the men who are prominent in the control of your organization: Substantially this: that the concern of one is the concern of all?

A. That sentence used to be a part of the doctrine of the Knights of Labor and I believe used to be written on many of the letter heads. That not only applies to a labor organization but to governments as well. That applies to the United States governments—the concern of one in this country, as a general principle, is the concern of the nation. If you will permit me we had that amply verified recently by the Secretary of State making inquiry as to why two men were arrested, who were Americans, and claiming to have been arrested on American soil. That is a dispute, now, to
692 be settled, and it is the concern of the nation whether those two men are going to be deprived of their liberty or not.

Q. Getting down to the application of that proposition by your organization, is this strike now called not an application of that very principle?

A. I think it is.

Q. This is a sympathetic strike, is it?

A. No, sir; not in my opinion.

Q. Tell me why it is not a sympathetic strike?

A. It is a strike to require the operators to respect a contract to which they were a party.

Q. It is sympathetic so far as the employes who go out under that call for a strike is concerned, is it not?

A. I think not.

Q. Have they any disagreement with the operators they are working for?

A. No; I think not

Q. Then they go out in sympathy, do they not?

A. I think not.

Q. Do they go out under order, then?

A. Yes, sir.

Q. And they have been ordered out of work, then, in order that your organization may coerce certain operators into doing what you claim they ought to do?

A. No, sir.

Q. If not, why not?

A. They have been ordered out for the reason that those operators are parties to an agreement with the United Mine Workers' organization, and when those same operators repudiated a contract to which they were parties, at a part of their mines, they practically nullified the entire contract with the organization. The opposite of that would be that if any of our members were to suspend work at any of the mines of the companies while they were in operation, the operators would not look to the men themselves to return to work but they would look to the organization to see that they did return to work; and we are looking to those operators to comply with

the contract that they made for all their mines; not any part of them, but to comply with their contract for all of their mines where they made it.

Q. Then I understand that the operators on the one hand furnish employment for your members and on the other hand you furnish employes for the operators?

A. No, sir.

Q. If not, why not?

A. The operators furnish employment to members of the United Mine Workers or to any one else who seeks employment at their mine, and we do not furnish men for them.

Q. But you do take from the operator his employes, provided that operator in any other place fails to live up to contracts which may have been made by him, with you, with respect to coal operations in some other section of the country?

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A. No; in this particular instance under discussion those men have been requested to suspend work until further advised.

Q. Is a formal request equivalent to an order?

A. Practically; yes, sir.

Q. In order to enforce obedience of that order on the part of men who are working in the regoin to be affected by this new strike would you under any circumstances threaten to revoke their charters if they fail to obey the order?

A. I think not.

Q. Aside from your reply that you think not, would you or would you not, as a matter of fact, revoke the charter where a local organization of your body failed to obey?

A. I am not in a position to answer that question.

Q. Why are you not in a position to answer it?

A. For the reason that I am only one of twenty-seven members of the national executive board.

Q. Have you never known that method to be resorted to in your organization?

A. No; the only time that I know of that charters have been revoked was when miners refused to comply with the terms of a contract when they were directed to do so.

Q. So you use that method under certain circumstances but you think that you would not use that method under the present circumstances with respect to the strike which has just now been called?

A. That is my position.

Q. Whether or not that method would be adopted would depend, as I understand you, upon the action of the international board?

—. No; I did not say that.

Q. What board did you say?

A. I did not refer to any board.

Q. Well, what body, then?

A. None.

Q. What collection of men?

A. None.

Q. You said that you could not answer my question on that point, when first asked, because you were simply one of twenty-

six or twenty-seven members. I will ask you what you meant by that?

A. I have no right to anticipate what this board may do.

Q. Well, then it is in the hands of a board, is it?

A. That board can revoke charters.

Q. That is what I thought! and then it is a matter that that board may take up and may act upon?

A. I do not know that they will. You have asked the question that they may, and if they may, that is equivalent that they will.

694 The Court: I think the question as asked is equivalent to asking if they have the power.

Witness (continuing): Oh, yes; I have stated that they have the power.

Mr. Gilchrist:

Q. Provided a majority of that board is it the international board?

A. Yes, sir.

Q. Provided the international board finds it expedient to compel the members of the United Mine Workers employed by these operators in this strike district, affected by this new strike order, would it be likely that revoking the charters of the particular locals would be effective to compel the employes at these mines affected, to obey the order and strike?

A. That I could not answer because I do not know what the temperament of the men themselves might be.

Q. As a general proposition when that authority is exercised and that matter of revocation is really indulged in on the part of your organization, what is the effect as to the men?

A. It has had different effects. Sometimes the men have obeyed the strikes and at other times they have refused. That depends a great deal on the character of the men themselves, and their intemper-ment; and in addition to that it depends upon their knowledge of the organization and the necessity on their part of obeying any laws — either of that organization or the laws of the country.

Q. You have said in your examination that you have different classes and conditions of men, of different temper-ments and of divers nationalities, and you have an incongruous crowd, in — way, and that it is difficult to compel them to live up to the rules of the organization?

A. No, sir; I do not think I said that.

Q. You do not?

A. I stated, if my memory serves me right, that it is more difficult to control some men than others. For instance, if we were organizing a body of men in a non-union mining district, giving to them all the rights of membership, and that being recognized by the mine owner, and even the negotiating of a wage contract to govern their employment, we find it more difficult in holding those men in line with the laws of our organization and the terms of the contract, than we do where men have been organizaed for a

period of time. I might add, too, that that does not apply alone to any particular nationality of men. I imagine that there are some men who come from southern Europe who are of a more fiery temperament than those from other parts of Europe, and are more
695 difficult to handle; but as they become educated you find even these people can be handled with very little difficulty. We find among our Americans—we call them Americans—native born—take for instance some sections of West Virginia there are men who have lived in mountain communities all their lives, and they open up mines there and those men become miners and join the organization. Because of their natural environment during their whole lives they resent restraint being thrown around them to keep them down to certain specified laws and the terms of contracts negotiated and agreed upon by the organization. That has come under my personal observation.

Q. When you negotiate a wage contract in joint convention, do I understand you that the wage scale and conditions that go with it are those which govern all mines which may be run union in such portions of the United States as, under the theories of your organization have the same working conditions?

A. No; in our joint conventions we endeavor to negotiate the terms of the contract covering a specified territory. It does not include the entire country.

Q. I do not mean to imply that you include the entire country but simply such portion of it as you consider ought to be subject to the same rate of wages under the same mining conditions.

A. Well, that may not apply, for the reason that we may have in the state of Iowa the same price and mining rate that we have some place in Ohio or western Pennsylvania, and yet a contract in that state is negotiated between the miners and operators of that state, and not in the central competitive joint convention or by the national organization. Pardon me and I will explain that further and help to enlighten you on that subject. The international convention of miners, when they formulate a proposition either to renew the terms of a contract or to ask for an advance in wages so far as the general advance is concerned would affect and has affected what are known as the basing districts; then they work from those to all the other mining districts in the country.

Q. In the central competitive states you have a joint convention and you agree upon a scale of wages and the other conditions which go with it. Those conditions and that scale are the things that must enter into the contract between your organization and the operator, are they not?

A. Conditions become a part of the agreement in the various districts provided that the operators and miners in those districts can agree to them.

696 Q. Assuming that they have agreed, then, when a union mine is signed up—by which term I have understood is meant the arrangement between the operator and the union whereby the mine is to be operated under the rules and regulations of the United Mine Workers—is it a fact that the terms of that agreement

between the operators, in convention and your organization, are applied to contracts not only between the members of the joint convention who are operators, but between operators who are not members of the joint conference but who operate coal mines within the district represented by the operators who join with the United Mine Workers in holding the joint convention?

A. I am not sure that I understand your question.

(The question was read by the stenographer.)

A. Any contract agreed upon by the operators and miners represented in the convention, applies to mines not represented, only upon the consent of the operators who own those mines.

Q. Do you in any instance consent that an operator not a member of the joint conference but having his mine within the territory represented by that conference, may operate his mine on terms different from what you have agreed as to those mines that are represented in the conference?

A. If it is the same vein and the same conditions, that operator can operate his mines, if he desires, without any interference from us, but the men who are working for him as members of our organization reserve the right to quit or to require him to comply with the same terms that other operators have to comply with provided he wants their services.

Q. I understand then from that, that as a matter of practice the operator must consent to these terms agreed upon or else he don't operate under the United Mine Workers?

A. If the mine is the same—the same vein and the same conditions—that is correct.

Q. And yet under such an instance that operator would not have had a hand in arriving at the terms?

A. Oh, yes; he would.

Q. Except that he consented to them afterwards?

A. Well, there would be a committee, or there would be representatives of the organization wait upon him to get his consent to comply with the terms.

Q. Yes; I understand.

A. And for that reason he would have an opportunity; and in addition to that he had the opportunity of attending the joint convention if he desired, and it was his fault if he did not take
697 part in the proceedings, because there is not any operator who is excluded from those joint conventions.

Q. Then, so far as the fixing of the scale is concerned, in joint convention, if the operator don't embrace his opportunity and join in holding that convention that you join, *and* he has only himself to blame. Is that true?

A. I think he is placed in precisely the same position as I would be if I failed to go to the polls on election day and cast my ballot. I have got to abide by the results of that election.

Q. Well, the analogy is not complete, I rather imagine, because one is governmental and the other is not.

A. The other is governmental so far as our organization is concerned.

Q. Assuming, of course, then, that your organization has the right by its rules and regulations to compel every man who wants to operate a coal mine, to operate it either under your jurisdiction and control or not at all. Is that true?

A. No; the other feature is that we haven't got the same power as the government to enforce our own laws.

Q. And if you had the power you would enforce them?

A. But we haven't got it and we are not discussing something we haven't got.

Q. So far as you have that power you exert it to enforce them?

A. But we haven't got it at all.

Q. So far as you have any power you exert your power to enforce them?

A. We exert our influence before the members of our organization, respecting the laws of the organization.

Q. Mr. Lewis, on page 61 of "Plaintiff's Documentary Exhibit No. 4," which purports to be the "Proceedings of the Eighteenth Annual Convention of the United Mine Workers held in the city of Indianapolis, Indiana, January 15-22, inclusive, 1907," I find a statement made by you in which you say: "To clear the minds of all the mine workers of the country and to strangle many falsehoods that are being circulated in regard to my position on the policy of the United Mine Workers of America, I desire to make clear at this time that I favor, first, one organization of the mine workers of the American continent; second, I favor the establishment of a national eight-hour day for every person employed in and around the mines; third, I favor a complete recognition of our right to organize in every mining district in the country; fourth, I recognize that there are certain local markets that naturally belong to certain coal producing districts; fifth, I favor giving every operator an equal opportunity to secure his share of the general mar-
698 kets." Do those statements made by you to that convention embody your present purposes and policy? Yes, sir; and in connection with the statement appears the following: "I am opposed to placing an embargo on the development of the resources of any coal producing state, in the interests of other states, and this cannot be done if every operator is given an equal opportunity of entering the general market." And I believe in that yet.

Q. Now, in extending the power of your organization you have organizers who are sent out into the various districts where you are not in control?

A. Yes, sir; we have organizers sometimes appointed for that work, and we have organizers in the best organized districts, in order to explain to the men their duty as members of the organization.

Q. Relatively speaking the number of men that you have employed in organizing is greater in districts where you are not represented than in districts where you are represented, is it not?

A. Oh, no; no, sir.

Q. Of the amount of money that you have spent in strikes, what percentage of that has arisen from attempts to organize?

A. I am not in a position to give you a definite answer, but I

might say this; that there has been more money spent in strikes to prevent mine owners from wiping the organization out of existence than there has been in extending the organization—three times over.

Q. When a mine owner fails to do what the union wants him to do, and undertakes to run a scab mine, he is assumed to be trying to exterminate the union, is he?

A. Not necessarily.

Q. Leaving off the qualifying words, can't you come closer to answering my question?

A. I think not.

Q. That is as near as you care to answer it?

A. Yes, sir; for the reason, to be perfectly plain, that it is not true, but I do not want to make it that plain.

Q. Then you have a very pronounced opinion on it?

A. Certainly.

Q. That is what I wanted to get. Now, what was the Alabama strike about, Mr. Lewis?

A. The Alabama strike was against a reduction in wages, first, but it developed into a contest whether or not the organization would be exterminated from the state. Every strike, or nearly every strike of any proportions that is mentioned, for which relief was made as shown by that statement read the other day, has been a contest involving wages first, and as the primary cause, and not the recognition of the union.

6995 Q. But the strike nearly always results in a contest on your part as an official of the union, based upon the idea that the operator is trying to exterminate the union?

A. Not at all.

Q. Is it not?

A. No, sir.

Q. The Irwin field was organized, it being non-union, wasn't it?

A. It was non-union but it was not organized.

Q. I mean the men were organized?

A. No, sir.

Q. By your organizers?

A. No, sir.

Q. Are the men in the Irwin field not now organized?

A. No, sir.

Q. Have you not had national organizers in that field?

A. No, sir.

Q. Do you call the Irwin field the same as the Greensburg?

A. Yes, sir.

Q. Is there a strike on there now?

A. Some people say there is and some people say there isn't; it depends on who you see. If you see certain people in the Pittsburg district they would say there was; if you see operators of the Greensburg field, they would say there isn't any strike there.

Q. Mr. Lewis, you are broad gauge in thought. Don't you really think that you are evading that series of inquiries?

A. Not at all, and I will tell you frankly why I am not going into details; I do not care to express opinions here on some things

that will possibly be used against the men who are involved in that struggle.

Q. Then you are conscious that you have been evading?

A. No; only to that extent. I will say this, your Honor: Every question that has been put to me I have answered frankly, honestly and truthfully, but I am not supposed to make explanations unless I desire to, or the court requires me to.

Q. What was the anthracite strike for, Mr. Lewis?

A. Wages.

Q. Did it involve a recognition of the union?

A. No, sir; I desire to say in that connection, for your information, that if the miners themselves who are members of the United Mine Workers, and the representatives of the United Mine Workers' organization in the anthracite field, had directly with the operators negotiated the terms of a settlement, that would have carried with it a recognition of the organization. The question of the recognition of the organization seems to mislead many people in the country who do not understand what that term means. A great many people get the impression that we go out, for instance, into a non-union mining district—and our interpretation of a non-union mining district is a district where there are no members of the United Mine Workers or any labor union—that we go out into such a district and organize the men. We never ask a mine owner to recognize as a union the men in the mine; we never go to a mine foreman or superintendent, through the representatives of the miners and ask them and the operator to recognize us an organized body of men. As I stated here the other day, the only time the recognizing of the union would probably come up, is when the mine committee or some one representing the men in the mine and employed in that mine should go to the mine boss or mine superintendent to investigate the possible cause of the discharge of an employee. The mine boss would say, "Why are you investigating the case? Why don't he come himself?" "Well, he has been to see you and can get no satisfaction." What authority have you to come and see me?" the mine boss will say. "We are a committee and he is a member of our union and we feel that we have a common interest in each other. If this man has been unjustly discharged we want to know it and we will have nothing more to say about it. If he has been unjustly discharged then we would like to know that and we would like to talk with you and see if we cannot get him reinstated." The mine boss instantly states to these men—if he is not inclined to permit the organization to be there—"You people go and take your tools out; we do not allow any organization around here;" and if any others come along he does the same thing. If there is enough men in that mine organized and they feel that they can suspend work and get all of the other men who are not members of the union to join with them and endeavor to get this first man's trouble adjusted, they then suspend work. In other words they strike. But the other phase of it is this: If a mine foreman states to these men who are acting as a committee, "Well, what is the trouble?" they proceed to recite what this man who has been discharged has told them. The mine foreman will say, "Well, that it

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not correct; bring that man here;" and they bring the discharged man there and they talk the matter over. There is nothing said about an organization but they talk the matter over and they find that the cause of the discharge of this man has been a misrepresentation to the mine foreman. Some one must have told him about what this man did or he saw it himself. They go over the entire matter and they find that the man was justly discharged—that he had committed some offense that justified the mine foreman in discharging him instantly. That ends it. But *if* they find out that he has been unjustly discharged, the mine foreman may become convinced of that fact and say, "Well the thing has not been
701 represented to me correctly; go back to your work." Now, in that instance, there is nothing said about the union, and yet the union is recognized by that transaction.

Q. And if the man should not be convinced then there would be a strike?

A. If the man was not convinced, as I stated a moment ago, and these men who represented the organized body there felt that they could induce all the other men and convince them that the proper thing to do was to suspend work, there would be a strike, but the question of the recognition of the union has not been a factor in that at all. It is the question of dealing with the proposition of a discharged employe.

Q. But it arises out of the acts of your organization in organizing the men, in the first instance?

A. It develops from that, although this man may not have been a member of that organization.

Q. Now, when that mine is shut down, if the operator employs other men, those men become scabs, do they?

A. Not necessarily.

Q. Well, can't you answer without qualification?

A. They are non-union men taking the place, probably, of other non-union men.

Q. So far as taking the place of a union man is concerned, they would be scabs, would they?

A. Well, I do not know whether they would or not; I can only speak for myself; I never called these men scabs for the reason that some of them are deceived into taking these positions; and yet there are others who are professional strike breakers. If I knew that one was a professional strike breaker I would say that he was a scab.

Q. But if a man was not a professional strike breaker and if he did not know at the time he entered the employment that he was taking the place of a union man, but if he was afterwards advised that he had the place of a union man but still persisted in working, would you call him a scab?

A. No, sir.

Q. What would you call him?

A. I would call him a mine worker; I would call him a non-union man if he was one.

Q. Would you call him fair or unfair?

A. No, I would not, because I am not in the habit of using those terms.

Q. Laying aside your own personal feelings, in union parlance would that man be called a scab?

A. I am not able to say; I haven't any right to speak for the few men in the labor movement who might use that term, when I know that the great majority of them don't use it.

702 Q. Some of them would call him a scab?

A. I do not know positively. I try to be as frank as I can in these answers and I want to add to that that I am not going to answer a question that would imply and include all the members of the labor union when I know that that question answered in that manner would be incorrect, because the great mass of the members of the labor unions in this country are not in the habit of using those terms. It is the erratic and sometimes the irresponsible in our union —whom it is even very difficult for us to control—who make use of those terms.

Q. So your men are difficult to control?

A. A few only, and a very small minority compared with the mass of the membership, just the same as if we were referring to our government affairs in our country. Law does not prevent crime; it is the act that will punish criminals.

Q. In the report of the Anthracite Strike Commission, on page 61, I find this language: "From the correspondence which passed between the coal operators and the officers of the United Mine Workers prior to the strike and which has been cited under the heading, 'History and Causes of the Strike,' from voluminous testimony presented during the hearings before the commission and from the arguments of counsel and others with which the public hearings closed, the commission is led to the conviction that the question of the recognition of the union and of dealing with the mine workers through their union was considered by both operators and miners to be one of the most important involved in the controversy which culminated in the strike." That conclusion of the commission is at variance with your understanding, as you answered me a little while ago, is it not?

A. No; because you were not dealing with the anthracite situation when you asked me the question.

Q. Is that the only explanation you have to give?

A. The only other explanation I can give is that in the anthracite field the question of wages was the direct cause of the strike, along with the persecution, on the part of the mine owners, of their employes who joined the United Mine Workers and became active members to organize the anthracite men. Those are the facts. And that is why, in my opinion, this clause in the commission's report reads as it does. They have not brought out the feature and the particular conditions in the anthracite region—I mean they have not brought out the facts that those men were discharged, victimized, and driven from place to place and out of the anthracite region because of their membership in the organization. A condition

703 such as that would not deal with all those minute details of the question; they have drawn their conclusions from that fact; and yet it is not the declaration of the miners that we must be recognized that led up to the general contest that took place, but

in the submitting of the testimony before that commission all of those details were brought out and the wage feature was made subordinate to the other for the reason that the mine owners of the anthracite region would have granted 25% advance without recognition of the union sooner than give no advance and a recognition to the union. That is true not only of the mine owners in the anthracite but that is true of mine owners in every mining district in the country.

Q. Now, Mr. Lewis, taking your statement on that subject as to what the operator would do with regard to wages rather than recognize the union, does it occur to you that it is strange why—with the objects that you have—a sensible man should prefer to give such an enormous increase in wages, as you have suggested, rather than do the simple act of recognizing a union run in the best method and with non-interference with the employers' business?

A. That is not strange at all to me, and it is not strange to me for this reason: That the anthracite operators who absolutely control the production of every pound of coal that is mined over there, and fix the price at tidewater on every pound of anthracite coal that is mined, realize that as long as their employes can be kept separated that they, representing the large interests that they do, can deal individually with their employes and that they can require them to work for wages that should not be permitted to be paid in a civilized country. You may be surprised when I tell you that there are men in the anthracite today who are working for as low as $1.37 and $1.40 a day for nine hours. You know that no man can keep a family on that wage in a thickly populated community where there isn't a possible chance of even raising a peck of potatoes in a year. And that is the reason why they are unwilling for their employes to be organized and to treat with them as an organized body of men. When you ask them to come into an open conference and discuss their ability to pay our men better wages and still earn a reasonable profit on their investments, they decline to do it. There isn't anybody in reality knows what the anthracite companies are earning on their actual investments in those properties, because the railroad earnings and the coal property earnings are so mixed up. That is the real situation. And even now here is a peculiar situation: While the anthracite representatives of the operators refuse to technically recognize the United Mine
704 Workers' organization, and refuse to deal with the officers of our union as officers of the United Mine Workers, yet they take the commission's award as the basis for their contention that the three presidents of the three districts of the anthracite miners' organizations, must continue to serve as a conciliation board to settle disputes that come up. There is the situation. In my experience over there I met all of those gentlemen and found them to be very clever and very intelligent men, and yet they looked upon the executive officers of the United Mine Workers as the authority to bring about a conference between them and the representatives of the anthracite men, notwithstanding they said they would not deal with bituminous men—to bring these persons together for the purpose

of agreeing upon the terms of wages that should continue in the anthracite field for a fixed period. The United Mine Workers' organization is now required to discipline the men in the anthracite and yet they will not recognize us as an organized body of men. For instance, the Pennsylvania company's collieries suspended work. I think it was a year ago this spring. Those men to the number of several thousand said they were not members of the United Mine Workers, which was true. They said they were going to demand their rights. And what was the outcome? That company appealed to the officials of the United Mine Workers and they appealed to me to send Italian, Hungarian and Polish speaking international organizers into that community to get those men to return to work, and it was done; and yet they will not recognize us technically as an organized body. Sooner or later they will recognize the miners of that country, because if not, all of the men will drop out of the United Mine Workers. They will naturally say, "Why, what is the use being in an organization if the mine owners are going to continue to refuse to recognize us. We will organize another union and we will fight this thing over again." Now, that is what is coming just as sure as night follows the day, and then the United Mine Workers will be charged, probably, with involving all those men in a strike with all the attendant hardships that necessarily follow in connection with strikes of that kind.

Q. So to avoid that result all men should go into the organization?

A. I think so; I think it is a good business proposition.

Q. On page 36 of the report of the Anthracite Coal Strike Commission I find with reference to engineers, firemen and pumpmen this statement: "These demands not having been granted June 2nd, the majority of the engineers, firemen and pumpmen stop-
705 ped work." I think you said in answer to a question of mine yesterday that in the anthracite there might have been some few instances of the mines being left without pumpers or provision to take care of the water.

A. I think not; no. Did we discuss anthracite yesterday at all?

Mr. Gilchrist: I think so.

Witness: Before I will admit it I will have to have that answer read.

Mr. Hogg: I do not remember it either.

Witness: Pardon me; we discussed firemen, pumpers and engineers as a general proposition, in the bituminous fields.

The Court: I think Mr. Lewis is right about that. I think it was the condition of the firemen and engineers generally in the field, but I do not think it was mentioned specifically as to the anthracite region. At least that is my recollection of it.

Mr. Gilchrist:

Q. I am under the impression that I asked you whether that subject had not been considered by the anthracite commission and whether the commission had not condemned the shutting down of mines so as to not allow the water to be taken care of, and you said you believed that the commission had condemned that. If you do not recall that the record will show.

A. I will not say positively that I did, and I have no recollection of it. I would like to have that answer read if I said it.

The Court:

Q. How is the fact? Just answer it now, with regard to the anthracite situation?

A. As I remember, your Honor, when those firemen and pumpers stopped in the anthracite, that feature of the strike was critised by the commission but the fact was not brought out that the United Mine Workers had ordered these men to stop. Of course I was not on the ground during that strike and I am not able to answer as to the details except as they were brought to my attention.

Q. You were not president then?

A. No, sir; not at all; I was not in the anthracite field during the entire controversy. In the minutes of the executive council meeting of the American Federation of Labor as printed in the "American Federationist" of March 11, 1911, I find this matter printed. The following telegram was received:

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COLUMBUS, OHIO, January 20, 1911.

Mr. Samuel Gompers:

The following resolution was adopted by the twenty-second convention of the United Mine Workers of America:

COLUMBUS, OHIO, January 19, 1911.

Whereas, the U. M. W. of A. in convention assembled one year ago recommended to W. F. M. certain steps to bring about closer relation between the men employed in the Coal and Metaliferous Mining Industry, to-wit, procuring a charter from the A. F. of L. that should concede to the metal miners the same complete jurisdiction of that industry which has been and is now enjoyed by the U. M. W. of A., and whereas the W. F. M. has complied with these suggestions following the course of the application for a charter from the E. C. of the A. F. of L. to the convention of that body and back again to the council. Thwarted at every turn by the jurisdiction claims of craft organizations; and, whereas, we believe that the best interests of not only of the men engaged in the mining industry, but of labor in general would be advanced by the addition of the W. F. of M. to the American labor movements as presented by the A. F. of L.; and whereas every objection raised against the issuance of a charter on jurisdictional lines applies with equal force to the U. M. W. of A. and is a covert menace to that complete control of the industry which we believe essential to our organization and the protection of the workers in general; therefore, be it

Resolved, By the U. M. W. of A., in convention assembled, that we protest against any further delay in the issuance of said charter or imposing any restrictions upon the jurisdiction now enjoyed by the W. F. of M. as being inimical to our interests as well as theirs.

We further pledge to the W. F. of M. our hearty support and announce to all labor organizations that we are determined to form a closer compact with the Western Federation of Miners.

We trust that it may be within the A. F. of L., but if the Western Federation of Miners is denied a charter or granted one with unsatisfactory restrictions, be it further

707 Resolved, That the U. M. W. of A., in convention assembled, join with the Western Federation of Miners in a movement that will insure that unity and co-operation in action, which has been sought in the A. F. of L.

THOS. HUGHES.
GEO. HUGHES.
PATRICK FINNEY.
JOHN R. LAWSON.
WM. HOUSTON.
THOS. J. RICHARDS.
BEN WILLIAMS.
J. D. PERKINS.
JAMES SMITH.
EDWIN PERRY,
Secretary-Treasurer."

It was moved and adopted that President Gompers be authorized to communicate with Secretary-Treasurer Perry, of the United Mine Workers of America, acknowledging receipt of their telegram communicating the decision of the E. C. on the application of the Western Federation of Miners, and extending greetings to the delegates in the miners' convention."

"The following telegram was ordered sent to the convention of the United Mine Workers of America:

"January 20, 1911.

Mr. Edwin Perry, Secretary, United Mine Workers of America, care of Miners' Convention, Columbus, Ohio:

Your telegram delivered this afternoon. We take pleasure in advising convention of mine workers that at this morning's session of the E. C. it was decided 'that a charter be issued to the Western Federation of Miners on the basis of the jurisdiction of the United Mine Workers of America,' the only reservation being in respect to a few local unions of machinists in mining camps which have been in existence for many years, and which have worked in harmony with the locals of the Western Federation of Miners. The reservation in respect to these few machinists' locals can in no way affect the control of the mining industry by the Western Federation of

708 Miners, as President O'Connell of the machinists has assured President Moyer of the miners that a working agreement may be entered into whereby machinists will co-operate in every way in protecting the interests of the Western Federation of Miners.

The E. C. extends to the convention of the United Mine Workers of America its best wishes for a harmonious and successful convention.

SAMUEL GOMPERS."

Q. (continued). Do you know, Mr. Lewis, whether that telegram was sent by your convention to Mr. Gompers, as stated there, and whether your convention received a telegram from Mr. Gompers as stated there?

A. I think that telegram or one similar to it was sent. I would not be positive whether it was in those exact words. I believe also, that that reply was received from Mr. Gompers—either that reply or one similar to it. I would not be positive that it is the exact language, but I think it is the same language.

Q. Did you upon the adjournment of the special international convention at Cincinnati send to the president of the various districts where the wage contracts expired on April 1st, 1910, a letter in which this language appears: "In accordance with the policy of the United Mine workers, any of the operators that desire to have pumpers and such other men employed as may be necessary to take care and protect the property, such men should be permitted to work providing they receive the advance in wages provided for in the enclosed proposition?"

A. On the first page of this paper—the "United Mine Workers Journal" of January 19th, 1911, which is marked "Lewis Exhibit No. 1"—in the third double column, in the paragraph before which the figure "1" is, the following is the beginning of the reading of the document: "After several weeks' deliberation the interstate joint convention in Cincinnati adjourned without reaching an agreement. The special international convention at Cincinnati adopted as the basis upon which wage contracts could be negotiated the following proposition.

"1. That the following *is* the terms on which agreements can be negotiated:" And if this in its entirety can go in with my reply, it will save the trouble of reading it all, here. I want it all in or I will read it all before I make my explanation.

The Court: I will have to read it sometime. Will it take you very long to read it?

709 Mr. Lewis: Not a great deal of time, and yet there is a lot of matter here. I do not have any desire to impose upon the time of the court in reading it. That is the reason I wanted it considered in.

Mr. Hogg: If it won't take long you had better read it: The witness here resumed reading as follows:

"After several weeks' deliberation the interstate joint convention in Cincinnati adjourned without reaching an agreement. The special international convention at Cincinnati adopted as the basis upon which wage contracts could be negotiated the following proposition:

1. That the following *is* the terms on which agreements can be negotiated:

"That the agreement of the present year be continued for the scale year beginning April, 1910, and ending March 31, 1912, with the exceptions of the mining prices and day wages.

That the price for mining be increased five (5) cents per ton on inch-a-quarter screen lump coal, pick mining in western Pennsyl-

vania thin vein, the Hocking the basing district of Ohio, and both block and bituminous districts of Indiana; three cents per ton on mine-run coal pick mining in the bituminous district of Indiana.

That the price for the machine mines be increased four (4) cents per ton on screen lump coal in Western Pennsylvania, thin vein, in the Hocking, the basing district of Ohio; four (4) cents per ton on screen lump coal in the block and bituminous district of Indiana, and three (3) cents per ton on mine-run coal in the bituminous district of Indiana.

That internal differences both as to prices and conditions be referred for adjustment to the various districts affected, it being understood that in the adjustment of such differences there shall be no modification of the advance of wages provided for in the proposition.

The inside day wage scale shall be advanced 5.55 per cent, with the conditions of the Columbus day wage scale agreement of 1898.

That all narrow, dead work and room turning and outside day labor shall be paid a proportionate advance with the pick mining rate.

2. That contracts may be negotiated and agreed upon by states, districts or groups of districts.

710 3. That where all the operators within one district fail to sign the terms of the proposed contract that the operators of any sub-district may agree upon the general terms of the contract.

4. That where the operators of an entire State, district *of* sub-district agree to pay the general advance demanded their mines may continue in operation pending the final negotiations and agreement upon the details of the wage contract in the State, district or sub-district affected.

5. That details not herein specified are referred to the International Executive Board with full power to act, except the Board is not empowered to modify in any respect the terms of the demand for an advance in wages as it applies to mining, day labor—inside and out—narrow and dead work.

6. All coal Companies shall be required to sign the contract for all the mines that operate in one or more districts, unless permission is given district officials to do otherwise by the International Executive Board.

7. That any district where new explosives are used the mines affected shall operate on a run-of-mine basis and the company shall furnish the miners with new explosives at the same relative cost as black powder.

Immediately upon the adjournment of the Special International Convention at Cincinnati, Ohio, the following letter was sent to the presidents of the various districts where wage contracts expired on April 1, 1910:

INDIANAPOLIS, IND., March 30, 1910.

Dear Sir and Brother:

You will find enclosed a copy of the proposition adopted at the special convention at Cincinnati yesterday evening.

You can see by this proposition that the first thing necessary to be done is to get the operators of your district together and have

them agree to sign the general terms of the contract providing they want the mines to continue in operation after April 1.

According to the rules laid down by the special convention at Cincinnati, no contracts can be signed up by individual operators. This rule should be adhered to as well as the other rules embodied in the proposition adopted by the special convention.

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In accordance with the policy of the United Mine Workers, any of the operators that desire to have pumpers and such other men employed as may be necessary to take care and protect the property, such men should be permitted to work providing they receive the advance in wages provided for in the enclosed proposition.

With the hope that you will be able to arrange a conference of the operators of the district immediately, I remain.

Yours very truly,

(Signed) T. L. LEWIS,
President U. M. W. of A.

Q. Mr. Lewis, that clause in your letter of March 31, 1910, embraced in my question, was in the letter as I have read it, from this newspaper?

A. Yes, sir.

Q. Now, by that you conveyed a covert threat, did you not, that unless the operator yielded and paid the advance, his mine might be shut down and might be flooded?

A. No, sir; and the reason for that is that the operators had agreed in Cincinnati to pay the advance in wages but they could not agree upon the conditions upon which the advance should be paid; and the further reason that the operators understood under our joint convention method of doing business, that even though we had disagreed and failed to reach a contract there was an advance proposed and they had offered to pay that without incidentally paying the advance to these people, and it was in order to inform our members as to that condition. That is why that was put in the letter. I might add to that also, that the delegates were going from Cincinnati to all local unions where this was being sent out.

Q. What is District No. 1?

A. District No. 1 is the anthracite—what is known as the Upper Anthracite.

Q. It has a membership, as shown by the report of W. D. Ryan to the twentieth annual convention of the United Mine Workers, of 15,968.

A. Yes, sir.

Q. District No. 2 is what?

A. Central Pennsylvania.

Q. It is shown to have a membership of 35,799.

A. Yes, sir.

Q. District No. 5 is what?

A. I do not know as I should answer those questions.

712 Q. Don't you know what District No. 5 is?

A. Yes, sir.

Mr. Hogg: Well we will get along more rapidly, possibly, if you will answer.

A. Well, if it will help the thing along will tell you what all of them are if you will give me the book.

Mr. Gilchrist: If you will just read the number of the districts, and the membership, and the State, where indicated, if I have it wrong I can correct it.

Witness: Certainly; to save time—I will do anything to do that.

A. This book that Mr. Gilchrist has handed me is the report of the secretary, W. D. Ryan.

District No. 1 is anthracite and it has 15,968 members according to this statement.

Q. That is Pennsylvania, you say?

A. Anthracite, I said. District No. 2 is in central Pennsylvania and has 35,799 members.

District No. 5 is western Pennsylvania and it has 27,700.

District No. 6 is Ohio and part of West Virginia and one section in western Pennsylvania, over on the Fort Wayne Road; it has 38,064 members.

District No. 7 is the middle anthracite district known as Lehigh and Panther Creek around Hazleton. It has 4,517 members.

District No. 8 is the block coal district of Indiana; 1,974 members.

District No. 9 is also anthracite, around Lykens Valley, Mt. Carmel and Shenandoah; 10,366 members.

District No. 10 is the State of Washington with 3,239 members.

District No. 11 is the bituminous district of Indiana; 16,191.

District No. 12 is Illinois; 68,262.

District No. 13 is Iowa; 11,308.

District No. 14 is Kansas and a small section of Missouri close to the Kansas line; 10,166.

District No. 15 is Colorado; 1,839.

District No. 16 is Maryland and the Myersdale section of Pennsylvania; 66.

District No. 17 is West Virginia and a small strip of land down on the West Virginia border—down next to the Big Sandy; 2,081.

District No. 18 is western Canada; 2,471.

District No. 19 is Tennessee and a part of Kentucky on the Tennessee border; 1,483.

713 District No. 20 is Alabama; 762.

District No. 21 is Oklahoma, Arkansas and Texas, 16,005.

District No. 22, under this book was Wyoming and Montana; that has got here 9,300.

District No. 23 is Kentucky; 5,690.

District No. 24 is Michigan; 3,474.

District No. 25 is Missouri and I think one mine in Iowa, or else there is one mine of Missouri in Iowa; I am not sure which it is; it is on the border; 7,975.

The total is 294,746.

Q. Mr. Lewis, in a copy of the United Mine Workers' Journal for Thursday, January 26, 1911, I find a tabulation showing the income of your organization for the year 1910. Please look at it and say whether it is correct or not.

A. So far as I know the income given here by months for December, 1909, and the first eleven months of 1910, under the captions "Tax," "Supplies," "Journal," "Assessments," and "Miscellaneous," giving a grand total of $1,669,634.72 is correct, so far as I know, subject to any typographical errors.

Mr. Gilchrist: I offer this statement in evidence—I mean this statement as to income—to be marked "Lewis's Exhibit No. 3."

Q. Mr. Lewis, in a copy of the United Mine Workers' Journal of Thursday, January 26, 1911, I find a short report headed "Annual Report of International Auditors," in which the income and expenditures and a recapitulation for the year 1910 are given, covering the money received and the money paid out by the association. I wish you would look at that and state whether that is correct.

A. So far as I know it is correct.

Mr. Gilchrist: I offer that in evidence to be marked "Lewis's Exhibit No. 4."

Q. In the "United Mine Workers' Journal" of Thursday, January 12, 1911, I find this notice:

Stay Away.

Pontiac, Ill., January 2, 1911.

Stay away from Pontiac, Ill., as we have been on strike here for nearly three years and miners come here from time to time
714 saying that they did not know we were on strike, as soon as this trouble is settled I will inform you at once. For information you may consult our district officers at Springfield, Illinois.

Yours for the cause of the union,

ALFRED TOON, *President*,
F. BIGG.

Q. (Continued). And on the same Page I find an article headed—

A Scab Mine in Missouri.

To All Union Miners: Stay away from Mapleton, Mo. The union is not recognized and the operators are running a scab mine. All locals look out for those men listed below, as they have been scab-ing at the Mapleton mine:

George Veach, Rodney Veach, Posey Veach, Maryland West, Eric Hillman, Aaron Sparks, Ray Hurley, Allie Healy, John Hanley, Hurley Hagus, Emery Morrow, Roy Cain, Simon Oliver, James Branscomb, Ernest Robbins, Elmer Veach, Manuel Richman, P. J. Richman, J. R. Richman, Jessie Richman, J. P. Hays, Andy Hays, Billy Millford, Frefrom Veach, Billy Wilson.

By order of members of Local Union No. 594, Mapleton, Mo.

W. J. MFARLAND, *President*.
ALBERT JOHNSON, *R. S.*
HARVEY MORGAN, *F. S.*

Q. (Continued): And on the same page I find another notice headed:

Stay Away.

All miners, mine laborers and other laborers are hereby notified that 17,500 men have been on a strike in the Latrobe Greensburg and Irwin coal fields of Westmoreland County since last March.

The coal barons have agents in New York, Philadelphia, Cleveland and Chicago, as well as Altoona, Johnstown, Connellsville and Uniontown.

715 These agents are informing the men that the strike is over, while to the contrary the strike is on in full force.

Anyone desiring information can secure the same by addressing

JOHN MCARTNEY,
U. M. W. Headquarters.
THOMAS HAGGERTY,
Member Int. Ex. Board.
VAN BITTNER,
Vice-Pres. Dist. 5, U. M. W. A.

Q. (Continued:) And on Page 4 of the same paper there is another notice as follows:

Suspended.

Claridge, Pa., Jan. 3, 1911.

Editor Mine Workers' Journal: Will you please publish in our journal the names of Antonio Chiazza, Antonio Barboro, Stefano Busini, Vinzenzo Stella, Borgo Poteco, Antonio Lovato and Lorenzo Prato, all Italians, who have been suspended from membership in our organization for a period of two years, according to our constitution, for going back to work for companies having coal mines in Westmoreland county, Pennsylvania, where we are on strike since April 1, 1910.

Also publish the names of Louis Jenich and Anton Mahkowitz, who have been suspended from our membership in our organization for a period of two years, according to our constitution, for going back to work for the Manor Gas Coal Company at Claridge, Pa., Westmoreland county, where we are on strike since April 1, 1910.

Mine Workers of the United States and Canada will please remember them if they apply for work in or about the mines.

ANDY SHUSTER, *President.*
JOHN GRUBER, *Rec. Sec.*
JOHN BATITCH, *Fin. Sec.*

Q. (Continued:) I hand you this paper with these advertisements in them and ask you whether those notices comport with the
716 general design and purposes of your organization?

A. No; I think not. I might say in connection with this matter we have articles of this kind sent in and I presume the manager or the editor of the Journal believes that he is required to publish such matter on account of the paper being sent to the local. We

have investigated some matters of this kind and have found out they were not telling the truth—some of these men. I won't say that is the case here, because I do not know anything about it. It is fair also to say that if a member violates the laws of the organization he is suspended from the organization; otherwise we would have no discipline at all within the ranks and could not control anything.

Mr. Hogg:

Q. I wish you would state whether these strikes are being carried on where they purport to be?

A. I do not know whether that strike is on in Missouri or not, and so far as that Illinois reference there is concerned, I do not know anything about that; in fact, I do not know anything about either one of those. In regard to the Irwin district, we had that matter up a while ago. I have my opinion as to whether there is a strike there or not, but I said I declined to discuss it because of the situation, unless it was desired that I should explain it here to the court and that would end it.

Mr. Gilchrist: I will say to you that I do not press it, because I do not wish to embarrass you, Mr. Lewis.

Witness: Well, I appreciate that. If I were to continue as president of this organization after the first of April, with reference to that particular phase of the situation in Pennsylvania I would talk a great deal more freely and speak frankly my opinion in regard to the whole situation; but I do not want to be placed in the position—if I can avoid it and still be within the requirements of the proceedings here—of saying something that my successor in office would comment on by saying that I had gone to Philippi and gone before the court and said things or done things to embarrass his administration.

The Court: I understand Mr. Gilchrist does not ask that.

717 Q. On page 13 of the issue of the "United Mine Workers' Journal" for Thursday, January 19th, 1911, I find an advertisement reading this way:

Mines Crowded, Turn Slow.

Sanford, Ind., Jan. 9, 1911.

Editor Mine Workers' Journal: By direction of Local Union 1054, located at Sanford, Ind., I am requested to notify miners (through the Journal) to stay away from the Sanford mine at present, as the mine is so full and the turn so slow that we consider it only justice to notify men to stay away.

Respectfully yours,

WM. OLIVER, *Rec. Sec.*

Q. (Continued:) Why would a notice of that kind be published?

A. Why, the reason for sending a notice of that kind is, because men may come to a community seeking employment, and if it is not given to them, then they are sent somewhere else, and this information is sent to the miners as a matter merely of information

that that particular mine is crowded; just the same as the mine owners have notices published in the "Journal" that they can put men on if they can get them.

Q. And it is not then published for the purpose of curtailing the supply of labor at that particular mine?

A. No; I think that idea is brought out fully when they say that the mine is so crowded. I might say that the phraseology of the notice itself might convey a different meaning, but that is really the intention of the notice and it is very seldom that they put them in the Journal.

Q. Mr. Lewis, do you know whether in the separation of the Illinois operators from the balance of the operators in the central competitive states' convention there was anything said about the Illinois operators not being fairly treated by the joint convention and Illinois being subject to discrimination?

A. I do not know whether that was one of the reasons why they separated, but it is true that in our joint conventions of operators of each State, these operators complain that they are unfairly dealt with as compared with the operators of another State; and then we tell them, "Frankly tell us your troubles; open them up;
718 present them and let us get at them"; and then they refuse to do that.

Q. Do you know wether objection was urged in the dealings between your organization and the operators representing the joint convention of the Illinois Coal Operators' Association, at Springfield, Illinois, May 17 to June 1, 1905, that no distinction was made between the operators who were members of the operators' association in that State and operators who were within that State but were not members of the operators' association, in making contracts?

A. There never was any distinction made between one operator and another because an operator was not a member of the joint conference, to my knowledge, at least. I do not have any recollection of anything of that kind occurring. That is, if I catch the question, the idea is that the operators who took part in the deliberations of the joint convention and the operators who did not take part—that there was no distinction on our part between those operators.

Q. I understood you to say there was not on your part?

A. Not so far as I know.

Q. But was objection made?

Witness: By whom?

Mr. Gilchrist: By the Illinois operators?

A. Not to my knowledge.

Q. That you did deal with other persons who are not members of the operators' association on the same terms that you dealt with those who were members of the operators' association dealing with you?

A. I have no recollection of that matter coming up in our interstate convention.

Q. It might have been and you would not remember it?

A. It might have been, and yet I hardly think so, because that is such a striking and peculiar incident that I believe that I would know something about it.

Q. I have here a copy of the "Proceedings of the Joint Convention of the Illinois Coal Operators' Association, United Mine Workers of America, District 12, held at Springfield, Illinois, May 17 to June 1, 1906." If that appears to have been the case by the proceedings of that convention, you have forgotten it?

A. No; I have not forgotten that—that is an entirely different proposition. We have been discussing interstate joint conventions and you now take up a district convention.

719 Q. This is a joint convention?

A. Yes, sir; and it is a district joint convention as applied to Illinois—an entirely different proposition from the one you are asking questions about.

Q. Now, answer my question, but apply it to this joint convention.

A. I shall ask that that question be rewritten in there. I shall decline to answer that question as originally put unless I am ordered to by the court. I decline to answer it until I get the question direct.

The Court: Well, put the question in proper shape.

Witness: I shall decline to answer that question unless the gentleman repeats it now, unless ordered by the court. There is a whole lot of language between your question and the matters we have been discussing.

The Court: Now, Mr. Harris, read the question.

(The question appearing on page 291, as originally propounded by Mr. Gilchrist was as follows: "Do you know whether objection was urged in the dealings between your organization and the operators represented in the joint convention of the central competitive States that no distinction was made between operators who were members of the operators' association in those States and operators who were within that section of country, but were not members of the operators' association in making contracts?" Pending a discussion of this question the stenographer was ordered to correct it and it appears in its corrected form on page 291 as if it had been originally asked in that form.)

Witness: Now, your honor, if it is permissible I would like to add one word or two to make the question complete. It says "joint convention of operators"; it could not be a joint convention without you had miners and operators.

A. I have no knowledge of any such thing occurring in Illinois, because I was not there at that particular time.

Q. In this same book, which is marked, "McKinley's Exhibit No. 2," purporting to be the "Proceedings of the Joint Convention of the Illinois Coal Operators' Association and the United Mine Workers, District 12, held at Springfield, Illinois, May 17 to June 1, 1906," I find on page 13 what purports to be the report of a speech of Mr. John Mitchell, in which he says: "Some of you gentlemen here, and Mr. Bush in particular, will remember that in

720 the southwest we did compel operators to join your association and you in turn compelled miners to come into our organization." What, if anything, do you know about that?

A. I do not know a thing about it.

Q. If Mr. Mitchell stated that in that way would you say his statement was true or not true?

A. I could not say either, because I do not know.

Q. I did not ask you if you knew; I asked you what you would say?

A. Well, I desire to say that I decline to answer the question as stated, because I would have no knowledge of what Mr. Mitchell said in Springfield, and I am not going to put myself in a position to answer questions in relation to matters concerning which I have no knowledge whatever. If I am directed to do so by the court I will answer them as best I can, but it won't be a clear-cut answer by any means. I would like to say right at this time, in order that my position may be plainly understood, that neither as an officer nor as an individual am I responsible for the statements of other men.

Q. Mr. Lewis, in "McKinley's Exhibit No. 1," which purports to be the record of the "Proceedings of the Joint Conferences of Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana and Illinois, Indianapolis, Indiana, January 25 to February 2, and March 20-29, 1906," I find on page 10 a statement by Mr. H. L. Chapman, to whom you referred yesterday as having been in attendance at the "Joint Convention of the Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8-29, 1910," which statement reads this way: "It has now been twenty years since I started out with John McBryde and Chris Evans, both of whom are here, I believe, although many of the others have passed over the river, to attempt to organize, carry and perpetuate the interstate agreement for the benefit of the operators and miners of the four competitive States"; and on page 11 in the same book I find this language by the same gentleman: "We are a close corporation, so far as these four States are concerned, between the miners and operators." Do you know whether that statement comports with the action of the union to which you belong?

A. I believe that this is the statement—in fact I feel satisfied it is the statement of Mr. Chapman as read by Mr. Gilchrist; but in addition to that, in reading parts of statements from records, always the things that lead up to the statements and what might be said after and before should be considered in order to have a clear
721 understanding of why sentences are picked out or why they have been made use of. In 1906 the interstate movement was threatened with dissolution. In 1906 the miners desired to extend the territory included in the central competitive coal field and to include other States than western Pennsylvania, Ohio, Indiana and Illinois. Mr. Chapman, in making the statement just read to the court, added to that the following:

"We have met here this year, after two years' recess, for the purpose of again seeing if we can, in this competitive field, establish and retain the present relations that have existed between us for so many years. Each of you operators and each of you miners who have participated in these conventions know full well the difficulties

t have attended this movement. On several occasions it has l-nigh gone. It has required the patience, the conservatism and arguments of the level-headed operators and miners to perpetuate It will require the same in the future to perpetuate it. As you know, it has been demonstrated in the past that whenever you another State to the movement it makes it that much more icult for the four States to get an agreement. While I have been nected with the movement for a great many years, I am today familiar with all the conditions even in my own State, nor am miliar with all the conditions in Pennsylvania, Illinois or Ina; much less do I know the conditions that exist in any of those ying districts. What does an Ohio operator or an Ohio miner, pt those who have been in those outlying districts, know con- ing the matters there? What business have we to attempt to a scale of wages for men a thousand miles away from us, and operators a thousand miles away from us? The conditions are rely different; the markets are entirely different. We in Ohio ot come into competition to any extent with any of the districts ed. If the miners would bring in our sister States of Virginia West Virginia, we would admit them. We have tried to bring e operators, but have failed. Let us look at the conditions there. 1903 the State of West Virginia produced 26,882,000 tons of ; in 1904, 30,222,000 tons, and the estimated production for 5 is 35,000,000 tons. In Ohio in 1903 we produced 24,573,000 ; in 1904 we produced 24,583,000 tons, an increase of 10,000 in one year. Although the statistics for 1905 are not out yet, not think Ohio will show an increase of anything in 1905. t does this argue? That this State of West Virginia is taking away steadily the trade of the miners and operators in Ohio. Our people undoubtedly would be in better condition today, so far as the operators are concerned, if they had a free rein nst West Virginia, with the cheap labor they have over there, we do not want it. We want the conditions of our people in State to be just as good as we can make them, and we are willing and by the movement, and trust in the future that something occur to bring those people in, or to prevent their taking away more of our trade.

ou miners want to consider this proposition carefully and usly; consider whether or not you are not, by increasing this tory, bringing about a condition of things that will eventually the movement that has done so much good for all in the con- ive field. These people in the southwest that you are seeking ke in have an organization with which you meet and fix a scale. have your organization there. We have no objection to it. We od-speed in your movement in the southwest, but do not make thing so big and difficult to handle that you destroy it. That at the operators fear, to say nothing about the business proposi- connected with it."

itness (continuing): And following that the argument was against the extension of the interstate joint movement to de the southwestern and all districts of the country. That was

the position of the operators because of the unwieldly nature of it and because of the difference of opinion, and the operators in making that argument, as read from Mr. Chapman's statement, did as the operators always did in our joint convention—oppose the extension of the joint movement in any direction unless the operators of the central competitive field could induce the West Virginia operators to take part, and the miners of the central competitive field could induce the West Virginia miners to take part in the joint movement. The reason for that was that the coal going west from West Virginia entered into the same general market as the coal from Western Pennsylvania, Ohio and Indiana, and they sought to benefit the industry, and not some individuals, by securing a better price for fuel from all those States, and that is why the operators wanted the West Virginia operators to be a part of the inter-state movement.

Q. Mr. Lewis, all of the non-union fields are not—so far as the mines and the men are concerned—in the deplorable condition that you have figured when you have talked about the non-union fields being a disgrace to civilization, are they?

723 A. I do not know whether I made that statement.

Q. Well, if you made anything substantially like it. I am not quibbling about the exact words?

A. Your honor, I am not going to be placed in the position of having a statement of that kind made and placed in the record and then make answer implying that I did say it.

Q. Do you believe in obeying the laws of the land?

A. I certainly do.

Q. Mr. Lewis, in this convention held in Cincinnati, March 8-29, 1910, about which we have talked more or less, the proceedings being reported in what is known as "Upstill's Exhibit No. 1," of which you have a copy, was not the contention broadly made—without going now into detail—on the part of the miners that wages ought to be increased and that the union ought to have the right without limit to make deductions from the men's wages, and wasn't the reply of the operators that there was a partnership between your union and the operators who went into that joint convention movement at Chicago in 1898 by which the markets were to be preserved by your organization to the operators who entered that joint movement with you?

A. I do not know what any individual operator may have said in Cincinnati and I won't attempt to try to remember what was said in Chicago. It has not been the purpose of the joint movement to control markets at any time or under any circumstances, so far as I know.

Q. Was it not also said during that Cincinnati convention, by you yourself, that in order to fulfill the pledge of the Chicago convention that the United Mine Workers were willing to go ahead and organize West Virginia, but you wanted the operators to assist?

—. I may have said that in Cincinnati. I believe, in fact, that I have said it in more than one convention, and in doing that I have always insisted upon the operators of those fields doing what they could to bring about conferences between the operators of West Vir-

ginia and themselves, and to make my personal acquaintance with the operators of West Virginia, in order that we could explain to them the object of the joint movement, as I believed that the West Virginia operators had a wrong idea of why we had the joint movement; and as a matter of fact I have met some of the largest operators in West Virginia, and the only obstacle in the way of them taking part in the joint movement was the doubt as to whether my ideas of the policies of our joint movement would be carried into effect.

724 Q. Mr. Lewis, when the operators at that convention manifested a disposition not to increase the wages of your men, did you suggest that the operators should combine and raise the price of coal and give you increased wages by reason of that?

A. I may have suggested that, and I believe that the operators of this country should receive for coal a higher price per ton than they are now getting. In order that you may understand another phase of this situation, I believe in endeavoring to establish a minimum selling price for coal at the mines of $1.25 per ton. I believe in that because mining is the most hazardous occupation in the country outside of the powder mill; I believe that coal is the most valuable commodity we have outside of grain; I believe that the natural resources of our country should be conserved wherever it can be done; I believe it is almost a criminal waste of fuel to permit of thirty to fifty-five per cent of the coal acreage to remain in the ground in developing it, beyond any hope of ever getting it out; I believe in a higher standard of civilization, and to secure it, so far as the miners are concerned, they must receive better wages; I believe that if the railroads and the manufacturers of this country were required to pay $1.25 per ton as a minimum for fuel coal that the mine owners could afford to sell coal a great deal cheaper than they are now selling it to the domestic consumers of our country. In other words, the masses of the people, who are less able to pay, are compelled to pay the highest price for coal. That is the reason why I believe in all of these things and every statement along that line that I make in these conventions is incidental to that one general idea.

Q. On page 187 of that particular book which you now have in your hand—"Upstill's Exhibit No. 1"—I find this language: "I think the time is coming in the development of the coal industry of this country when we will be able to agree upon a minimum basis for mining and make it a perpetual contract. That is the kind of plan I have in mind. I do not know how soon it will come. There is only one thing in the way, and that is the lack of such an organization among the operators and the miners as we ought to have to govern the industry. I think if our friends on the other side could have a national organization and we could have a complete national organization on our side the time will come when we will establish the relative mining prices in the different districts, and we can afford to fix a minimum basis as a wage scale and make it a perpetual contract. We could go from that up, but not below it. If anybody tried to get below it we would attempt to find out who was trying 25 to injure the trade." Did you say that?

A. Yes, sir; and I said that for the reason that I gave just a moment ago.

Q. Now, in discussing the question of raising the price of coal and suggesting that the operators combine and raise the price, you were answered, were you not, by one of the members of the convention that if the operators undertook to do that they would probably land in the penitentiary?

A. An operator may have said that.

Q. And did you not also say when you came to reply to that operator—when you came to speaking of that feature of it—didn't you say that it might be that the miners (that is, "we") might also go there?

A. No; I do not know whether I said that or not. I may have said that and—(interrupted)

Q. If it is there in the report you said it?

A. If it is there over my signature or in connection with my name I presume I said it; but there are lots of things given in a report that I didn't say. And I might say this, your honor, in that connection: In taking the reports by the stenographer everything that is said in a convention is taken, and the circumstances and conditions that exist when the statements are made should be taken into consideration. I might banteringly say to an operator, "We may all go there," and probably that convention would consider it more of a jest than anything else, and yet at the same time in reading it in cold type it conveys an entirely different meaning.

Q. On page 18, commencing in the last paragraph near the bottom of the page, you say: "Mr. Maurer has very well said—and I am glad he has brought the subject up—that we say to the operators, 'Get a better price for your coal in order that you can pay us a better price for our labor.' Then he supplements that statement, and very properly, by the statement that if they were to organize to get a better price for their coal they would be haled into court under the provisions of the Valentine law of Ohio and possibly sent to the penitentiary. Probably we would, too."

A. Yes, sir; I said that, and in addition to that I also said this: "He supplements that statement by asking us to tell them how to get a better price for their coal. I am going to tell you. First, stop making war on the railroads. The poor fellows need help. And this proposition is going to be no joke. I recognize what the mining industry is; I recognize that it is more important than transportation." (This is Lewis talking now.) "I recognize that the Valentine law of the State of Ohio was put on the statute books by a lot of political demagogues who believed that they were working
726 in the interest of the dear people—and they did it once for the dear people and about twenty times for themselves. I recognize that this industry does not occupy the plane among the industries of the country that it ought to occupy, because we have met in joint conventions year after year and discussed our wage relations instead of devoting some of our time to going out and telling certain people to keep their hands off our business.

The railroad companies of this country say to the mine owners, 'We want our fuel at a certain rate.' The mine owners, in order to get a part of the fuel trade of the railroads, put down the prices in

some instances to cost, not because of competition, but because of your desire to get a part of that trade. Then after securing a part of that trade the official representatives of the railroads are in so close touch with the leaders of the manufacturing industries of the country that the steam trade, as we call it, buys fuel almost at as cheap a price as the railroad company. Then in order to make ends meet somebody must pay a better price, and it is usually the domestic consumers, the masses of the people. And that is where the political demagogues get their work in, because they are the people who have votes, and that is why they have anti-conspiracy laws placed on the statute books.

That is not the only phase of it that hurts us. In order to crowd out somebody or in order to get a better price for coal going into the markets our friends on the other side, finding that the miners' contract is signed on this end, that the railroads are insisting on a lower price on the other side, seek to get a readjustment of the freight rates in order that they may increase their returns on their investment. What is the result? They haul the railroads before the Railroad Commission or before the Interstate Commerce Commission and secure a readjustment of freight rates, as was done in Ohio recently, when the rate was 20 cents a ton lower than it was last year. Of course, that makes a railroad feel good! The railroads, like the rest of us, have more or less resistance in their makeup against what they call unreasonable demands. They go into courts, and the operators will probably say that while they have a decision from the Ohio Railroad Commission, the chances are it will not become operative for a year or two because the railroads will fight it in the courts, the operators will do the same, and they will all spend money in legal fees that should go to paying our wages and go to giving you returns on your investment. It is true that that is what is transpiring, because you men deluded *yourself* into the be-
727 lief that the railroads are going to hold a dividing line along the Ohio river. Don't you think they will readjust the rates going over to West Virginia? Certainly. There is a well-founded suspicion in the minds of most men that the railroads have an indirect interest in the mines, not only in West Virginia, but in a great many other coal producing States. The railroads in Illinois have advanced freight rates 10 cents a ton on all of the coal to be handled there the coming year. The Illinois operators will probably meet us in conference, and they will say, 'We must get relief, because the railroads have put on an increased rate of 10 cents, and you must meet the issue.' Of course, we must meet the issue, no matter what we get. We are going to meet it. We are going to insist upon an advance in wages. We are going any length to enable you to get a better price for coal than you have been receiving; but we do not want so much competition in your own ranks." Because the argument of competition is always used as the principal argument to reduce wages. "You should not come in here until you come, as they say in court, with clean hands on your own proposition."

Q. In your report to the convention of the United Mine Workers, held on January 11th, did you refer to the Sherman anti-trust law?

A. I think I did; I believe I expressed the opinion that I was in favor of repealing it or modifying it, and I am.

Q. This language I will read from the United Mine Workers' Journal of January 19th, 1911, page 5, top of middle column, two paragraphs, and ask you if it is correct: "In my opinion the Sherman anti-trust law, and every other law of a similar character, should be either amended or *a*ppealed, and instead of attempting to regulate corporations and trusts in the manner provided by the Sherman law, the national and State governments should enact laws providing for a method of taxation that would remove any incentive for large corporations to accumulate wealth by illegitimate methods.

"As laboring men, and especially as mine workers, we should lend every influence we possess to repeal those provisions of the Sherman law that deprive us of our right to organize and establish the object for which we are united. Now is the time to act, as we may at any time be made the victims of a law that was enacted to control trusts, but which is being diverted to destroy organized labor." Did you say that in your report?

A. Subject to any typographic errors, yes, sir; I think that is about the language.

Q. Is that the position of your organization on that sub-
728 ject?

A. No; that is my position; that is an expression of opinion.

Q. And do you not know whether your organization is in favor of the continuance or of the repeal or of a modification of that law?

A. No; I am not positive whether the committee on officers' reports reported on that particular clause favorably or not, without going over the records to see, and that is the reason I say it is an expression of an opinion of mine to the convention.

Q. The federal anti-trust law is held by the courts to be simply an embodiment in the federal statutes of the common law. If your organization aims to have the anti-trust law abolished or amended so as not to apply to your organization, would you say that your organization would be equally opposed to the enforcement of the common law if it contained the same matter substantially as the anti-trust law does?

A. I haven't any right to say what the organization will do; I haven't any right to anticipate what action it may take after an investigation of the subject.

Q. You suspended organizing work, didn't you, after the disastrous strike of 1906, to a very large extent?

A. No; I think not. They may have called in a number of the organizers, but I do not remember that at any time we suspended organizing work except the temporary organizing work of a part of last year.

Q. Were you not short of funds after the strike of 1906?

A. No; I think not—not to that extent, anyhow. I would not be sure whether Mr. Mitchell, who was then the president, discon-

tinued the temporary organizing force or not, but it seems to me he did not, and for this reason: Because in 1906 a number of the operators signed up agreements immediately in different sections of the country. The strike seemed to be that year, I think, confined for some time to a part of Ohio and for some time in central Pennsylvania, and I believe they had quite a strike in some sections of Illinois that year, and the revenue from our membership—that is, the membership whose contracts did not expire in the spring of the year in the northwest and different sections—I think would obviate the necessity of suspending the entire organizing force. However, that is an opinion and I am not positive or clear about it, but that could be learned by an examination of the record.

Q. At that convention wasn't a resolution adopted which said: "Your committee recommend that this convention heartily approve of the board's action in withdrawing a part of our organizing
729 force from the service as a result of the debilitated treasury, but we further recommend that the force be increased whenever in the discretion of the board our funds would warrant."?

A. That is in line with what I said—that I believe possibly a part of the force might have been discontinued, although I had forgotten about that incident you read.

Q. And along in the spring of 1907 the organizing work was again taken up when the funds became better?

A. Oh, I think they were continued immediately. The international executive board has authority, without the action of the convention, to place organizers in the field, and the international president appoints organizers with the consent of the international executive board.

Q. At that time you were the vice-president, weren't you—in 1906 and 1907?

A. Yes, sir.

Q. And you had charge of the organizing, especially, hadn't you?

A. Under the direction of the president. In other words, the organizers reported to him and to myself. I looked over their report and reported to him—made a monthly condensed report to him of the situation.

Q. Now, where a mine is run non-union and wages are not being paid equivalent to the wages paid under a union organization, you claim that you are doing a man good by organizing the mine and thus procuring for him more compensation for his labor. Is that your claim?

A. I do not think I made any such claim as that, sir.

Q. Well, do you claim that?

A. I think that we are doing the men and the industry and the community and the country a benefit.

Q. Where a mine is running non-union, but is paying wages substantially the same as would be paid provided the mine was running union under your rules and regulations, what would be your object in unionizing that mine?

Witness: In organizing the men at a non-union mine?

Mr. Gilchrist: Yes, where the wages that were paid were substantially the same as the wages paid at a union mine?

A. Well, we believe they ought to be members of the organization because they have received those wages that they would not have received if it was not for the work of the organization. That can be clearly brought out—and I believe it was stated the other day—that when we had a joint conference with the operators who were employing men, part union and part non-union, that this led
730 up to what is known as the so-called closed shop contract arrangement; but when we secured the advance in the wages for the men we were rather embarrassed to find that the only men we could and that we had a right to exercise control over were members of the union. When we asked the operators to make a contract for all of the men, and that those men should all be in our organization in order that we could discipline and control them, the operators said: "No; we will not do that, but we will make a contract for the union men." We immediately took up that phase of the situation and said: "All right; we will make a contract with you for the union men—to advance their wages—the stipulation to be in this contract that this is only for union men, and the non-union men are not to receive any advance, but are to continue at the present wages." The operators very promptly said: "That is foolish; every man in our employ would go into the union before night to get the benefit of the advance for the union men." And that is true. They further said: "We might just as well have a contract for all the men." That is what led up to the so-called closed shop agreement.

Q. How many men have you in closed-shop wage agreements now?

A. All the men in Ohio with the possible exception of a few small isolated cases; all the men in Indiana; all the men in Michigan; all the men in Illinois (well, I must qualify that statement by saying, unless the statement in the Journal with reference to that locality in Illinois that was called non-union, or a scab mine, or something like that, is true, and I do not know a thing about that); approximately all the men in Iowa, Kansas, Missouri, Oklahoma and Texas, and all the men in Arkansas with the exception of some local places in the Spadra field; a part of Kentucky; a part of British Columbia; a part of Washington, and I believe approximately all of Wyoming and Montana, but I will not be so positive about that; and this was true of northern Colorado previous to the present trouble out there; a part of central Pennsylvania and I believe the greater part of western Pennsylvania as it applies to employes inside of the mine.

Q. About what does that closed shop include in numbers of your men?

Witness: In membership?

Mr. Gilchrist: Yes.

A. Oh, I would say offhand that it will run over 200,000 men. There may be quite a variation there, and I haven't got time
731 to figure up the number of all the men in those States. That could be ascertained by the mining reports—the exact number.

(End of Cross Examination.)

Redirect examination.

"Q. Mr. Lewis, Mr. J. C. McKinley, a witness who testified in this case, *and* said that it was the purpose or one of the purposes and objects of the United Mine Workers to unionize the United States and Canada and to create a minimum price for mining coal, and to do this so that the operators would be able to dictate a minimum price for the sale of their coal; and he further stated that you had declared this to be the purpose of your organization and that you had stated it to be your ambition. What can you say as to this being the object or purpose of the organization, or whether this statement of Mr. McKinley is correct or true?

A. It is true that the purpose of the United Mine Workers is to organize, if possible, all the mine workers in the United States and Canada; it is likewise true that it is the purpose of the organization to endeavor to secure for the mine workers a fair day's pay for their labor. The organization has not itself declared in favor of fixing a minimum wage rate at any time. That feature of it is a declaration that I have made—that I believed that if that were possible we might then make or agree upon a perpetual contract. The idea I had in mind was to do away with these periodical strikes that take place as the result of this agreement. In regard to fixing a selling price for coal for the operators, I do not know of any time that the organization has ever considered in any of its conventions that phase of the situation, nor has it taken into consideration the advisability of formulating any plan that would permit the operators to dictate the minimum selling price of coal either on a uniform or any other basis; and as to whether that is my ambition, I do not know as I have ever publicly expressed an opinion that it was my ambition to bring that about.

Q. He said you told him on a number of occasions that that was your ambition but he could not designate any particular occasion.

A. The fact of the matter is I have never discussed this matter with Mr. McKinley except since I have come to Philippi, and I would not be positive whether in the discussion here in this court room, or on the train, that I have discussed my ideas of that
732 matter; but I have no recollection of saying that it is my ambition and yes I may have said that it was one of my ambitions to bring about the condition to do away with strikes entirely, and that I believed that that was one of the methods to bring that about.

Q. Well, did you say that it was your ambition to bring about such conditions by the agency of the United Mine Workers as to enable coal operators to dictate the price of coal?

A. No; the matter of saying anything about operators dictating the price never to my recollection was referred to either in conversation on the train or anywhere else with Mr. McKinley."

Witness is familiar in a general way with the price paid for mining coal in union territory during the past four years, and in some instances it would be regarded as fair, in others not. The purpose of the United Mine Workers is to secure a fair mining price for all work in and around the mines, taking into consideration the con-

ditions existing in the various districts and sub-districts; the organization has never sought to establish a uniform mining rate throughout the country; there are as many rates throughout the country as there are veins of coal. Under the old system it was usually considered in the ordinary vein, free from any faults, that three tons of coal would be an ordinary day's work of screened coal; and for that the organization endeavored to secure for the miner—not because of his special skill but because of the hazardous nature of his occupation—a wage rate equal if not better than that of the average skilled mechanics. In negotiating a wage contract it is always considered that the men cannot demand or hope to establish a wage rate and deprive the miner owner of earning a fair profit on his investment.

As to using the Hocking rate as a basing rate in Ohio: The Hocking district had a vein of coal uniform in thickness—anywhere from six to nine feet—and the operators and miners of that district arranged wage contracts, before the institution of the interstate joint movement. It is used as the basing district because the coal from that district comes into direct competition with the coal from western Pennsylvania and Indiana in the general markets of the northwest. The Hocking district was fixed as the basing district of Ohio, because it supplied the general market. The rate in the Hocking district is taken as the basing rate in negotiating for the balance of Ohio in working out the details; all of the details of the mining rates must be worked out in accordance with the physical condition of the veins and the prices that the operators receive for the coal they sell; when an agreement is reached on a rate in the Hocking district, the same pick mining rate is agreed upon in the thin vein section of the Pittsburg vein, and in the bituminous district of Indiana. The details of the agreement for each district are worked out at home in these districts.

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If it were the purpose to fix a rate in the Fairmont territory, where there are three different veins, as well as differentials, the Fairmont district would be taken as the basis point for the state; the Pittsburg vein would be taken upon which to base the right, because it is a general vein and there are such large quantities of that coal shipped to the eastern markets. In arranging a mining rate for the Fairmont district, the differential against Fairmont would be taken into consideration; that must always be done; then if it is shown that the Fairmont operators receive less in the aggregate for their coal than the operators in other places, that also would have to be taken into consideration. If that were not the case, but it were shown that owing to the physical condition of the vein, it cost more to produce a ton of coal in the Fairmont district than it did in other districts that would have to be taken into consideration, because it always goes back to the ability of the operator to earn a profit on the investment in the mines. So, in the Fairmont district, it would not necessarily be true that the rate for mining the Pittsburg and Freeport veins would be the same. The question would have to be considered, so far as the Freeport vein is concerned, by basing it upon the selling price of the coal, the cost of production and the ability of the operator to earn a profit in developing his property.

The purpose of the American Federation of Labor, with which the United Mine Workers are affiliated, is to endeavor to bring all the international and national organizations of labor in this country into one family or federation of unions, but taking nothing away from the power and authority of the national or international union to regulate its own affairs. The American Federation have affiliated with that organization, small unions in isolated localities of some particular trade probably of a few hundred, that could not have any national organization because the industry is confined to one locality, and in those instances the American Federation of Labor does assist these men in arranging their conditions, employment hours of labor and wages.

734 Aside from that the American Federation exercises a great deal of influence, so far as the executive council is concerned, in endeavoring to convey to the minds of the American people the real purposes of the labor movement, and of course in that connection if there are laws sought to be enacted that would be inimical to the interests of the laboring people, then the legislative committee at Washington and in the various states of the country will look after them, and where laws have been enacted that are directly inimical to the interests of the laboring people, they seek or endeavor to have those laws amended or repealed just the same as other societies or corporations are looking after legislative matters that affect them.

As to permitting men to remain at work in order to protect mining property, while a strike is on, witness says:

"For a number of years a class of men who are known as pumpers, engineers and firemen were not members of the United Mine Workers and for that reason we were not concerned as to what they did because we had no jurisdiction over them. We had no right to tell them to continue to work neither had we the right to ask them to stop working. In the development of this joint movement and system of arranging wage contract, I believe I made it clear that we had a very serious strike in Illinois by the hoisting engineers, who are the men who work in the mines and haul coal out or hoist it out of the shaft. A contract had been signed up with the miners for several months and the hoisting engineers went on strike throughout the entire state. We had no jurisdiction over them; we could not order them back to work; and unfortunately we had no men that we could advise to be employed to take their places, because, you understand, in mining camps there are only one or two or three men of that kind living around the mine. When that occurred it was put up by the operators to our organization to put those men back to work notwithstanding the fact that they were not members of our union, and our officials did make it possible for those men to go back to work. The next time that we took up the question of making a contract in that state this question came up and the operators were plainly told that if we were to direct that class of men then they should be members of our organization. They were willing to be members of our organization but the operators had always protested against it. That is really how those men became members of the United Mine Workers, and along with that is incorporated in

our contracts clauses not stating that these men may work,
735 but they are required to work and protect the property even
though there is a strike growing out of the disagreement
over wages."

As to strike benefits paid out between 1900 and 1910, witness says: In some of the districts they pay out to men on strike $3.00 per week per member. Those strikes may be the result of a mine foreman violating a contract just as much as a miner. It is paid out usually in goods and not in cash; that is to prevent the possibility of the men spending it for drink, if he were so disposed; also if families are evicted from houses tents are provided and ground is leased; the usual basis is allow a dollar for the head of a family, fifty cents for the wife, and twenty-five cents each for the children, per week.

The railroad strike at Pittsburg, in 1877, occurred before the formation of the present miners' organization; from information had at the time witness thinks that strike was a spontaneous uprising of disorganized men; the result was that it was one of the most disastrous strikes in its effect in the history of the country. The men who were engaged in that strike had the sympathy of thousands of other men in Pittsburg outside of the railroad interests; the strike reached such proportions as to require the authorities to declare martial law in Allegheny County. Property was being destroyed in every direction. The proportion of organized labor to unorganized labor at that time was very much less that it is now, or as compared with what it was in 1907.

During the coal strike of 1897, the number of men engaged in it was about 150,000 men, more or less; there were less than ten thousand members in the United Mine Workers at that time.

No organizer has power to order a suspension or a strike at any mine at any time either before or after the mine is organized; that power rests with the international executive board, so far as national strikes are concerned, and with the district boards in district strikes, provided they consult the international authorities. The sub-district has no power to order a strike without first consulting the management of the mine and investigating the causes that may lead up to a strike. If an organizer declares that he will shut down a mine after it is organized, he cannot carry such a threat into effect and be in conformity with the laws of the United Mine Workers. Such a statement would be mere idle declaration or boast. If he did get the members to join the union and the mine were not unionized by entering into contractual relations, he would not be carrying out the
purposes of the organization if he got the men to quit. He
736 would be defeating its first declaration—conciliation; he
would destroy the second—arbitration; if he did such a
thing, it would not be possible, witness thinks, to unionize the mine with those men; it would not be possible to carry out the policy of the United Mine Workers, because the policy and purposes of the organization had been set aside in advance by that method. Under such a course as that, it might be possible but hardly probable, to organize a non-union mine, such as the Hitchman mine. It might

be that the operator was getting a high price for his coal, and required coal at the time, and he would meet the men and sign an agreement, and it would carry with it the organization, but not necessarily the unionizing of that mine.

Asked as to the difference between unionizing a mine and organizing, the witness says: "There is a great deal of difference, although it is not generally understood by the American People. For instance, to illustrate: Take a mine across the river here that has been in operation for ten years, employing two hundred men. If I would go over there and would be talking to those fellows or would start to work in the mine myself, I would say, 'Boys, how long have you been here in this condition?' Some of them might say: ten, fifteen or twenty years. 'Are you reasonably satisfied?' 'Yes.' 'Wouldn't you like to get more wages?' 'Why sure we would.' 'Well, now, if you fellows will listen to me we will go ahead and we will all join the union, and we know this company wants coal, and we will go ahead and join this union and demand an advance in wages and they will pay it to us.' I will say that I know they will pay it because I know something of the conditions. Now, I persuade all those fellows to join the union and make this demand and they concede it instantly because it is better to pay the five cents advance than to lost fifteen or twenty cents profit. Now, that mine is organized but that mine is not unionized, because to be a union mine the men must understand the principles of organization; they must understand its laws and they must understand its objects. In other words, they must be educated in the principles of the organization to be a union mine, and that would be organizing the mine. You can join church and not be a christian."

737 D. H. SULLIVAN.

Age 53; residence, Coshocton County, Ohio; serving second year as president of District 6, United Mine Workers; was elected district vice president in 1899 and served in that position until elected president; there was about a year that witness was a member of the district executive board of District 6; District 6 embraces Ohio, a small part of Beaver County, Pennsylvania, and four river counties in West Virginia—Hancock, Brooke, Ohio and Marshall; before becoming an officer of the United Mine Workers, witness did nearly every kind of work around the mines except weighing coal; worked for quite a time in Mercer County, Pennsylvania, his native state; then in Ohio, where he worked about all the time except for about a year or so in the states of Iowa, Kansas and Missouri.

The preamble and section 2 of article 1, of the constitution, found in "Plaintiff's Documentary Exhibit No. 1," express the purposes and objects of the United Mine Workers of America.

Witness has been a member of the organization since its formation, but was not present as a delegate when it was formed.

The first miners' organization of which he was a member was along about 1873, and was called the Miners and Laborers Benevolent As-

sociation; it was along the same lines as the United Mine Workers, but did not live very long; witness also joined the Amalgamated Miners Association—an open organization, that is, there were no secrets about it; he also joined the Knights of Labor, which was a secret organization; it was largely along the lines of the United Mine Workers except that they did all their work in secret. The Knights of Labor had territorial divisions, and held conventions, for the purpose of carrying out their purposes; there was one branch of the Knights of Labor set aside for the coal miners known as N. T. A. 135. Witness was also a member of the National Progressive Union, which was distinctively a miners' organization.

The United Mine Workers has always been an open organization; any one is at liberty to enter their conventions or local meetings who desires; its literature is for the public as well as for the members; there is nothing connected with it that is sought to be withheld from the public.

Witness is acquainted with John Mitchell, T. J. Lewis, W. B. Wilson, William Green, George W. Savage, A. R. Watkins,
738 John Zelenka, Lee Rankin and Thomas Hughes, co-defendants in this suit.

W. B. Wilson holds no official position with the United Mine Workers, but is serving his second term as a member of Congress from Pennsylvania; he was a practical coal miner and mined coal in his native state of Pennsylvania before he became connected with the United Mine Workers. Witness first became acquainted with him about 1886 or 1888.

William Green is not officially connected with the United Mine Workers; he formerly held the position now occupied by witness; was a coal miner and worked in a mine near where the witness worked before becoming an officer in the United Mine Workers; is now a member of the Senate of Ohio, serving at present as president pro tem. Was elected at the last election.

Lee Rankin is not now connected with the United Mine Workers; his connection ceased about a year ago when he became superintendent of the Florence mine of the Y. & O. Coal Company, near Martins Ferry; when a man becomes superintendent of a coal company he forfeits his membership. The average man would not want to hold membership in the United Mine Workers, or he would be placed in a very delicate situation. The organization never has undertaken to assert government *of* control over the superintendency of a mine.

John Mitchell holds no official position with the United Mine Workers, and has not since about March 31, 1908; he was immediate successor to Mr. T. L. Lewis.

The difference between organizing the men at the mine and organizing the mine is that when the miners are organized the work of organizing the mine is only just started. The next proceed to meet with the operator who owns the mine, or operates it, for the purpose of making contracts or agreements. Under the constitution and methods of the United Mine Workers a mine cannot be organized without the consent of the owner, and it is not the object

or purpose of the United Mine Workers to do so, and never has been; it has never been attempted as far as witness knows.

After a mine has been organized, the agreement between the employer and the organization is paramount. The constitution of the organization has nothing to do with the workings afterwards; that agreement does not take away from the operator the control of his men. The agreement is in writing and a copy of the one made in Ohio in 1910 is here handed to *consul* for his inspection. If a
member of the United Mine Workers in the territory com-
739 prised with District 6, should violate the agreement between the operator and the miners, the management of the mine has a right to discharge him; the discharged man could then have a hearing; it is taken up by the local officers at the mine, and if they fail to reach a settlement it is referred up to the sub-district officers and very often they settle it. Perhaps it comes up to the state but not very often. The reason for these investigations as stated by the witness is that employers of labor as well as employes are very selfish, and are liable to make mistakes. The right of investigation is just as sacred to the employer as to the employe, for often the mine foreman or the mine superintendent has some personal matter against one of his employes and he brings that into the mine and there he places inconveniences upon that employe to the extent that he can bear it no longer, and when he resists he is discharged. The mine owner knows nothing about this personal matter until he learns of it through the investigation. Then very often the mine foreman superintendents are under the influence of liquor and say and do things that injure the business. When the mine owner finds out the true state of facts as a rule he puts the man back to work.

In paying out benefits to members of the union the organization always tries to pay in orders, for the reason that there are men in the organization, just as in other walks of life, who have a weakness for drink, and the organization wants to have the money go where it properly belongs; that is, to go for the benefit of the family of the men who *is* on strike. The fund is usually in the hands of the sub-district officers for distribution; sometimes it is sent to the local officers if a good reputable man can be found to handle it. It some times happens that the orders for provisions are not accepted in some localities; when that condition is met money must be used.

The preamble and sections 2 and 3 of article 1 of the *consituation* of District 6 of the United Mine Workers, contained in "Plaintiff's Documentary Exhibit No. 2," is expressive of the objects and purposes of the United Mine Workers of District 6; it has no other purposes. The same is true of the preamble and article 1 of the constitution of sub-district 5, as contained in "Plaintiff's Documentory Exhibit No. 3."

One of the objects of the organization, as stated in section 2 of article 1 of the national constitution, is to ameliorate the condition
of employes that produce or handle coke or coal in and
740 around the mines, by the method of conciliation. That embodies the getting of better ventilation in mines, and also the protection of the miner in his working place by having proper

timbers there and enough of them for his protection, and also to have a safe traveling way. A safe traveling way is very important on account of electric wires. When a miner is traveling his light may be blown out or he may stumble and fall and come in contact with that live wire and be electrocuted. Those things have to be brought about by conciliation—the operators and miners getting together and agreeing upon a scale of wages and also on conditions of employment by which this work is to be performed.

It is not true as stated in the plaintiff's bill, at page 19 of the transcript of the record, that the defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy to cause the plaintiff's mine to be shut down, its plant to remain idle, etc. until such time as is shall submit to the demand of the union that it shall unionize its plant, etc. Either as an official of the United Mine Workers or an individual, witness is not in any confederation, combination or conspiracy to unionize the plaintiff's mine against its consent. Witness was in no such conspiracy at any time prior to the granting of the injunction in this case. Witness has not, either as an officer of the United Mine Workers or as an individual, sought to make the plaintiff's mine idle and to remain idle. To do so would be an injury to the United Mine Workers, because if the mines were unionized and then closed down, it would be necessary for the union to keep the men at considerable cost, or find employment for them some place else. If the mine of the Hitchman Company had become unionized, the men would obey the management of the mine, and not the orders of the union. They could not remain in the union and disobey the directions and orders of the operators, against the wishes of the union. There are no rules of the organization whereby a unionized mine must submit its men to the paramount control of the union, and has never known any such rules to be adopted by the organization.

Witness has never, either in a combination or conspiracy, or outside of such *such* combination, conspiracy or confederation, individually or as an officer of the United Mine Workers, endeavored or attempted to shut down the mine of the Hitchman Coal and Coke Company because it is running non-union; never gave any directions to that effect; does not know of any one connected with the
741 union who did give such directions; if any one did give such instructions, he had no authority from the United Mine Workers to do so.

The allegation: "After your orator started up non-union about June 12th, 1906, as aforesaid, efforts were repeatedly made by one or more of the defendants to induce your orator to unionize its mine, and, failing in that, efforts were made by some one or more of said defendants to bring about by inducement, persuasion, threats, and intimidation, and by various means and devices unlawfully to induce your orator's employes to cease working for your orator, and by use of like means, devices, intimidation, threats, persuasion and inducements to prevent men willing to work for your orator not to engage to work, or if having engaged to work, then not to go to work

for your orator"; is not true; witness has never used any efforts to have any of plaintiff's employes cease work; does not know of any official of District 6 or of Sub-District 5 who did; if such a thing were done it would be without authority from the proper officers of the organization; neither did witness, either as an officer or an individual, attempt to keep men from going to work there who were willing to work, nor did he authorize any one else so to do, and knows of no one belonging to the organization who was authorized so to do.

The allegation: "Yet your orator says that although it has refused to permit it, still the said defendants, further proceeding to carry out their conspiracy are now endeavoring to unionize your orator's mine, and threaten, and your orator has reasonable grounds to fear that they will, and so alleges, close down you orator's mine and keep it closed until your orator will agree to sign the scale and employ none but union labor"; is untrue; it is not a part of the policy of the United Mine Workers to threaten to close down a mine if the owner refuses to sign the agreement. If a mine is running non-union the organization would not threaten to close down the mine before the mine is organized or the men organized, because that would work against the interests of the organization; and if the officials succeeded in getting those men to join the union the officials would meet with the operator as often as he would allow them, and try to reach a settlement, and if he were paying the same scale that the union were paying, the organization would be only too glad to have it go that way; of course the union would rather have him sign the scale because that would show his good faith—the operator and miners would be mutually obligated to carry
742 out the agreement by reason of having signed it up together. If he is paying the scale and the men are properly treated in line with the contract, witness would not close down the mine in order to coerce the operator into signing the agreement; it would be an expense to the organization. Witness does not know of a case where the union shut down a mine where the owner was paying as much as the union was paying, and the men belonged to the union; but it always shows good faith to have the contract signed. If they refuse to sign it would be an evidence of bad faith.

Witness is not sure that he was acquainted with the defendant Thomas Hughes in 1906-7. As an organizer Hughes would have no power to unionize a mine; he would have no power whatever to shut it down.

As to the allegation: "And your orator says that while the said defendants have so far been unable to bring about or induce your orator's employes to quit its service, still the said Hughes has recently stated to one of your orator's miners whom he was trying to induce to leave your orator's service and join the union, that he, Hughes, had succeeded in having 125 men at the Hitchman mine sign their names agreeing to become members of the United Mine Workers of America and that just as soon as he got 25 more names he was going to shut the Hitchman mine down;" witness says that Hughes could not as an organizer, have shut the mine down if he had all the men in the mine to join the union.

Witness is acquainted with E. T. Hitchman, and first met him at Mt. Pleasant, Ohio, about 1905; at that time Mr. Hitchman was running a union mine at Mt. Pleasant, Ohio; he was also connected with the United Mine Workers as an employe of labor in West Virginia—does not know just how long.

As to the allegation: "Your orator further says that unless enjoined by this court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal and will compel your orator to contract with its employes through the said
743 defendants as officers of the said associations under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and further will compel your orator to agree that each of its future employes as members of the said United Mine Workers of America shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employes would owe to your orator and that they will thus take charge of, dictate the management of, and virtually control, your orator's business and thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the State of West Virginia; witness says it is not true; and further, that he would not belong to a labor organization that would take that view.

At this point the witness, Sullivan, was asked and answered questions as follows:

Q. It is alleges in this bill that the defendants (and this term includes yourself) "will by combining, confederating and agreeing, by enticement, persuasion or coercion in one form or the other bring about the shutting down of the plaintiff's mine." What have you to say about anything that you have done to accomplish this?

A. I have done nothing.

Q. Do you know of any of the defendants who are doing it?

A. I do not.

Q. Are you combining or confederating or are you conspiring with any of these defendants to do this?

A. No, sir.

Q. Are you doing any of these things to shut the plaintiff's mine down?

A. No, sir.

Q. Are you attempting by conspiracy, confederation or combination or by using enticement, threats, coercion or intimidation to compel the plaintiff to contract with the United Mine Workers of America?

A. No, sir.

Q. What if anything are you doing of that nature?

A. Well, as far as that is concerned we are doing nothing. We are not allowed to do anything.

Q. Did you before the injunction was granted?

A. Why, if we could persuade them to join with us we thought we had that right.

Q. Did you try to use argument with the operators, through your representatives, to try to get them to agree to a contract?

744 A. I presume they did; I have always held that we had the right to persuade them.

Witness knows of no one connected with the organization who attempted to bring about such a state of affairs that the employes of the Hitchman Coal and Coke Company would owe allegiance to the United Mine Workers that would be paramount to the allegiance they would owe to their employer, in the discharge of their work in the coal mines.

As to the allegation: "Your orator further says that in effecting their said objects of unionizing your orator's mine the said defendants propose and threaten to, and your orator being so informed and believing it to be true, alleges on such information and belief that said defendants will and are about to, indulge in all the many methods of accomplishing their result by the use of threats, intimidation, force, violent or abusive language, picketing your orator's premises, picketing or patrolling or guarding the streets and approaches to your orator's premises and going to the homes or boarding houses of your orator's employes for the purpose of intimidating or coercing them to leave your orator's employment and to picket railroad and street cars passing to and from or through your orator's premises for the purpose of intercepting your orators in going to or from your orator's premises and for the purpose of intercepting and preventing persons coming to your orator's premises for the purpose of seeking or for the purpose of entering into your orator's employment;" witness says it is not true, knows of no one connected with the organization that has ever done any of these things; did not authorize any one to do so; witness was never in any conspiracy to do any of the things mentioned; knows of none of the defendants who were; knows of none of the defendants who has conspired, confederated or combined with him to do anything of that kind, either now or in 1906 or 1907.

The locals throughout the country—or a great many of them—have an accident and funeral fund; it is for the purpose of taking care of those who get hurt or to bury those who die.

It is one of the purposes of the United Mine Workers to use its organization and membership, so far as they can, to secure legislation relating to mines and mining, so far as it affects the coal industry in the various states of the union where they operate as an organization; there is a wonderful improvement in the mining laws of the state of Ohio since the year 1890, when the United

745 Mine Workers organization was formed. One of the improvements is in regard to electrical power—The use of that has

been so regulated by legislation brought about through agitation through the United Mine Workers that it is much safer now than formerly, although there is still room for improvement. That agitation resulted in the formation of a commission appointed by Governor Harris, of three operators and three miners, and those six men got together and selected the seventh—who was the chief inspector of the state; they went into several mines in the different sub-districts of the state to find out the actual conditions. After they made that tour of inspection they got together and unanimously agreed on new bills and changes in the old laws. The three miners who were on that commission were members of the United Mine Workers and practical coal miners; one was an officer of the organization, and the other two were coal miners.

Before the scale expired on March 31, 1906, the Hitchman mine was working on a union basis and under a union scale; it was within the Ohio District, under Sub-District 5; at the national convention at Indianapolis in 1906, the United Mine Workers reaffirmed the scale of 1903; witness's understanding was that Mr. Hitchman had an opportunity of signing the scale at that time, if he wanted to do so; if he had signed it there would be no reason why they should not continue running, so far as the organization was concerned.

Cross-examination:

Upon cross exmination of the witness, Sullivan, the following questions were asked and answers given:

Q. Mr. Sullivan, your business life has been very largely taken up with your work as an official of the United Mine Workers, has it not?

A. Quite a large part of my active life—for twelve or thirteen years anyhow.

Q. That has been your business?

A. For that length of time, actively.

Q. With respect to Mr. Lewis, Mr. Savage, Mr. Zelenka, Mr. Watkins, Mr. Rankin, Mr. Green and the other defendants—possibly with the exception of Mr. Hughes—their business life has been, to your knowledge largely a life connected with the organization and management of the United Mine Workers of America?

A. Well, I think I can say the same for the others that you have mentioned, so far as I know.

746 Q. And in performing the duties of their positions with the United Mine Workers during these years that you all have been connected with that organization, the work they did for the United Mine Workers was their business.

A. Yes, sir.

Q. And the compensation afforded for their work and the compensation afforded to you for your work, was their means of livelihood and your means of livelihood?

A. Yes, sir.

Q. You often met together, I suppose, during those years and during the performance of your duties?

A. Yes, sir; we met pretty often.

Q. And it would be fair to conclude that the directing power of the organization's business was then in the hands of yourself and your associates?

A. Well, now, there were others who were in the office before I was.

Q. Yes; but to the extent that you and they participated together over any given time, your answer would be yes?

A. Yes, sir; as far as our work was concerned.

Q. You have your national conventions and your district conventions and your sub-district conventions, and these conventions enact rules and regulations, and pass resolutions, and elect officers, and the special things that are not covered by the rules and regulations which the convention desires to have carried out, those things are the subject of convention action?

A. Yes, sir.

Q. And that convention action may be then placed in the hands of some other committee and then finally drift down to the officers you have named in charge of the particular districts and sub-districts, or national officers, or it may go first to the national officers and then to the district officers and then to the sub-district officers and then might get into other sub-district committees, &c?

A. That is, to what do you have reference?

Q. You just carry out the general rules and policy of the organization? Is that true?

A. In the making of their constitutions a constitution committee is selected, you know, and they prepare those constitutions or changes or whatever they are, and then the convention votes on those changes and it is the same way in the state or district and the sub-district.

Q. And after the convention has acted on matters that are not included within the provisions of the constitution, those matters may be referred for attention to some other board or they may be referred to the officers directly?

A. The officers could not change the work of a convention, because if a convention adopts a constitution then the officers could not go out and change the constitution afterwards.

747 Q. I am speaking about the constitution or carrying out the provisions of the constitution. I am speaking of carrying out resolutions, or provisions or directions of the convention which are not embraced in the constitutional provisions at all?

A. In replying to that I will say that the constitution is our guide in handling the affairs of our organization.

The Court:

Q. If questions arise, Mr. Sullivan, after the adjournment of your convention, that require attention, those matters are transacted by the officers, are they?

A. If it is constitutional, why, the old constitution will prevail until a new one takes its place.

Q. I mean in the ordinary routine business you attend to all the routine business that occurs at the convention and make report to the convention afterwards, do you?

A. Yes, sir; after the annual convention is over the constitution is prepared and sent out in book form to the different locals all over the mining districts of the country; and in the same way when the districts have their convention and prepare their constitution, they send it out to the different locals. If there are any changes in the constitution the old constitution will prevail until the new one takes its place.

Mr. Gilchrist:

Q. Do you mean that each convention—national convention—adopts a new constitution?

A. They make changes in the constitution; sometimes there may be changes made; but you take the preamble and that is never changed.

Q. Well, they may amend—make changes and amendments in the constitution?

A. They have the power.

Q. And the same is true of sub-district conventions?

A. Yes, sir; and fraternal societies.

Q. But unless some changes are made the constitution remains the same?

A. Yes, sir.

Q. Now if at a convention there is no change in the constitution but if some action is taken at the convention relative to the course or action to be pursued with reference to a scale, for instance, that action of the convention is carried out by the officers is it, or by whom?

A. In preparing the scale they select a scale committee. That scale committee makes its report to the convention embodying the demands of different competitive fields. If that is adopted that scale will be taken to a joint convention of operators and miners and that scale will be discussed there; but the operators who are doing
748 business with us will have a scale to hand us, and we exchange our scales.

Q. Now, suppose that a scale has been established at the national convention and then you have had a joint convention with the operators who do business with you, and you agree and your scale is accepted by the operators, whose duty is it then to see that the scale is signed by the operators?

A. The basic scale and the day wage is fixed in the national convention, the Hocking Valley being the basing point for Ohio. When the officers of the district return they call up the chairman or president of the organization—(interrupted)——

Q. Which organization?

A. The United Mine Workers call up the chairman of the operators' association of the Hocking Valley and ask him whether it will be convenient for the companies representing that vein of coal to meet with us in joint conference, and he tells us about when he can meet us and we meet. The day-wage scale is fixed in the national convention; the basing scale is fixed in the national convention; the internal difference- are taken up then—that is, for the

bailing of water and prices for narrow work and for the other different kinds of work, which means the rules to govern the scale; (there have been quite a number of rules; I think up to twenty-four); and after they get through there then we take up the different sub-districts in our state just in the same way.

Q. You say "we"?

A. I mean the presidents of the districts.

Q. The president and the vice president and the secretary-treasurer—are those in the main the officers who have charge of that?

A. Yes, sir; I prepared the last scale, with Secretary Savage and Vice President Moore and with the sub-district officers and members of the different locals who were represented on that scale committee, and also the delegation in the joint convention.

Q. Now, with this scale agreed upon in the joint conference, the first step after the adjournment is the carrying out of the scale so far as having the operators in each district sign up is concerned. Is that correct?

A. Yes, sir.

Q. And that work is taken up by the district officers in each district which has participated in the joint conference or joint convention?

A. Yes, sir; as a rule three state officers and district officers attend the joint meeting at the basing point and fix and sign up a scale for the basing point; then we can divide up after that because the basing point is fixed. We divide up and Brother Savage
749 goes to one sub-district, Brother Moore to another and I go to another, and all go through with our work, because the basing point is fixed.

Q. With the basing point fixed the process is easy of going around to each sub-district, is it not?

A. It is not always easy but I have got a guide to go by. On account of so many different veins of coal, and the different natural conditions, it makes it a very tedious job sometimes to be able to get together. You see in the state of Ohio we have the No. 8 seam of coal and we have the No. 7, No. 6, No. 5 and a little of the No. 4 which was worked for years in the southern part of Mahoning and the northern part of Columbiana; we have also the No. 3. All of these veins of coal have different natural conditions and you have to meet those conditions in order to give every one, as near as you can, an opportunity to run their mines at a profit and pay a reasonable wage to the men who work there.

Q. Were you a member of the national convention of 1906?

A. Yes, sir.

Q. Of 1907?

A. Yes, sir.

Q. Of 1908?

A. Yes, sir.

Q. Of 1909?

A. Yes, sir.

Q. Of 1910?

A. Yes, sir.

Q. Of 1911?

A. Yes, sir.

Q. In 1906, after the holding of the national convention of that year, were you one of the officers of District No. 6?

A. Yes, sir.

Q. What position did you then hold.

A. Vice president.

Q. Who were the other officers?

A. Brother Green was just elected then and he took charge.

Q. William Green, the defendant?

A. Yes, sir; he was just elected that year. Brother Savage was the secretary.

Q. Did you and Mr. Green and Mr. Savage perform your duties in having the scale signed up in 1906?

A. Well, you have reference to Ohio?

Q. To District No. 6.

A. Well, we did but we had quite a job.

Q. Do you mean that you had difficulty?

A. Yes, sir; the 1903 scale was reaffirmed in 1906 making it 95c. a ton for pick mining and of course some of the operators were willing to pay that scale and others were not; consequently we had some trouble in that direction and e-pecially in eastern Ohio.

Q. What did that trouble consist of, in the main?

A. Well the operators of eastern Ohio did not want to
750 pay the scale of 1903, as I understood it, and there was a strike for quite a little while there.

Q. Do you remember how long the strike continued?

A. I do not mind; it seems to me it was about five or six months over there, if I recollect right.

Q. In eastern Ohio?

A. Yes, sir.

Q. About what time was this declared off?

A. I think it was along in August sometime, but I am not able to say just what time. There was about six months, I think, that we had of it but I will not say just at what time because my memory is not good as to that.

Q. The strike took effect April first?

A. Yes, sir; they refused to sign up —that is, to pay the scale.

Q. During that period of time where were you engaged in performing your duties in trying to have the scale signed?

A. Well, I am inclined to believe that I was spending a large part of my time in the other districts—I mean in the other subdistricts of Ohio than No. 5.

Q. Did you spend any time in Sub-District 5 that you now recall?

A. I am inclined to believe that I did but it was a very short time.

Q. Where in Sub-District 5 did you spend that time?

A. Well, if I recollect right, the Lorain Coal & Coke Company and the Belmont Coal Company—with another Company; I do not recollect who they were—wanted to sign the scale of 1903 and I attended that meeting in the McLure House in Wheeling.

Q. Where were these mines doing business that you speak of—In Ohio?

A. Why the Lorain Coal & Dock Company's mine—the railroad on which it was located was the Cleveland, Wheeling & Lorain; now it is owned by the B. & O.; and the Belmont was out on the B. & O. road west of Bellaire. I do not recollect where the other company was, from memory.

Q. Was that in Ohio, too?

A. I think it was in West Virginia.

Q. Whereabouts?

A. If I remember right it was at Moundsville.

Q. The Mound Coal Company mine?

A. It seems to me that it was; I will not say positively but it was at Moundsville, if I recollect right.

Q. Now, what did you do when you made this visit to Sub-District 5, on that occasion?

A. Well we got together.

751 Q. With whom?

A. With Mr. Ed. Johnson, of the Lorain Coal & Dock Company and Mr. Thomas K. Maher of the Belmont company.

Q. And who for the Mound Coal Company?

A. I do not recall the other man; I cannot say; I understood the other man was—that there was a representative of the Moundsville mine but I do not recall his name.

Q. All three were together with you?

A. All three; that was the understanding; of course I paid very particular attention to Mr. Johnson and Mr. Thomas K. Maher, because they were over on our side, and they signed up the scale as agreed upon in Indianapolis and started to work.

Q. When was that?

A. Well, that was along about in—I do not mind, but it seems to me it was along in May sometime.

Q. Sometime along about the middle of May, wasn't it.

A. I think it was along about the middle of May.

Q. Probably about May 17th?

A. It might have been, yes sir.

Q. Now, when was the next time you came down to Sub-District 5?

A. I would not be able to say that.

Q. Were you there at all?

A. It is possible I was but I would not say because I—(interrupted)——

Q. You have a pretty good recollection, haven't you?

A. Well, you take ten or twelve years, and being subject to orders, and going wherever I was ordered to go,—it was very few times as I recollect.

Q. You cannot now recollect any other occasion?

A. No, sir; not just at this time.

Q. Mr. Sullivan, by disposition you are conciliatory, are you not?

A. Well, I have got that name.

Q. But sometimes you remember the injunction, "Spare the rod and spoil the child," I suppose, do you? Are you a believer in that statement—that proverb?

A. Oh, no; I am not really a believer in that.

Q. Mr. Sullivan, have you a copy of your recent strike order?

A. No; I have not.

Q. Is that your name attached to that?

A. My name is attached to that. You have reference to the order in eastern Ohio?

Mr. Gilchrist: Yes.

A. (continued). Yes, sir; my name is there; I understand it is there, now, because I have stated time and again that I was
752 willing to co-operate with the national organization in order to bring about a settlement in the Tuscarawas and Carroll county coal fields on the basis of the Columbus agreement and the Cincinnati demands.

Q. And if your name in fact is there, it is there with your permission?

A. Yes, sir.

Q. That strike is one to compel the operators to abide by what your organization claims they contracted to do in another portion of District 6?

A. Yes, sir; what they agreed to in Cincinnati—the operators of Ohio.

Q. The men that are employed at those mines now to be affected by this new strike have no grievance that you know of, have they?

A. They would have this much of a grievance; that coal companies are not permitted to sign up for one mine here and leaves another mine right *co*/se by paying a reduction; or in other words, pay an advance here and across the valley have a reduction. The operators of Ohio would not even stand for that themselves as a rule, because they get after us about *us* quick as the other fellow.

Q. Part of the programme, then, of your organization is that every operator who deals with you must deal with you altogether or not at all. That is, he must sign up for all his mines or not at all.

Witness: That do business with us jointly?

Mr. Gilchrist: Yes; that is true, is it not?

A. That do business with us jointly. He is expected to do that because he signs to do that. When he signs the contract he signs to comply with whatever that contract calls for. There isn't any provision in the contract that he signs for two mines to pay an advance and does not sign for two more. There are not any provisions of that kind.

Q. And these operators who signed the contracts which you say they have not carried out for their mines in the Tuscarawas field, are now subject to your coercive measures effective upon mines in other portions of district 6 which they own or are interested in?

A. Well, you can call it coercive measures if you wish to, but it is a refusal to carry out a contract after they had signed the contract.

Q. You spoke of Mr. Rankin, the defendant. I believe you said he is now superintendent of a "Y. & O." mine in Sub-District 5. Is that mine effected by this strike?

A. I understand it is.

Q. In your direct examination you were asked whether there was any form of contract which your organization required to
753 be signed when a mine started to run under the rules and regulations of your organization, and said that it was a printed form.

A. Yes, sir; we had printed forms of contracts.

Q. Is that printed form one made for the signature of the individual operator or is it a form for the signatures of a number of operators, together with your officials who meet together for that purpose?

A. As I stated, the operators in the different sub-districts in Ohio desire to sign up in groups. They insist on that and we make a contract with them in a group. There may be times, however, when all the operators do not sign; then, if they do not sign, it may be necessary to sign with individuals.

Q. Now, with regard to signing with an individual: Is there a separate printed form for that?

A. Well, we have quite a number of printed forms—have had—and before we compile all the contracts together, we have these single separate contracts—(interrupted)

Q. A sheet of paper of some kind with the rules and regulations of your organization printed on it?

A. Yes, sir; and the operator's name signed to the contract.

Q. The operator signs his name down at the bottom?

A. And the other operators are signed to the contract and we compile them in book form afterwards.

Q. You mean that the printed sheet which would be presented to the individual operator contains the rules and regulations of the union and purports to have printed as a part of those rules and regulations, and to authenticate them, the signatures of the group of operators who might have met with the officers at some other portion of the sub-district and agreed upon those particular things as the rules and regulations of the union and covering the operation of mining in that sub-district?

A. Yes, sir; that same vein of coal.

Q. Now, on that sheet the individual operator would sign his name at the bottom and the representative of the United Mine Workers—one of these officials you have named—would sign his name, would he?

A. No; those names are all signed beforehand when the groups of operators have signed the contract. The scale is signed by a group of operators and representatives of the mine workers; then if there is an individual, that contract is taken to that individual and he just signs his name with the rest of the operators, that he is willing to comply with that contract with the rest of the operators.

Q. Do I understand you that this agreement is between the group of operators and the officials—those three officials you have
754 named?

A. Or whatever number of officials may be necessary—the scale committee and the officials with them.

Q. Do I understand you that they sign these rules and regulations when they come together in this sort of a quasi convention, on a small scale, and then when the individual operator wants to sign, he is given the same document or the same book in which to subscribe his name, under the signature of those who attended the group meeting?

A. He is asked to sign that contract.

Q. That particular document or book?

A. Yes, sir.

Q. Now, who takes that to the individual operator when he concludes that he will sign?

A. Some officer of the organization will take the contract. Now, here are the rules for the sub-district, here is the scale of prices, here are the names of the operators signing and here are the names of the miners signing.

Q. Now, to illustrate from this book which you have and which contains only printed matter, you have shown me the officials mining scale of Sub-District 5, and then later on follow the general rules for pick and machine mining, and then follow the signatures of the chairman of the meeting and the secretary of the meeting, and then on behalf of the miners appear the signatures of the president of the district and the president of the sub-district, and the vice-president of the sub-district, and the miners' scale committee, and the name of T. L. Lewis, national president, and then on the opposite side appear the names of the president of the operators' association that you dealt with, and of the secretary of the operators' association you dealt with, and then of a committee constituting the operators' scale committee. Now, what I want to get at is this: When that document is completed by the signatures of all those people, those signatures are in writing, are they not?

A. Yes, sir.

Q. Is that document then taken to the individual operator when he agrees to sign the scale?

A. Why, not as a rule, with the written names there, because we go and get copies struck off—go to a printing office and get it struck off—may be five or six hundred or a thousand copies—and then that can be sent out to the different local unions and they can make their reports when they go home.

Q. And that would be in book form or on a sheet of paper?

A. Oh, no; just on a sheet of paper.

Q. Then the method would be, when a man signed, to have him just subscribe his name at the bottom of one of these long sheets containing the matter which I have illustrated would be
755 contained in that, as shown by this book.

A. Yes, sir; that is customary.

Q. When you pay benefits, Mr. Sullivan, what do you pay—how much?

A. Well, the constitution of our district says three dollars a week.

Q. You said something about the union not wanting to pay three dollars but wanting to give store orders.

A. We generally try to do that, as far as possible. There are some places where storekeepers sometimes hesitate to take the orders, and there are sometimes men who claim that it would inconvenience them very much to take orders and especially in a case of sickness, and other different things, but wherever we can get our miners to take orders in preference to currency we always feel that we can get better results. It has been our recommendation time and again but

of course we have not been able to bring it about absolutely, but wherever we have been able to bring it about we have always found very good results.

Q. And as a matter of practice you do pay money when you pay benefits?

A. Oh, yes; we pay money and pay orders, too.

Q. You only pay orders when you have a shortage of funds.

A. Oh, no; we paid orders right along for nine months—well, I would not say nine months—but seven months—in the Pomeroy bend. We had money but we paid orders right along.

Q. During all the strike of 1906?

A. Not all through it, but we paid orders there, and then we would go around about every two weeks with a check book and take up the orders. We would count the amount we owed to the storekeeper and give him a check, and he went to the bank and got his money.

Q. Does your organization stand in with any storekeepers?

A. No, we do not, but you know there are *some* storekeepers, like individuals, who look upon labor organizations as though they were something that belonged to his satanic majesty.

Q. Well, they sometimes get pretty close to that.

A. No; if it ever comes to that I will leave it.

Q. Now, getting to a pleasanter subject, you attended some of these joint conferences, didn't you?

A. Yes, sir.

Q. Can you tell which ones you attended?

A. Well, I have been attending them, I think, since 1889.

Q. You have attended all of them since that time?

A. That is my recollection.

756 Q. You said that you knew W. B. Wilson.

A. Yes, sir; I know him.

Q. And that he is a member of Congress.

A. I think he is yet; it seems to me he was re-elected that last time

Q. You said also that your organization seeks to have legislation enacted in its behalf?

A. Yes, sir.

Q. Do you know anything about or did you ever hear of the Wilson bill?

A. Well, I have heard about it, yes, sir; I haven't paid very much attention to it because I never got a copy of it.

Q. That bill is the one introduced by the Mr. Wilson you speak of?

A. Yes, sir.

Q. And it is known by his name?

A. The Wilson bill.

Q. That bill is a labor bill?

A. That is my understanding.

Q. And its passage is being urged by the American Federation of Labor?

Witness: Now, what bill do you mean? He has one bill that is called the "old age pension bill."

Mr. Gilchrist: No; that is not the bill; it is one relative to the rights of labor organizations, &c.

A. I know that the bill he has in relation to old age pensions—I know he had that up. It was a bill that we thought very important.

Q. This other bill is generally called the Wilson bill and known to the public as that?

A. Well, I do not know as I can say anything about that bill; I would not like to say anything about it because I have not read the bill.

Q. When an operator is running a non-union mine, and his men are unionized, and the operator says that he will pay the scale, do you allow him to run without signing up?

A. It of course would depend to some extent on where he is located.

Q. You might or you might not allow him to run?

A. It depends largely on where he is located. I will say in answer to that, Mr. Gilchrist, that that could not prevail over in Ohio because operators would insist on it—they would insist that he sign up the scale as well as they—and as a matter of course we would have to carry out—if he was willing to sign and willing to pay the scale, they would say, "Why not get him to sign the scale," and they would insist upon his signing the scale just as they had. So,
757 I say, it would depend largely upon the location.

Q. Assuming that the man was not so situated as to call forth the requirement of the other operators that he should sign up, would you permit his mine to run provided he was willing to pay the scale but was unwilling to sign up?

A. Well, if he was located—as I say, it would depend largely on the location of the mine and what his reasons were. Now, if he would say that he would pay the scale pending a settlement—if there was a strike—if he would say, "I will pay the scale pending a settlement over in your district" (speaking for myself), I would be very suspicious of that and I would wonder why he would be willing to pay the scale and not sign the scale; but in order to be sure that I was right I would permit him to work until I would find out later on, because as a rule the man that will say that he will pay the scale but refuses to sign—it is very often the case that there are some parts of the scale that he refuses to comply with.

Q. So that in practice you would be very chary about allowing a man to run *un*less he signed up?

A. I would allow him to run, understand me, but I would be very suspicious of what his intentions were in refusing to sign that scale, and I would visit him very *often* to try to persuade him to sign the scale.

Q. And being of your persuasive nature you would probably succeed.

A. I have been very fortunate in that way; I will say that.

Q. You are not in favor of strikes at all, are you, Mr. Sullivan?

A. I wish I had the power to remove the occasion and cause of strikes. I am very much opposed to strikes; I hate the name "strike."

Q. Why do you oppose strikes?

A. Oh, it looks as though intelligent people ought never to resort to that, on either side.

Q. It involves a great deal of misery, I suppose?
A. Yes, sir.
Q. And a great deal of ill feeling?
A. As a rule.
Q. And violence and bloodshed and different things of that kind?
A. Not in our district.
Q. Well, it does sometimes?
A. Not in our district. I will say that we had a strike on in the Crooksville district for seven months and five days and the operators never reported to me that there was any part of their property injured. In fact, they would sooner leave their property in the care of the striking miners as a rule, than in the care of somebody else.

758 Q. Where there is a strike—where there is a mine that is being operated independently and in opposition to your organization, and your men are idle around the mine, that condition frequently results in disorder, does it not?

A. In reply to that, Mr. Gilchrist, I will say that I do not recall of having any report come to me of a violation of law on the part of an individual member of our organization or any group of our members during a strike. It appears strange but it is nevertheless true, in Ohio, and I attribute this to our long acquaintance in this joint movement. There seems to be a commercial friendship between both sides and it has gone along until there has got to be a personal friendship. While we differ in opinion we will have a warm feeling for each other.

Q. The operators in your district who are members of that joint conference arrangement have not undertaken during the existence of a strike to run non-union, have they?
A. Oh, no; they never attempted it.
Q. Now, up in the Irwin field—you know about that, I suppose?
A. I have heard of it.
Q. Have you ever been up in that section?
A. I was never up there.
Q. Have you ever been in any section where a union mine was on a strike and the miners were there, and the management had undertaken to run non-union and defy your organization?
A. Well, no; I cannot say that I have; only there were one or two mines in the Pomeroy bend that undertook to do that but I staid on the ground and cautioned our men all the time.
Q. So as to keep them out of trouble?
A. Yes, sir; but I do not know as I would have needed to do it because they all appeared to be very good citizens.
Q. Mr. Sullivan, you were asked whether you were in any conspiracy to unionize the Hitchman mine. You took refuge, did you not, under your construction of the word "conspiracy"?
A. Why, I said then and I say now that I have never entered into a conspiracy of any kind, not only in my own work as an officer of a labor organization but in any other thing, in my life.
Q. Do you remember the occasion of the strike at the United States Coal Company over in Jefferson county?

A. I recollect that; it was in 1906.
Q. Do you recall that there was disorder there—great disorder?
A. I recall it but we were not responsible for it.
Q. Then the disorder did occur?
A. Yes, sir; but it was the men that the coal company brought in there, who were very bad citizens, and when the soldiers were
759 brought in there, as I understand, they went and disarmed those people right away and made them stay where they properly belonged; and I will say to the credit of the soldiers that they even divided their victuals with the children of the striking miners.
Q. You did not recall that occasion when you said that you had never known an occasion where there had been disorder?
A. Well, I was not there. I recall it through the official work, but I was not there. You asked me, if I recollect, if I had ever been at a place of that kind. I never was at Plum Run or Bradley during that strike.
Q. Hav- you had to your knowledge similar occurrences in your district?
A. Not that I know of; I do not recollect of any; there may have been but it was not during my time, that I recollect of.

(End of Cross examination.)

Redirect examination:

In 1906, when the organization desired to get the employes of the Hitchman Coal & Coke Company to join the union, it did nothing to prevent the company from selling its coal north and northwest, or to prevent its properly competing with the coal of the Ohio coal producers. Witness had no such object in view, either as an individual or as a member of the Union Mine Workers; the organization had no such object in view, for that would be punishing its own members.

Witness understands that there are mines in the Kanawha field that are run on a union basis; is slightly acquainted with Mr. Davis, president of that district; Mr. Davis attended the last annual convention at Columbus; District 17 had several delegates there; witness recalls meeting a man by the name of Morris there, and thinks he is secretary-treasurer of District 17; witness is not advised as to how many members there are in that district.

Witness has no ill feeling against Mr. Hitchman, President of the Hitchman Coal & Coke Company, and hopes that he never will have; had no ill feeling against him in 1906; has not any ill feeling against any operator who may differ with him.

I, Alston G. Dayton, United States District Judge for the Northern District of West Virginia, presiding at the hearing in the
760 aforementioned case of Hitchman Coal & Coke Company v. John Mitchell, et al., do certify that the foregoing narrative of all the oral evidence given upon such hearing has been examined and approved by me; and further, that wherever in said narrative the original testimony has been inserted in full in the form of questions and answers, it has been so inserted at the request of counsel

and by my order. And the said narrative is directed to be filed in the Clerk's office and to be incorporated in the transcript of the record in this cause on appeal.

Given under my hand this 10th day of July, 1913.

ALSTON G. DAYTON,
U. S. District Judge, N. D. W. Va.

Opinion.

(Filed Dec'r 23, 1912.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL and Others, Defendants.

Upon Final Hearing.

George R. E. Gilchrist, of Wheeling, W. Va., for Plaintiff.
Charles E. Hogg, of Morgantown, W. Va., for Defendants.

DAYTON, *District Judge:*

On September 21, 1909, I filed a written opinion in this cause, reported in 172 Fed. 963. I there stated the purposes and objects of the bill and the proceedings had thereon and in the cause to that date. I do not, because of the necessary length of this opinion made necessary by the gravity and importance of the questions involved, deem it expedient to reiterate the statement of the case there made, but refer to this prior opinion therefor. Suffice it to say that, to my order refusing to modify and in part dissolve the injunction based upon the reasons set forth in that opinion, an appeal was taken by the served defendants to the Circuit Court of Appeals for this Circuit. That Court, on March 11, 1910, dismissed such appeal
761 for want of jurisdiction. 100 C. C. A. 137, 176 Fed. 549.

The parties then proceeded to mature the cause for final hearing. The evidence was taken in open court before me. This evidence and the record in bulk is now estimated to be equivalent to between seven and eight thousand pages. Briefs of counsel filed are equivalent to near eight hundred more such pages, and the learning, research and legal ability displayed by counsel on both sides in these briefs are such as to command not only the court's gratitude but its highest admiration. The sincere purpose to aid, in every possible way, the true and right determination of the cause on the part of these counsel deserves special commendation.

I have given several months' consideration and study to the questions involved. Because of their importance, I have, upon this final hearing, deemed it proper to review, as briefly as possible, the origin

of labor Unions in England and the legislation and judicial decisions touching their rights, privileges and obligations in that country as well as under our Federal and local State laws and judicial decisions.

Without tracing the distinction, recognized in England, between Gilds and combinations of common laborers from which spring substantially the Labor Unions of today, it is sufficient to say that the emancipation of the serfs, in the time of Edward III., increased largely the number of laborers and the competition in the labor market, but in the middle of the 14th century when the plague carried off 2,000,000 souls, near half the population of the realm, conditions became reversed—labor became very scarce, food rose in price and higher wages were demanded by labor. In consequence the Statutes of Laborers were passed in 1349 and 1350 fixing wages absolutely for the summer months and authorizing the justices of the peace to fix them for the winter ones. These acts further designed to accomplish the other purpose of tying down the liberated serfs who had become laborers to the soil. A laborer was required under pain of imprisonment to remain in his parish and it was made an offence to refuse to work or to receive or offer higher wages than those fixed by the statutes. These Statutes were passed clearly in aid of the agricultural interests of a Kingdom with limited resources in that regard, seeking to supply food products for its people. They looked especially to the interest of the consuming public and not to those of the laborer. In the reign of Henry VIII, the Monasteries were suppressed and, in consequence, a large number of unemployed persons were turned out to wander over the country. Thereupon the Statute of Apprentices was enacted "in great hope, that being duly executed, it shall banish idleness, advance husbandry and yield unto the hired, both in the time of scarcity and in
762 the time of plenty a convenient proportion of wages." This Act confirmed the former ones regulating work and wages and in addition fixed the hours of labor and required the laborer to secure from the Master a certificate that he had completed his work for him before seeking work in a new district. These Acts fell into desuetude by the beginning of the last century and State regulation of wages became superseded by contractual relationships between master and servant. The result was that labor, which had before that time opposed state regulation of wages, changed front and began petitioning Parliament for such regulation and the enforcement of the Apprentice Act. Human nature is the same substantially yesterday, today, and forever. It was very natural that laboring men, seeking to better their condition in life, should a century ago, clamor for the legislative regulation when work was dull and the laborers many, which they had opposed, the preceding century, when harvests were plenty and laborers few. It is just as natural today that from the vast army of laborers engaged in the coal mining industry constantly depressed by over production, demands should come for legislative enactment of wage scales minimum at least, and in the absence of such legislation, efforts on their part should be made by combination, to achieve the same result. The question always recurs whether either method can best super-

sede the natural law of supply and demand. The English court at the time manifestly thought not for when organized trade societies, about 1800, instituted actions and sent petitions to Parliament to enforce the Apprentice Act (fixing wages) they held that the Act only applied to industries existing at the time of its passage in 1563, thereby rendering it practically ineffective, and, in 1813, Parliament formally repealed it. During these two and a third centuries the Apprentice Act, fixing wages, necessarily forbade labor combinations having for their purpose the securing of wages beyond the limit fixed by the law.

In addition the common law doctrine of "restraint of trade" rendered such combinations illegal. In 1797 an Act reaffirmed in 1800, known as the Combination Act, was passed, making unlawful every combination seeking to secure advance of wages, to change or decrease the hours of work, to prevent any employer from hiring any one he chose, to prevent workmen hiring themselves, to induce workmen to leave their work to attend any meeting called to advance any of these objects or to spend any money for these purposes.

It is important to pause here and bear in mind that the three charters granted to Virginia in 1606, 1609, 1611-12, all expressly provided that the laws and ordinances enacted by it should
763 conform to those existing and in force in England; that under its six State Constitutions (1776, 1830, 1850, 1864, 1870, and 1902) the fact has always been recognized that the common law of England in force prior to the Revolution was the basic law of the State save and except so far as repealed or modified by either constitutional or legislative enactment; that in the first constitution of West Virginia (1861-3) it is enacted:

Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the legislature.

The same provision was incorporated in the Constitution of 1872.

This being true, it is all important to the correct determination of the questions here involved to determine (*a*) just what the common law was at the time prior to the birth of Virginia as regards these labor organizations and (*b*) how far that law has been repealed or modified by legislative enactment in Virginia and West Virginia. While there have been very many conflicting decisions in the different states of the Union, it seems to me that the questions are essentially local in character and must be determined by local law. It is certainly an inherent power of each state to determine for itself how law and order shall be maintained and crime punished. This power necessarily carries with it the right to determine what assemblies meeting within its limits are lawful or unlawful, for what lawful purposes organization may be had and for what purposes it may be unlawful to organize and operate within its limits. This inherent power in the State can only be superseded by the very limited power of the National Government to interfere provided for by the Federal

Constitution. For this reason it seems clear to me that I must determine what constitutes a lawful organization in West Virginia by its laws and not by either statutes or judicial decisions of other states. What may be lawful in one may be unlawful in another, what may be criminal in one may be permissible in another. In this view of the matter the subsequent legislation and decisions in England become immaterial except so far as they may aid us in defining the true principles of the common law existing prior to 1776 and still existing in this State. It will be sufficient to say that the Combination Act of 1800 was, in 1825, repealed by the English Parliament, and conspiracy alone became the combination liable to prosecution.

For common law conspiracy, a number of the members of
764 trades unions were prosecuted for combining to raise wages and for other of their declared purposes, and convictions were had. In 1856 Crompton declared "that all combinations tending directly to impede and interfere with the free course of trade were not only illegal but criminal." In 1859 Parliament passed an Act more closely defining the offence of "Molestation and obstruction" used in the Act of 1825. It rendered peaceful persuasion to induce workmen to abstain from working, in order to raise their wages, lawful. Was this act necessary because prior to it such persuasion for such purpose under the common law was unlawful? If so has that common law rule been abrogated in West Virginia by subsequent legislation? These questions must be considered later. Under this act of 1859 it was held by the Queen's Bench (1867) by Cockburn, C. J.: "I am very far from saying that the members of a trade union, constituted for the purpose not to work, except under certain conditions, and to support one another in the event of being thrown out of employment, in carrying out the views of the majority would bring themselves within the criminal law, but the rules of the society would certainly operate in restraint of trade, and therefore, in that sense, be unlawful." The labor Unions thereupon secured the passage of the Act of 1871 providing that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise." Was this act secured to repeal another common law rule existing prior? If so, has such common law rule been abrogated in West Virginia? If not could Congress, by virtue of its power to regulate Inter-state trade, traffic or commerce interfere with or prevent this State's enforcement of it as regards Intra-state trade? This Act of 1871 was the result of the long agitation preceding which had resulted in the appointment of a Royal Commission by Queen Victoria in 1867 and which commission had made ten preliminary Reports and its final one on March 9th, 1869. As a result the Government introduced a bill to legalize Trade Unions so far as they, being combinations, were in restraint of trade, and in addition the bill included certain clauses which made criminal certain acts of theirs. Objection was made by the Unions to these criminal provisions. The result of the long agitation that followed was that the bill was cut in two, one being 34 & 35 Vict. c. 31 known as the Trade Union Act

of 1871, above referred to, the other the Criminal Law Amendment Act, 1871 (Stat. 34 & 35 Vict. c. 32). By four years of agitation the Unions secured the appointment of another Royal Com-
765 mission which reported in 1875. Following this report Parliament repealed the Criminal Law Amendment Act 1871 (Stat. 34 & 35 Vict. c. 32) and passed the Criminal Conspiracy and Protection of Property Act, 1875 (Stat. 38 & 39 Vict. c. 86), and in 1876 amended the Trade Union Act, 1871, by an Act known as the Trade Union Act (1871) Amendment Act, 1876, and the two together, it was provided, were to be cited as the "Trade Union Acts 1871, and 1876." The "Conspiracy and Protection of Property Act, 1875," was amended by an Act known as the "Trade Disputes Act, 1906," and it was provided that it and the "Trade Union Acts 1871 and 1876" together might be cited as the "Trades Union Acts 1871 to 1906." These embrace the existing Statutory law of England touching Labor Unions.

The Trade Union Act of 1871 provides:

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

4. Nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely:

1. Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed.

2. Any agreement for the payment by any person of any subscription or penalty to a trade union.

3. Any agreement for the application of the funds of a trade union—

(*a*) To provide benefits to members, or,

(*b*) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or,

(*c*) To discharge any fine imposed upon any person by sentence of a court of justice; or,

4. Any agreement made between one trade union and another; or,

5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

766 5. The following Acts, that is to say,

(1) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same;

(2) The Industrial and Provident Societies Act, 1867, and any Act amending the same; and

(3) The Companies Acts, 1862 and 1867, shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

Sec. 6 then provides that any seven or more members of a trade union may register such trade union "provided that if any one of the purposes of such trade union be unlawful such registration shall be void."

Section 7 authorizes a registered union or any branch of it under the Act to purchase and lease land not exceeding one acre in the name of trustees, to sell, exchange and mortgage the same; Sec. 8 vests all land and personal property of the union or of its branches in the trustees selected therefor and their successors; Sec. 9 authorizes such trustees to sue and be sued touching the property rights of the union; Sec. 10 limits personal liability of such trustees to funds actually received by them as such; Sec. 11 requires the treasurer of the Union to render to the trustees accounts of moneys, bonds or securities received by him, at such times as the Union rules may prescribe, and, if required, to turn over to the trustees balances in his hands and all books, papers and property of the Union; Section 12 provides for legal enforcement and criminal punishment of any officer, member or other person fraudulently obtaining possession of, withholding or misappropriating funds or property of the Union so registered. Sec. 13 provides the rules of registration to be (1) by an application with printed copies of the Union's rules, and a list of the titles and names of its officers sent to the registrar who (2) shall become satisfied that the Union has complied with the requirements of the Act; (3) that no Union shall register under a name identical or so nearly the same as to deceive, with that of another existing registered union; (4) where the Union has been in operation for more than a year before application made for registration a general statement of the receipts, funds, effects and expenditure of such Union to be delivered to the registrar; (5) the certificate of registry unless proved to have been withdrawn or cancelled to be conclusive that the requirements of the Act have been complied with, (6) one of the Secretaries of State to have power to make regulations
767 from time to time touching details of registration, the forms to be used, the inspection of documents kept by the registrar and the fees to be paid for registration; Sec. 14 provides, (1) that the rules of the Union shall contain provisions in respect to the several matters mentioned in the first schedule of the Act, and, (2) that a copy thereof shall be delivered to any person by the Union on payment of a sum not exceeding one shilling. Sec. 15, that every registered Union shall have a registered office. Sec. 16 that a general statement of the receipts, funds, effects, and expenditures of the Union be, on the first of June of each year, transmitted to the registrar together with any alterations in rules or changes in officers

of the Union; Sec. 17, registrars to report annually to Parliament; Sec. 18, making it a misdemeanor to circulate with intent to defraud other than the existing rules of a Union. Sections 19, 20, 21, 22, 23 relates to legal proceedings for the enforcement of the fines and penalties provided for in the Act and of definitions of terms used and "The First Schedule" defines six matters to be provided for by the Union's rules. (1) The name and place of meeting for business. (2) The whole of the Union's objects, and the purposes for which its funds shall be applicable, the conditions under which a member may become entitled to benefits and the fines and forfeitures that may be imposed. (3) The manner of making, altering, amending or rescinding the rules. (4) A provision for the appointment and removal of a general committee of management, of trustees, treasurers and other officers. (5) A provision for the investment of the funds, and an annual audit of accounts. (6) Inspection of the books and roll of membership by every person having an interest in the Union's funds. The amendments provided by the Act of 1876 do not change these provisions, but enlarge them by, (1) allowing Unions to pay money on the death of a child under ten years of age. (2) providing for transfer of Union's funds from the estate of a bankrupt trustee to a new trustee. (3) requiring registration by registered Unions in all countries where the Unions operate. (4) regulating the withdrawal and cancellation of registration certificates. (5) allowing one under twenty-one but over sixteen years of age to become a member of a registered Union and providing how funds due him may be paid by the Union. (6) providing how a registered Union may change its name. (7) that two or more Unions may amalgamate and the proceedings necessary thereto. (8) and how a Union may dissolve.

The Conspiracy and Protection of Property Act, 1875, provides:

An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance
768 of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offense against the State or the Sovereign.

It makes it criminal for (1) an employe of a municipality, alone or in combination with others, to break his contract of employment if he has reasonable cause to believe his doing so will deprive the inhabitants of the place wholly or to a great extent of gas or water, (2) to break a contract of hiring when there is reasonable cause to believe the doing so will endanger life, cause serious bodily injury,

or expose valuable property, real or personal, to destruction or serious injury. For a master legally bound to furnish his servant with food and clothing to fail to do so where such failure is likely to impair seriously the health of the servant. It then provides:

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

1. Uses violence to or intimidates such other person or his wife or children, or injures his property; or,

2. Persistently follows such other person about from place to place; or,

3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,

4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,

5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road, shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labor.

769 [Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section. (Repealed by section 2, Trade Disputes Act, 1906.)]

The remainder of its provisions relate to the legal proceedings to be pursued in its enforcement, to definitions of its terms and to its application to Scotland and Ireland.

The Trade Disputes Act, 1906, provides:

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875:

'An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.'

2. (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation of furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

(2) Section seven of the Conspiracy and Protection of Property Act, 1875, is hereby repealed from 'attending at or near' to the end of the section.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract, of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

4. (1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act, 1871, section nine, except in respect of any tor-
770 tious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

In giving this very limited review of the origin and progress of English legislation touching trade unions, I have not stopped to cite authorities. It will be sufficient for me to say that by aid of counsel I have had before me and have consulted the English works, Greenwood on The Law Relating to Trade Unions, Chalmers-Hunt on Trade Unions, Davis' Labour Laws, Wright's Criminal Conspiracies, Webb's History of Trade Unionism, Schlosser and Smith Clark's Legal Position of Trade Unions, Webb's Industrial Democracy, Vol. 14 Enc. Laws of England, The 11th and Final Report of the Royal Commissioners (first Commission appointed) 1869 and Second and Final Report of the Commissioners (second appointed) 1875.

It is somewhat difficult to define the exact status of these Unions under the involved and confusing legislation existing today in England. Their position in the body politic is certainly anomalous. Discussing the Trade Union Act of 1871, Farwell, L. J., in the Taff Vale Case (1901) 1 K. B. 170, says:

A trade union is neither a corporation, nor an individual, nor a partnership between individuals. It is an association of men which almost invariably owes its legal validity to the Trade Union Acts 1871-76 * * * and the Legislature in giving a trade union the capacity to act by agents, has without incorporating it, given it two of the essential qualities of a corporation.

Provisions are made for registered Unions but the acceptance of such provisions is purely voluntary. These registered unions obtain few privileges that are not enjoyed by those unregistered. It is very doubtful whether class legislation of this character could be enacted and enforced in the United States by reason of Constitutional limitations both Federal and State. It is to be always borne in mind that the power to legislate is supreme and unrestricted in the English Parliament, while always limited here by the written Federal and State Constitutions. However we are not called upon to pass upon the constitutionality of such legislation for none such exists under Federal Statute or by laws of West Virginia as we shall presently show. However some limitations in England still exist, under this legislation, upon the acts and proceedings of Union organiza-

tions, that tend clearly to establish common law principles
771 existing in this state by which we must be bound. Some of these it seems important to indicate. First—At least, prior to the last Act 1906, which provided by its section three that:

An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract;

it was clearly unlawful for these Unions, by its trustees and officers to induce or procure men to break contracts with their employers. This was distinctly held by the House of Lords in 1901 in the case of Quinn v. Leatham A. C. 495, 70 L. J. P. C. N. S. 76, 65 J. P. 708, 50 Week. Rep. 139, 85 L. T. N. S. 269, 17 Times L. R. 749, and in South Wales Miners' Federation v. Glamorgan Coal Co. (1905) A. C. 239, 74 L. J. K. B. N. S. 525, 43 Week. Rep. 593, 92 L. T. N. S. 710, 21 Times L. R. 441.

This latter case, as reported in 1 British Ruling Cases 1, will be found to involve closely a similar condition of fact existing here. The Coal Company and seventy-three other plaintiffs brought action against the Miners' Federation, its trustees, officers and certain members of its executive counsel for wrongfully and maliciously procuring and inducing its workmen in the mines to break their contracts of service with the plaintiffs. It appeared that the Federation (a registered trade Union), fearing that the action of merchants and middle men would reduce the price of coal and consequently the rate of wages ordered a "stop day," obeyed by over 100,000 men who took a holiday and thereby broke their contracts of service. Subsequently four additional "stop days" were ordered and the men ceased work in violation of their contracts. It was found this advice to the men on the part of the Federation's Counsel was given without malice. Bigham J. dismissed the action. The Court of Appeal reversed the judgment and awarded damages to the plaintiff (1903) 2 K. B. 545, 72 L. J. K. B. N. S. 893, 89 L. T. N. S. 393, 19 Times L. R. 708. Upon appeal to the House of Lords the Court of Appeal was affirmed and the Federation's appeal dismissed, the Earl of Halsbury, L. C., Lord MacNaghten, Lord James, and Lord Lindley delivering concurring opinions. Good faith was there held to be no justification: "that to combine to procure a number of persons to break contracts is manifestly unlawful." This ruling is in full accord with our American decisions which sustain the right to an injunction against the officers of a labor union to restrain them from inducing members of such organization to strike in violation of their contracts of employment, or which hold them liable
772 in damages therefor. Holder v. Cannon Mfg. Co. (1904) 135 N. C. 392, 47 S. E. 781; Tubular Rivet & Stud Co. v. Exeter Boot & Shoe Co. (1908) 86 C. C. A. 648, 159 Fed. 824; A. R. Barnes & Co. v. Berry (1907) 156 Fed. 72; Old Dominion S. S. Co. v. McKenna, (1887) 30 Fed. 48; Thomas v. Cincinnati N. O. & T. P. R. R. Co. (1894), 4 Inters. Com. Rep. 788, 62 Fed. 816; Thacker Coal & Coke Co. v. Burke (1906), 59 W. Va., 253, 5 L. R. A. (N. S.) 1091, 53 S. E. 161, 8 A. & E. Ann. Cas. 885. Attached to the report of this last case in 5 L. R. A. (N. S.) 1091 will

be found a very valuable note citing many additional authorities. It would seem clear that section 3, of the English Act 1906 above referred to can only affect the enforcement of this principle in England when a trade dispute is on between the same particular employer and his employes and therefore that no sanction for the claim for the so-called sympathetic strike can be found in it where the breaking of contracts is involved. Second—The Conspiray Act 1875, it will be observed expressly makes criminal all violence and intimidation against any person to prevent him from exercising his legal rights, or against his wife or children, or injury to his property; from persistently following him from place to place; from hiding his tools, clothes or other property or from depriving or hindering in the use thereof; from watching or besetting his house or place of business or the approach thereto; from following such other person with two or more others in a disorderly manner through any street or road.

In detail specification of forbidden acts this English statute possibly has gone farther than many of our American Courts' decisions have gone as regards what shall be considered as intimidation and violence, nevertheless the general principle is the same and is fully recognized in this country as also the right to resort to injunction to stay such violence and intimidation. It is needless to cite the vast number of cases establishing this principle in this country beyond peradventure. Third—It will be noted what stress is laid by this English legislation upon the rules that may be adopted by the Unions. In order for them to have the benefit of registration these rules must be filed with the registrar. All changes therein must be reported and they are to be printed and copies furnished on demand of any one upon payment of a nominal fee. The clear purpose of this publicity is that it may be apparent to the public just how far the Union is lawful in its organization and designs and that the courts, when appealed to, may determine the character of the Union by an examination of its rules. As a result, since these Acts were passed, the English Courts have been called upon to deter-
773 mine by such examination whether several of these organizations were lawful or not. From these decisions can be ascertained some very valuable information as to what penalties and obligations can be enforced by these Unions against (*a*) its own members, (*b*) against the interests of its members' employers, and, (*c*) against the interests of the public.

In Chamberlain's Wharf Limited v. Smith (1900) 2 Ch. 605,

The rules of an association, called the Tea Clearing House, the members of which were dock companies and tea warehouse keepers carrying on the business of warehousing tea in bond, provided (rule 11) that every member should charge on teas the respective rates and adhere to the terms and conditions specified in a schedule to the rules, and should not be at liberty to depart from them in any way, except that a discount not exceeding 10 per cent. might be allowed on the said rates. No other discount, no money gratuities, and no advantages, direct or indirect, should be offered or allowed by any member to any merchant, broker, or other person in connection with any matter or thing in any wise relating to the Tea Clearing House agreement.

By rule 14. No subscriber should be entitled to warehouse or deposit tea with, or employ in connection with tea, any dock company or tea warehouse keeper who was not a member of the Clearing House, or to purchase or sample any tea from the warehouse of any non-member.

By rule 15. Any member breaking or failing to observe any of the rules was to be liable to expulsion by resolution of the committee.

The committee passed a resolution expelling the plaintiffs for an alleged breach of the rules and they brought an action against the members of the committee to restrain them from acting on the resolution, on the ground (inter alia) that the plaintiffs had not an opportunity of being heard in their defence. Kekewich J. granted an interlocutory injunction:—

Held, on appeal, that the association was a 'trade union' within the meaning of s. 16 of the Trade Union Act Amendment Act, 1876; that its objects were illegal independently of the Trade Union Act, 1871, and that s. 4 of that Act prevented the Court from directly enforcing the agreement between the members:

Held, also, that by granting the injunction the Court would be directly enforcing the agreement.

The injunction was accordingly dissolved.

774 In Cullen v. Edwin (1903) 88 L. T. 686,

Under the rules of the Amalgamated Society of Tailors it was provided by rule 34, "Trade Regulations," that during slack seasons a fair equitable division of trade shall be compulsory in all shops. That a fair equitable division of trade shall be understood to mean that each man shall get trade to the same value as his fellow man, or as near it as possible. In no shop shall the dual system of piece work and day wage be allowed to exist. No member of this society shall in future be allowed to leave a workshop for the purpose of working outdoors or at home, except by the express permission of his branch committee, such permission only to be granted in case of physical inability to remain in the workshop, and to be in all cases indorsed by a general meeting of the members of the branch. Any member breaking the rules and allowing himself to run out of society and still work for a society shop, the branch shall have full power to deal with the matter as they deem best subject to rules 32 and 33. That a working week shall not exceed fifty-four hours, each district or town to regulate its own time of starting in the morning and leaving off in the evening and that no overtime be worked except in cases of necessity. Time lost on one day cannot be made up on the following or any subsequent day. Members infringing this rule shall be dealt with as the branch directs, subject to rules 32 and 33.

By rule 32 if a member acted contrary to the interests of the society or its rules, he was to be fined or expelled.

Held, that the society was illegal.

This case was heard in King's Bench before Lord Alverstone, C. J., Wills and Channell J.J. all concurring. It was appealed and affirmed by the court of appeal in 1904, 90 L. T. 840, all three of the judges concurring. In his opinion in this case Collins M. R. says:

It is possible for societies to frame rules which contain an element of illegality in them, without at the same time vitiating the whole system. It is possible. It is also possible for them to make rules which are apparently and ostensibly innocuous, and yet may vitiate the whole system, because rightly understood and *and* considered as a whole, their innocent parts are merely ancillary to that part which is not in point of law deemed to be legal. The question on which side of the line the particular rules of a particular society fall is a question of fact in each case.

775 Again he says:

At common law agreements in restraint of trade are bad, and combinations in restraint of trade are illegal. But the Trade Union Acts have, to a certain extent, and for certain limited purposes, modified the rigor of the common law.

The case of Gozney v. Bristol &c. Trade and Provident Society (1909) 1 K. B. 901 was an appeal from the county court to King's Bench Division and from there to the Court of Appeal—The defendant was to be practically an indemnity company undertaking to pay sick, funeral and death benefits and also benefits to members when on strike. The action was brought to recover such benefits not paid. The County Court held the Society illegal and the action in consequence not maintainable. This action was reversed by the King's Bench and the reversal approved by the Court of Appeal upon the ground expressed by one of the Judges that "this society is just inside the limits of legality" for the reason, as expressed by another of them, that "Provisions to encourage or procure a strike may be illegal. Provisions for the assistance of the victims of a strike may be perfectly legal." In these rules I can find no provisions addressed to the procurement or even sanction of a strike. Channel J. of the King's Bench in his judgment in this case says:

It seems to me that the grounds for suggesting illegality are two. First, there may be illegality in the character of the influence which is exerted, which may amount to unlawful coercion. * * * Secondly, that with which I think we have to do in this case, namely, the doctrine as to restraint of trade. Speaking generally, and without pretending to give an exhaustive definition, that doctrine is that it is unlawful to fetter by agreement the freedom of action of any one engaged in trade, as a trader or an employer or a workman, except so far as such fetter is reasonably necessary for the protection of the person seeking to impose such fetter upon others.

Again he says:

What I think has to be found in order to make the association illegal is that the members agree to submit their own action to the decision of others and to strike or not as directed. That would certainly make the society unlawful, and probably also it would be unlawful if the object is to combine for the purpose of putting pressure on employers and thereby to fetter their freedom of action.

776 In his opinion in the case Fletcher Moulton L. J. says:

To answer this question (of legality of the association) it is necessary to examine the purposes for which the defendant

society is formed, and the means whereby it proposes to effect those purposes. If either of these be illegal, it may be necessary to examine more closely into the nature of that illegality to see whether it is of such a kind as to taint the whole constitution of the society and make it an illegal society. * * * It follows, therefore, * * * that the question must be decided entirely by an examination of the contents of the printed book of rules of the society. These rules define its constitution and objects and set forth the detailed rules adopted by it for carrying out those objects.

The case of Russell v. Amalgamated Society of Carpenters and Joiners seems to have been a test one having been appealed to the Court of Appeal and from there to the House of Lords (1910) 1 K. B. 506 and 81 L. J. K. B. 619.

In this case it was held:

Where the rules of a society combined provisions for the militant purposes of a trade union and provisions for the provident purposes of a friendly society, and it was provided by one of the rules that members of the society might be expelled, with the result that they would forfeit all future benefit from the funds of the society, for non-compliance with the decisions of committees directing the militant operations of the society or for violating the recognized trade rules of the district:—

Held, that the main object of the society was illegal at common law, as being in restraint of trade, and that the rules relating to its provident purposes were so inseparably connected with that object as to be affected by its illegality, and therefore unenforceable; and consequently that an action for moneys alleged to have become payable to a member under those rules was not maintainable.

Vaughn L. J. of the Court of Appeal in his opinion says:

It is not every restraint of trade which will render the provisions of an agreement unlawful, in the sense that it cannot be enforced by action at common law. To have that effect a restraint of trade must be such as in some way to prejudice the interests of the community. It may do that in a case where the freedom of contract of an individual is restricted to an unreasonable extent by an agreement which he has entered into, or in a case where the area
777 from which employers, not parties to the agreement, can seek to obtain workmen is unreasonably restricted. It may be observed, in passing, that it cannot be said in the latter case, as it can in the former, that the restraint of freedom of trade arises in consequence of the voluntary action of the party whose freedom is restrained; for, in a case where, for instance, the rules of a trade union prohibit their members from working with non-union men, there is a restraint of trade to the prejudice of employers and workmen other than members of the trade union, quite independently of any action of their own.

And again:

With regard to clause 3, which provides that, where one of the committees of the union therein mentioned considers it to the best interest of the members of the union that they should refuse to work with non-union men, they shall be entitled to trade privileges,

it appears to me that this clause does involve a restraint of trade inconsistent with the public interest.

The same observation seems to me to apply to clause 6, the important words of which are those providing that any members who may be withdrawn from their employment on the instruction of one of the committees of the union therein mentioned shall be entitled to trade privileges. The effect of the rules seems to me to be that the members in question must leave work when they are so withdrawn by the instructions of the committee.

Then, again, rule 48, clause 1, appears to me most materal for the purpose of showing that the rules contemplate such a restraint of trade as to render them generally unenforceable in law. [The Lord Justice here read the clause.] In my opinion, that clause, in substance, from beginning to end amounts to such a restraint of trade as necessarily to render its provisions unlawful. It trespasses against the principle of freedom of contract. The workman is not to be allowed to take a sub-contract or do piece-work, or to work in fixing, using, or finishing work which has been made under conditions which the union may consider unfair, and, if he does so, he is liable to be expelled from the union. From every point of view this clause is, in my opinion, of such a character that it must of necessity tend seriously to hamper and restrain trade.

Kennedy L. J. in his opinion in the case says:

The only question before us now is, therefore, as I have said, whether this society is an illegal society at common law. In
778 dealing with that question I will not refer to the rules of the defendant society in detail, as they have been already fully dealt with by the other members of the Court. Speaking generally, what seems to me to be the vice of these rules is that they provide for a restraint of trade, not shown to be reasonable, in that they involve a surrender by the members of the union of their individual freedom of action; for they provide that a member may be expelled from the society, under rule 48, clause 1, with the result that he will forfeit all future benefits, unless he renders passive, or, if required, active obedience to the decrees of certain bodies constituted within the union under the rules.

In his opinion in the House of Lords, Lord Macnaghten in this case says:

The only question, therefore, seems to be this: Is this trade union, apart from the Act of 1871, a lawful association? The answer must depend on a consideration of its purposes as manifested in its rules. It is not every restraint of trade that is unlawful. But I cannot doubt that restraint of trade which is unreasonable, oppressive, and destructive of individual liberty is unlawful. And I cannot help agreeing with the learned Judge of the Court of Appeal that such is the character of some of the rules of this society; and further, that having regard to the constitution of the society, the powers vested in its executive officers, and the blending of its funds for all purposes, it is impossible to separate what is legal from what is not legal.

And in discussing the effect of this Trade Union Act 1871, as suppplemented by the Act of 1876, Lord Robson says:

It is to be observed that the Act did not go the length of abrogating or altering the general law against restraint of trade. It grafted an exception on it in favor of certain classes of persons, but by section 4 it maintained the principle of the old law even against those persons, to the extent of refusing the assistance of the Courts in the direct enforcement of contracts between members of a trade union, when the purposes of the union were in restraint of trade. Had it gone further, and altogether excluded the application of the common law doctrine in this connection, the Courts would have been compelled to give full effect by decree, or injunction, to contracts whereby workmen had bound themselves not to undertake certain legitimate kinds of work, and to refrain, under certain circumstances, from working at their trade at all, except by leave of
779 their union, no matter what their immediate necessities might be. Such contracts would then be as legal as any other by which a man limits his freedom of action for a definite time or purpose, and the prospect of the burden which would thus be cast upon the executive, of actively enforcing great numbers of such contracts in periods of industrial hardship or disturbance, was one from which Parliament might well shrink.

But the operation of section 4 of the Act of 1871 is not confined merely to contracts in restraint of trade. It enacts also that 'Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of' (inter alia),

'(3) Any agreement for the application of the funds of a trade union—(*a*) To provide benefits to members.'

Prima facie, the agreements thus excluded from the benefits of the Act are legal and meritorious, and their exclusion can only be due to the fact that they rest, in some degree, upon a consideration involving a restraint of trade which the law tolerates, but will not directly assist.

See also Mudd v. General Union of Operative Carpenters and Joiners (1910) 103 L. T. 45, and Thomas v. Portsmouth "A" Branch of the Ship Constructive &c. Association reported in the Times Law Reports May 3, 1912, which are to the same tenor and effect.

I have made this review of the English legislation and decisions in regard thereto to make clear the demonstration of these propositions:

First. That these Union combinations under the law must be considered in their three fold relation, (*a*) to their own members, (*b*) to those who may employ such members, and, (*c*) to the public interests.

Second. That in their relations to their respective members they cannot, even under the advanced legislation of England, undertake to require by oath, obligation, constitution, by-law or rule, a surrender by such members of their individual freedom of action; that when they seek to do so they become illegal and, while tolerated in England under her Trade Union Acts, nevertheless there, by reason of their illegality, neither can the Unions enforce such contracts with their members or members with the Unions.

Third. That the question of legality is to be determined from an examination of the Union's Constitutions, by-laws or rules as they may be called, and while some such rules may be lawful, yet if others unlawful in character are of such weight and im-
780 portance as to dominate the course of the Union's action, or if the lawful and unlawful ones are so interdependent or intermingled as to render separation, one from the other, impracticable then the organization becomes wholly illegal.

Fourth. That in their relations to the employers of their members, while they may use all peaceful efforts to advance their members' interests, in the way of aiding them to secure better wages, shorter hours of labor and better conditions in which to work, they cannot accomplish these ends by any acts of violence, coercion or intimidation on their part or at their instance. They may not by common law, and in the absence of permissive legislation such as that of the English Act of 1906, interfere with the contracts which their members have entered into and which are existing between an employer and his employees nor by any means induce such employees to break such contract or contracts. To break a legal contract is unlawful, therefore to persuade or induce one to do this unlawful thing is itself unlawful. Further, these Unions have no right, by intimidation or coercion to destroy the inherent right vested in the employer to control his property and conduct his business in any lawful manner he may choose. Such employer may fix the terms and conditions upon which he will give employment; may employ whom he desires, refuse to employ who mit pleases him to deny employment; may discharge (in absence of contract) whom he pleases and refuse to discharge whom he pleases. It is entirely within the right of the Union to advise its members in the absence of contract on their part with the employer to quit their labor for him, to strike in other words, and insist upon other and different terms of employment before they return to labor, but neither the Union or its striking members have any right by intimidation or coercion to prevent other laborers or any of the members of the Union itself from assuming the employment under the employer's terms if they so desire. They may by reasoning and persuasion under such conditions induce its own members and others not to assume the employment where the breaking of no contract is involved, but this is as far as they can go.

Fifth. The relation of these Unions to the public must be considered in dual aspect, (*a*) as to the non-union laboring class seeking competitive work with the Union's members, and, (*b*) as to the public generally considered as consumer of labor's product As regards the first class, it is to be remembered that while the membership of organized labor is large the number of non-union laborers in this country and especially in this State is many times greater and it is the law's function and duty to fully, without fear,
781 favor or partiality, protect the rights of the latter as well as those of the former. These rights guarantee to the laborer the absolute right to join the Unions or not as he sees fit. The Unions cannot, under the law, use any means of intimidation or

coercion to compel him to do so. The limit of their right in this direction is persuasion. If he joins they cannot compel his continuance in membership. He may withdraw when he desires. The Union members as individuals may voluntarily determine not to work with non-union labor if they so desire, they can cease working themselves on that account, but they can do nothing in the way of intimidation or coercion to compel either other Union men or the non-union men to cease working on the one hand or to prevent the employer from filling their place with other Union or non-union men on the other. The inherent right of the individual laborer to sell his labor, which is his property, in any lawful manner or pursuit and upon such terms and conditions as he may himself determine to be for his personal best interests must be upheld by the law just as fully and freely, regardless of these union organizations, as it is upheld in all the other relations of our civic life. As said by Sir William Erle in his "Memorandum on the Law Relating to Trade Unions" filed with the Eleventh and Final Report of the Royal Commissioners, 1869:

As to combination, each person has a right to choose whether he will labour or not, and also to choose the terms on which he will consent to labour, if labour be his choice. The power of choice in respect of labour and terms, which one person may exercise and declare singly, many after consultation may exercise jointly, and they may make a simultaneous declaration of their choice, and may lawfully act thereon for the immediate purpose of obtaining the required terms; but they cannot create any mutual obligation having the legal effect of binding each other not to work or not to employ unless upon terms allowed by the combination. Any arrangement for that purpose, whatever may be its purport or form, does not bind as an agreement, but is illegal, though not unlawful, on account of restraint of trade, and therefore void. Every party to it, who chooses to put an end to it, is thenceforward as free to claim his own terms for his own labour, as if such arrangement had never been made; and any attempt to enforce, by unlawful coercion, performance of any such supposed agreement, against a party who chooses to break from it and labour or contract for labour upon different terms, is an attempt to obstruct him in the lawful exercise of his right to freedom to trade; and is thus a private wrong; it is also a violation of a duty towards the public—that is
782 to say, of the duty to abstain from obstructing the exercise of the right to the free course of trade. A person can neither alienate for a time his freedom to dispose of his own labor or his own capital according to his own will (see Hilton v. Eckersley, 6 Ell. & Bl. 47), nor alienate such freedom generally and make himself a slave (see the argument of Hargrove in the Negro Sommerset's case, 20 State Trials, 23); it follows that he cannot transfer it to the governing body of a union.

As regards the second aspect, the relation of these organizations to the general public as consumers of the products of capital and labor it must be admitted that, in the absence of special legislation such as that of England, (of doubtful constitutionality at least in

this country under the written constitutions, Federal and State, thereof) it is just as unlawful for labor to combine to form a trust or monopoly as it is for capital to do so. The same rule of common law governs the one as the other and the Act of Congress, known as the Sherman Anti-Trust Law, I conceive to be simply declaratory of this principle. The latest construction of this act by the Supreme Court set forth in the Standard Oil Company v. United States, 221 U. S. 1 and United States v. American Tobacco Company, 221 U. S. 106, is that "it prohibits all contracts and combination which amount to an unreasonable or undue restraint of trade in interstate commerce." By the English authorities, I have hereinbefore cited, it will be perceived that the same doctrine of the "unreasonable" restraint of trade has been applied there as against these labor organizations. Turning our attention to our own country, while it might be interesting to trace the history of these labor combinations in the United States and the decisions of the several states touching their status and rights, it is clearly impracticable to do so within the limits of this opinion. As regards the historical outline too, it has already been well written in an article on "Trade Unions" in 27the Volume of the Encyclopaedia Brittanica (11th Edition 1911) pages 150-153. As regards the court decisions of the several states, it is to be always borne in mind that some of the states have enacted legislation touching these organizations differing in character and extent from each other and that their decisions, based upon and influenced by such legislation, may be found conflicting and confusing as regards each other. For example New York has passed laws excepting trade unions from restrictions on combinations and conspiracies imposed by other statutes or by the common law; and states like Michigan, Wisconsin, Nebraska, Montana
783 and North Carolina have laws excepting them especially from the operation of their Anti-Trust laws. The Texas statute, having a like effect, has been by its Supreme Court, declared unconstitutional. See National Cotton Oil Co. v. Texas, 197 U. S. 115.

On June 1, 1898, an Act of Congress was approved, Ch. 370, 30 Stat. L. 424, providing for arbitration of controversies between common carriers in interstate commerce and their employees. The Act was permissive and not mandatory in character as to whether such arbitration should be submitted to by the parties concerned. Its 10th section, however, provided:

That any employer subject to the provisions of this Act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social or bene-

ficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

This section was held unconstitutional and void in United States v. Scott, 148 Fed. 431, Order of R. R. Telegraphers v. Louisville & N. R. Co., 148 Fed. 437 and in Adair v. United States, 208 U. S. 161.

In this latter case the Supreme Court holds such a provision "to be an invasion of personal liberty, as well as of the right of
784 property, guaranteed by the Fifth Amendment to the Constitution of the United States." This leaves the Act of June 29, 1886, Ch. 567, 24 Stat. L. 86, 7 Fed. Stat. Ann. 334, entitled "An Act to legalize the incorporation of National Trade Unions," as our only Federal law in amendment or modification of the Common Law upon the subject of Trade Unions. This statute has been construed by Jenkins, Circuit Judge, in Farmers Loan & Trust Co. v. Northern Pacific R. Co., 60 Fed. 803. At page 816, he says:

It was asserted in the argument with great confidence that the act of congress entitled 'An act to legalize incorporation of national trades' unions' (24 Stat. c. 567) had entirely changed the common law. I think the confidence of counsel in the assertion of the proposition was born of zeal, not of judgment. The statute provides for the formation of national trades' unions, with power to establish constitution, rules and by-laws to carry out its lawful objects, and defines the term 'national trades' union' to be 'an association of working people having two or more branches in the states or territories of the United States for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages, and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of the sick, disabled or unemployed members, or the families of deceased members, or for such other object or objects for which workingmen may lawfully combine, having in view their mutual protection or benefit. The most that can be claimed for this statute is that it removes the common-law disability of combination to raise the price of labor, and to establish the conditions of labor. It contains no suggestion of any right to combine or conspire with a view to injure or oppress or interfere with the rights of others. The organization of labor for the purpose specified in the statute is lawful and commendable, but the statute does not sanction the use of a lawful organization

for an unlawful purpose. Nor does it permit such organization to invade the rights of others. Under this act, labor may organize to regulate wages, the hours of labor, and the conditions of labor, and for the protection of individual rights in the prosecution of labor; but such lawful organization cannot be employed to injure property, or for the oppression of others, or to harm the public welfare. There is nothing in the statute which sanctions that which the law, as above declared, condemns.

785 It was also construed in Arthur v. Oakes, (C. C. A. 7th Ct.) 63 Fed. 310, 11 C. C. A. 209, where Mr. Justice Harlan says:

Some reference was made in argument to the act of congress of June 29, 1886, legalizing the incorporation of national trade unions, 24 Stat. 86, c. 567. It is not perceived that this reference is at all pertinent to the present discussion. That act does not in any degree sanction illegal combinations. It recognizes the legal character of any association of working people having two or more branches in the states or territories of the United States, and established 'for the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of the sick, disabled, or unemployed members of the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit.' Associations of that character are authorized to make and establish such constitutions, rules, and by-laws as they deem proper to carry out their lawful objects. Those objects, as defined by congress, are most praiseworthy, and should be sustained by the courts whenever their power to that end is properly invoked. What we have said about illegal combinations has no reference to such associations, but only to combinations formed with the intent to employ force, intimidation, threats, or other wrongful methods whereby the public will be injured, or whereby will be impaired the absolute right of individuals, whether belonging to such combinations or not, to dispose of their labor or property upon such terms as to them seem best.

The only statute of West Virginia relating to these Trade Unions that could be held to be in amendment or modification of the common law in force in the State, is the Act of the Legislature of 1907, reg. ses. c. 78, sec. 19 (Code Supp. 1909 Sec. 113a1), which reenacted the latter clause of Sec. 113 Code 1906, Code 1899, p. 1053, Sec. 14. This Statute has been construed by the Supreme Court of Appeals in Thacker Coal & Coke Company v. Burke, 59 W. Va. 253, 53 S. E. 161 wherein Brannon, J. speaking for the court, says:

The defendants rely on Code, 1899, p. 1053 Section 14, reading as follows: 'Nor shall any person or persons or combination
786 of persons by force, threats, menace or intimidation of any kind, prevent or attempt to prevent from working in or about any mine, any person or persons who have the lawful right to work in or about the same, and who desires so to work; but this provision

shall not be so construed as to prevent any two or more persons from associating themselves together under the name of Knights of Labor, or any other name they may desire, for any lawful purpose, or from using moral suasion or lawful argument, to induce any one not to work on and about any mine. This statute is a penal, criminal statute; for it makes the acts in it specified unlawful, and by section 17 imposes a punishment. This is a criminal act. It does not pretend to create rights between individuals. It prohibits certain acts, and the proviso simply curtails the scope of the enactment by saying that the enacting clause shall not be construed to impair any right already existing, if existing, to join the organizations therein specified or use moral suasion. It is only a curb upon the enactment. It does not affirmatively grant, create, or originate those rights. It does not make them lawful, if before unlawful. And could the legislature authorize any person to violate a contract?

In State v. Goodwill, 33 W. Va. 179, 10 S. E. 285, the Supreme Court of Appeals of West Virginia says:

The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void.

And in Gompers v. Buck's Stove & Range Co., 221 U. S. 418, Mr. Justice Lamar speaking for the court says:

Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of working-men to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.

But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.

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Further citation of authority would seem to be unnecessary to establish the proposition that under Federal legislation and that of West Virginia the common law is in full force and that the several propositions I have set forth are the principles of law to govern in the determination of this case. Before applying these principles to this particular organization and case, I cannot, in view of the extended quotations from labor leaders and advocates contained in the brief of counsel for defendants, but disclaim the sentiment expressed by such leaders, to the effect that either the legislative bodies or the

courts of this country, Federal or State, have been or are unfriendly to labor organizations. The contrary is true. The statute books are full of laws for the benefit of labor, to better their conditions, to insure their health, safety and their lives. Organized labor is entitled to all praise for the effective work done in aid of securing these laws. And the courts of the country have been prompt in fully and effectively enforcing such laws.

All labor unions, organized for lawful purposes, and striving to achieve those purposes by lawful means and procedure, are entitled to the protection of the law to the fullest extent, but on the other hand any and all combinations, labor or otherwise, organized for unlawful purposes, or being lawful in purpose which are prostituted to unlawful proceeding and to the accomplishment of unlawful ends, should be required either to reform their unlawful purposes, cease from their unlawful procedure or cease to exist. And no part of the body politic is or can be more vitally interested in the suppression of labor organizations unlawful in purpose or proceeding unlawfully than the members of such organizations lawful in purpose and procedure. In determining the character of this International Mine Workers' Union assailed in this case, as disclosed by the near 8,000 pages of evidence, for reasons that will more fully appear hereafter, I purpose to reverse the order and consider first its relation to the general public and especially to the citizenship of West Virginia. It appears clearly established that in 1898 this organization had a membership of over 30,000 the bulk of which resided in Western Pennsylvania, Ohio, Indiana and Illinois; that in that year
788 they sought and secured a joint conference with an organization of coal operators, the employers of its members, in these states; such conference was had and as a result a distinct agreement was entered into. From the stenographic report (admitted to be correct) of the "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana," subsequently held in Cincinnati, March 8-29, 1910, filed in this cause as "McKinley's Exhibit No. 1" the purport of this Chicago Agreement is fully disclosed. In reply to certain propositions presented by the defendant here, Mr. Lewis, then President of the Union, Mr. Maurer of Ohio read on behalf of the operators a statement from which I quote:

The answer of the operators to the proposition of the miners, in order to be thoroughly understood, makes it necessary to recall the history of wage agreements, and trace with brevity the conditions under which we have from time to time met as operators and miners and effected such agreements, so as to show connectedly the factors which have controlled both parties up to the present time.

In the years prior to any substantial agreement the conditions of the mining industry were very unsatisfactory in their influence upon both the operators of the mines and the miners in the various competitive districts. A remedy for this state of chaos was earnestly sought by both parties, and resulted in the early '80's in agreements between the operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois. In 1886 the institution of contracts between

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miners and operators was effected. These contracts operated with varying degrees of success and failure for some years and until about the year 1894, when these relations were dissolved. The conditions again took on an aspect of demoralization, which continued with varying degrees of intensity, numerous strikes, lockouts and consequent loss in wages and profits and sometimes injuries to property, until in the year 1898.

During this period the conditions were such, both as to the price received for coal by operators and the price paid to the miners, that it became imperative for the interests of each to re-establish in some form the former agreements. At this time the basing price of the Hocking district was 56 cents per ton for screened lump coal. For a short time immediately preceding that year, the mining rate was 51 cents. The working hours in the districts, parties to the early agreements, were from nine and a half to ten hours per day.

The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sus-
789 tained contractual relations with that organization. Some of the more important factors influencing these conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements.

In order to correct these most harmful conditions a joint convention of operators and miners of Western Pennsylvania, Ohio, Indiana, and Illinois, at the solicitation of the miners' officials, was called to meet at Chicago in January, 1898. At this convention an interstate joint agreement was established. After a long session of deliberation and negotiation, continuing over a period of about three weeks, the basing price for mining in Ohio and Pennsylvania was increased from 56 to 66 cents per ton, an advance of practically 18 per cent, and both the existing price and method of screening and weighing of coal was made uniform throughout the entire territory covered by the terms of the contract. As a result of the Chicago convention a representative meeting was subsequently held at Columbus, at which a uniform day-wage scale was established for inside labor. All of these concessions made by the operators were of substantial benefit to the miners.

In addition to the advance in the price of mining and the other important concessions enumerated, the action of this convention had an effect of the most far-reaching and salutary character, not alone for the mine workers, but for the entire labor world, in the recognition of eight hours as constituting a day's labor, this being the first recognition of the eight-hour day by any large body of employers in the United States.

The granting of the eight-hour day by the operators, after making these numerous other important concessions, was with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting states adequate protection against the competition of the unorganized fields. From year to year they have been called upon to fulfill that promise.

The operators, parties to that agreement, at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroachments upon them by their competitors of the unorganized fields. The tonnage of the non-union fields entering into the competitive market, particularly of West Virginia and Kentucky, at that time was not so large, as it was aggressive and threatening, the total tonnage entering directly into competition from those fields being approximately 600,000 tons. Since, however, coal from this unorganized territory coming into direct competition with Ohio and Pennsylvania has so increased that a fair estimate places this competitive tonnage at 8,000,000
790 tons, which does not include the tonnage from non-union fields adjacent to the Pittsburg district. The markets in western and northern Ohio, eastern Indiana, and Michigan, from year to year have been encroached upon by coal from the unorganized districts until at the present time nearly 50 per cent of the coal consumed in these markets is supplied from fields operated with non-union labor. To find a market for the union tonnage displaced in the territory named, the mine owners of Ohio and Pennsylvania within the past five years, have made heavy investments and built and equipped large coal docks to secure the markets at the upper lake ports; but these operators now find the non-union coal rapidly commanding a heavy percentage of this market, when, at the time of the Chicago agreement the non-union fields had but a small fraction of this trade, and unless these conditions are corrected the markets so secured will soon be replaced by the tonnage from West Virginia and Kentucky.

Though in the very heart of the consuming territory, on account of the wide difference between the price of labor in the organized fields of Ohio and Pennsylvania and the unorganized fields of West Virginia, Kentucky and the fields adjacent to the Pittsburg district, Ohio and western Pennsylvania are rapidly losing the markets at their very doors.

It is evident to any candid observer that such unfair conditions should not be imposed upon the operators and miners of the unionized territory. That the interests of operators and miners are mutual in every respect does not admit of controversy. Each is equally concerned in rescuing this business from its present peril.

Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concessions. It is now, in our view, not only to the interest of the miners, but their duty, as well, to do their share to meet these conditions.

The Chicago agreement and its purposes as set forth by Maurer were subsequently admitted. In proof of this I quote from the remarks of Mr. Green, a defendant here, as follows:

Our friend, Mr. Maurer, in the well prepared statement he has submitted to this convention, referred to an obligation he
791 claims was assumed by the United Mine Workers of America in the meeting at Chicago in 1898. Mr. Chairman and gentlemen, we agreed that to a certain extent that was right; but I do not believe it was ever understood that one party to this contract was obligated exclusively to carry out that promise. I believe it was intended to be a mutual understanding and that both sides would co-operate in trying to organize West Virginia and other non-union districts in order to extend this business like basis of adjusting our differences to those fields.

Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia.

Is the fact that we have spent hundreds of thousands of dollars appropriated from the small earnings of our people in the Central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does not that show that we have honestly, sincerely and diligently attempted to redeem it? I believe, gentlemen, that if the operators had done one-half as much as the miners have done, if they had even co-operated with us in what we have done, West Virginia would be organized and the operators and miners of that state would be here today participating in this joint movement.

The "plea in the nature of confession and avoidance" contained in the last paragraph of Mr. Green's argument had been advanced by Mr. Lewis and was urged by him in these words:

We want to say, and we say it kindly but positively to the gentlemen on the other side of the house, 'Get together' and organize, not only in Ohio and West Virginia—and I know a lot of you have influence enough over there, if you do as much work as we do, to organize them.'

792 But at the same time, it is manifest that he recognized the danger of the public declaration of such purpose for, prior in the discussion, he had said:

If I have a proper conception of this movement it means the uplifting of the industry. If I have a proper conception of this movement it does not mean that either operators or miners can publicly say, 'We will organize West Virginia in order that the miners of Ohio or Indiana can get more work.' That has done more to pre-

vent the organization of West Virginia than anything I know of. Coupled with that is the attitude of Ohio and Western Pennsylvania, probably of Indiana, and I know of some Illinois operators who have gone to West Virginia and have built human fences around their properties. I mean by that that they surround their properties with pickets, men who, even when the organizers of the United Mine Workers want to walk along a country or township road passing through the properties, is met at the property line and compelled to state what his business is before he can walk on the public highway. Men will say that that is not possible in a free country, but I say it is possible. It is possible in some mining districts in this country, and I believe they are in the United States, because they are in West Virginia, Kentucky, Tennessee, Alabama and a few places in Pennsylvania.

I further quote from the remarks of Mr. Feehan of Pennsylvania, another member and representative of the Union, as follows:

We are unwilling that the non-union operators and miners of West Virginia or of any other coal field shall set the standard of prices and the standard of living for the intelligent operators and miners engaged in the mining industry in the states that are represented here. I believe that is the honest opinion of all the operators who are present. It is unnecessary for me to refer to the fact that many of the operators who are represented here in this joint conference have interests in West Virginia and in other non-union coal fields whose products are going into the markets they are complaining of. It is true that they have contributed, with the other operators who are engaged in the industry in those states and districts, to keep the organization from obtaining a hold or becoming a factor in the industry of those fields, of which they complain. If they will withdraw their objections to the establishment of the organization in those fields, I am sure they would not be confronted with
793 those conditions, and we would be able to remove the evil in a very brief time. The practices resorted to by the non-union operators of West Virginia are un-American.

Also from Mr. Maurer's reply:

We have a condition confronting this convention as grave as confronted the convention that met in Chicago in 1898. We have this great tonnage from the unorganized fields of West Virginia and Kentucky that is absolutely taking away from us our markets and taking away the employment which belongs to you. It is a condition that not one of us must meet, but that both of us must meet, not only for our protection but for your protection as well. The cost of living is only incident to it, and the mine-run basis is only incident to it. Every man who swings the pick will agree with me that we can pay you more for mining coal than we can get for the product of your labor. And I am going to put up to you, I am willing to concede to this convention, that West Virginia is not organized; that for ten or twelve long years the miners have done everything in their power to organize that field, and that they did it diligently and earnestly is admitted, nevertheless that field today is unorganized. Nobody is to blame. Neither the operator nor the

miner is to blame for that condition; but it is a condition that we must meet and each one bear his share of the burden. Eight million tons of the coal from that unorganized state is today taking away from you the product of your labor, and taking away from the operator every cent of profit he ever had in the business. You cannot correct that. You may say to us, 'You must get together and agree upon prices; you must get the West Virginia operators in and agree upon a price.' Why, every man who stands here knows that if the operators in the State of Ohio attempt it they do so in violation of the Valentine law and that the penitentiary stares them in the face. Every miner here knows that if in the States of Ohio and West Virginia the operators were to attempt anything of the kind, they would violate, not only the Valentine law of Ohio, but they would violate the Sherman Anti-Trust Law. It is easy to tell us what to do, but you should also tell us how to do it. Does any miner here believe that the operators of the State of Ohio have not tried to get the best price they can for their commodity? We have some interest in our business, we have our money invested in it, and I assure you that for two years the miners and the railroads have got every cent there was in it, and more too.

However, we stayed in the market, we gave you employment.

Now it is up to the miners of this state to meet those con-
794 ditions and bear their share of that burden. I want to tell you here that if the miners of the State of Ohio insist on an increased price of their coal they will lose every bit of business they have on the Great Lakes. You have already lost your commercial business. Who supplies Michigan today with commercial coal? Who supplies Detroit? Who supplies Toledo? Who supplies Marion. Who supplies Columbus, right in the heart of the Hocking District? Who supplies Eastern Indiana? Who supplies all of Western Ohio? Tell me, tell me, you miners from the Hocking Valley who have seen your mines lay while West Virginia coal in train load lots has gone past your mines! Tell me, you miners in Eastern Ohio, who have stood idly by and watched Fairmont coal in train load lots taking your markets! Ninety per cent of that market is supplied by West Virginia coal from the non-union fields. I say to you the cost of living does not enter into this. I say to you these other elements did not enter into this. I say to you that the best price we can get for our coal under competitive conditions will not admit of it.

You miners who mined coal in the State of Ohio, and, if you please, in Western Pennsylvania, know that every bit of the trade I refer to was formerly supplied by Ohio and Pennsylvania even down to the gas business, but it is now supplied by West Virginia.

And from Mr. Lewis' rejoinder:

Now the argument is made that we ought to turn our attention to West Virginia and stop the competition from that state. I admit that argument is good; but in order for that argument to have strength it is necessary for the operators at home to stop the kind of guer-illa warfare they have among themselves.

Mr. Maurer has very well said—and I am glad he has brought the subject up—that we say to the operators, 'Get a better price

for your coal in order that you can pay us a better price for our labor.' Then he supplements that statement, and very properly, by the statement that if they were *or* organize to get better price for their coal they would be haled into court under the provisions of the Valentine law of Ohio and possibly sent to the penitentiary. Probably we would too. He supplements that statement by asking us to tell them how to get a better price for their coal. I am going to tell you. First, stop making war on the railroads. The poor fellows need help! And this proposition is going to be no joke. I recognize what the mining industry is; I recognize that it is more im-
795 portant than transportation. I recognize that the Valentine law of the State of Ohio was put on the statute books by a lot of political demagogues who believe they were working in the interests of the dear people—and they did it once for the dear people and about twenty times for themselves! I recognize that this industry does not occupy the plane among the industries of the country that it ought to occupy, because we have met in joint conventions year after year and discussed our wage relations instead of devoting some of our time to going out and telling certain people to keep their hands off our business. The railroad companies of this country say to the mine owners, 'We want our fuel at a certain rate.' The mine owners, in order to get a part of the fuel trade of the railroads, put down the prices in some instances to cost, not because of competition, but because of your desire to get a part of that trade. Then after securing a part of that trade the official representatives of the railroads are in so close touch with the leaders of the manufacturing industries of our country that the steam trade, as we call it, buys fuel almost at as cheap a price as the railroad company. Then in order to make ends meet somebody must pay a better price, and it is usually the domestic consumers, the masses of the people. And that is where the political demagogues get their work in, because they are the people who have votes and that is why they have anti-conspiracy laws placed on the statute books.

Mr. Chapman, of Ohio, an operator, contributed to the discussion some figures as follows:

It is an admitted fact that there is a difference today of between 40 and 50 cents per ton in the cost of production of coal in the union fields of Ohio and the non-union fields of the trade east and south of us in West Virginia, Kentucky, Tennessee and Alabama, and three of those states, gentlemen, are competitors in the markets of Ohio coal—West Virginia, Kentucky and Tennessee.

The production of West Virginia for 1907 was 40,043,311 gross tons, 44,091,000 being net tons. In 1908 the production was 44,091,000 net tons. In 1909 the production was 44,495,000 net tons.

Ohio's production for 1907 was 32,365,949 net tons; in 1908, 26,287,800 net tons, and in 1909, 27,756,172 net tons.

There are some more interesting statistics connected with this proposition. The following are the numbers of days the miners worked in West Virginia during the years from 1904 to 1909: 1904, 209; 1905, 213; 1906, 237; 1907, 234; 1908, 211; 1909, 192;

796 making an average of 216 days of ten hours per day, or a total of 2,160 hours' work each year. Reduced to eight hours per day would be an average of 270 days each year. Ohio worked in 1904, 154 days; 1905, 171; 1906, 175; 1907, 204; 1908, 157; 1909, 165 days, an average for the six years of 173 days, or ninety-seven days less than the average work in West Virginia on the eight hour basis.

And then said:

Now, gentlemen, it is useless, after the discussions that have taken place here by the gentlemen who preceded me, to discuss at any great length the market that the non-union fields have taken from Ohio in the past. It has been well said that they are putting coal into Columbus, into Michigan, into Detroit, taking the markets that heretofore have been enjoyed by Ohio coal. In the city of Athens, Ohio, which is within three miles of several of the large producing Hocking Valley mines, West Virginia coal is being sold. The gentlemen who are familiar with the situation have informed me that over 2,000 tons of West Virginia coal was sold there between the first of September and a short time ago. Even in the town of Logan, one of the points where Hocking Valley gathers its trains to start its coal out to the markets they have, West Virginia is taking that market. The gentlemen who were in the Toledo convention and returned on the Hocking Valley train, if they had their eyes open, would have seen full solid trains of Norfolk and Western coal passing up over that road to Toledo. There was not a single car of Hocking Valley coal in the trains. At the town of Bowling Green, twenty miles south of Toledo, when I came through a few weeks ago, I saw every car of coal standing on the side tracks were loaded with West Virginia coal.

Think of the proposition, gentlemen! Toledo, the central point at which several Ohio coal roads brings everything and 60 per cent or more of the coal being consumed there is from West Virginia! The Pennsylvania people have a road coming in there, the Wheeling and Lake Erie have a road coming in there, the Toledo and Ohio Central goes in there, the Hocking Valley goes in there, and the D. T. & I. goes in there on a direct line. Now just consider that proposition for a minute, and is it any wonder that Ohio coal operators and interests are in the condition they are today with that state of affairs?

It is well said by Mr. Lewis and Mr. Penna that people buy their fuel where they can buy it cheapest. I am not through with the proposition. I want to bring you to the city we are now holding

797 this convention in and give you a few figures. In 1897 Pittsburg shipped by river 1,401,000 tons of coal to the city of Cincinnati. The Kanawha region shipped by river 717,000 tons of coal. The Kanawha fields shipped by rail 704,000 tons. The other interests from West Virginia, Kentucky and Tennessee shipped here 275,400 tons. Now we will come to the year 1908.

Pittsburg District shipped 535,000 tons to the city of Cincinnati in 1908 as against 10,041,000 (manifestly a mistake—should be 1,401,000) in 1897. Kanawha shipped by river 867,000 tons in

1908, as against 717,000 tons in 1897, and Kanawha shipped by rail in 1908 1,848,000 tons, as against 462,000 in 1897. The Pocahontas District, the Tennessee and Alabama fields shipped in 1908 by rail 1,512,000 tons to the city of Cincinnati as against 275,400 in 1907.

The reasons why West Virginia coals are able to supplant those of Ohio, Western Pennsylvania, Indiana and Illinois, operations in which both sides of this conference were so vitally interested, are contributed by both operator and mine representative.

By Mr. Chapman, operator:

It is not surprising that West Virginia is on a mine-run basis. Why? Because a large per cent of all the fine coal that is produced in that state is made into coke. They even crush the lump coal after the- produce it to make coke, which is — much more valuable product to them and yields them more returns than the raw coal will. We haven't any of those coals in Ohio or Indiana and they have none of them in Western Pennsylvania outside of the coking coal as it is known there.

By Mr. Feehan, mine representative:

There is one point I want to bring out that has not been made clear, and that is the disadvantage the operators of Eastern Ohio are put to in competing for the markets against the operators who have interests in West Virginia, and that is the character of the veins. In West Virginia, it is not an uncommon thing to have them develop from six to ten feet of clean coal. There is no slate to remove; it is easily mined; it is a good grade of coal; it can find a market; and when you take into consideration the cost of producing a ton of that coal compared with the little five-foot vein of coal in Eastern Ohio with its many impurities and its thick slate, and the Pittsburg District, with its weak roof, where in many cases it is difficult to operate a machine, as well as many other natural disadvantages the
798 operators have, herein lies the cause of the competition more than in the cost of labor. The cost of labor is not the important factor that is crowding the eastern Ohio operators out of the market on the lakes or elsewhere. It is the natural disadvantages that is doing it. There is one advantage the operators in Eastern Ohio have, and that is their geographical situation. They are nearer the lake markets and other markets, and I believe they have an advantage of from 15 to 25 cents a ton in freight rates. I understand that when the decision of the Interstate Commerce Commission goes into effect they will have even greater advantages in freight rates. It is fortunate for them that they have these advantages. Were it not for their advantages in the matter of freight rates I am positive that many of the veins of coal now being worked in Ohio and elsewhere would be abandoned, and they would wait until the big veins with the greater natural advantages in West Virginia were worked out before they would again operate there. These factors have not been seriously enough considered heretofore.

By Mr. Chapman:

In 1907 and 1908 the miners earned more money in West Virginia at the prices they were paid there than were earned in Ohio.

In fact they earned from one hundred to one hundred and fifty dollars more to the man. That tells the tale concerning that matter. * * *

The coals of West Virginia are said to be mined at about one-half the cost of producing Ohio coals and the West Virginia product has taken the Ohio markets to the full extent permitted by the difference in transportation expenses, leaving Ohio coals only such markets as may be near the mines, and as the means of transportation increases by which West Virginia coals are put farther into Ohio markets, the prospect of the Ohio mines is not bright.

I quote further from the remarks of Mr. Savage, one of the defendants here, as follows:

Mr. Savage, Ohio: I was surprised a minute ago to hear that some of the operators were not in sympathy with the men in trying to get a readjustment of their freight rates in Ohio. I know as one miner we did all we possibly could in giving testimony before the commission in Columbus, and from what I heard then I believed, and I believe now, that the operators were absolutely right in asking for this readjustment. I believe I can assure you that we will help you in every manner that we can to get that readjustment.

799 But we would ask you, on the other hand, if we are willing to help you—and by helping you we agree we are helping ourselves—if you operators from Ohio and Pennsylvania will lend us the same assistance in West Virginia in getting the mining price up so that competition will not prevail. When we ask that what do we find? Operators have told me in years past that they were willing to have the miners organized in Ohio, but they were not willing that their miners should be organized in West Virginia. We find as great opposition on the part of the operators from this State who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union state. Go down there and practice what you preach in Ohio. Help us get the protection of the law in that State and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that State. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of those men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe thos contracts as religiously as the miners in Ohio, Pennsylvania, Indiana or any other State.

And finally from Mr. Zerbe of Ohio, an operator:

A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one state or another to furnish fuel

for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon them burdens in the organized fields that do not exist in the unorganized fields. By reason of the fact that you cannot control in the producion of this commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self-defense find it necessary, in order to carry out contracts and fulfill their obligations to those who take this
800 commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated. * * *.

We might argue this up one side and down another for a year and we would be no nearer a solution of this proposition. We are, when we get through, right up against the one proposition we cannot get through which has been created by the competition brought to bear against us by the operators and the miners of West Virginia in the unorganized field.

It is impossible to deny the conclusions to be drawn from all this. By reason of the natural advantages in the way of superior veins, roofs and quality, West Virginia coals can be mined for something like fifty per cent less than those of Ohio, Western Pennsylvania, Indiana and Illinois, and then even, her miners can make better wages; the officers and members of this Union are almost wholly resident of Ohio, Western Pennsylvania, Indiana and Illinois; in 1898 as an organization they entered into a direct contract with the operators of that field for and in consideration of an eight hour labor day and other concessions, to organize the West Virginia miners and, by reason of the control they would have under the Union's laws over such miners when so organized, "protect" these operators in Ohio, Western Pennsylvania, Indiana and Illinois from the existing open competition even then threatening the markets of such operators especially in the West and the Lake regions. For the purpose of carrying out the agreement, this labor organization has, in the language of the defendant, Green, one of its officers, "at various times spent hundreds of thousands of dollars trying to unionize West Virginia" and "sacrificed human life in the attempt to redeem that promise." Was this in the interest of and for the bettering of mine laborers in West Virginia? It is impossible to see how it could be for in this conference between the operators and the Union representatives in March, 1910, as we have shown, direct statistics were given by Mr. Chapman and not controverted, showing that the West Virginia miners, unorganized, were getting more work and more wages than miners in this Unionized field in Ohio, Western Pennsylvania, Indiana and Illinois. In illustration of this, it seems to me that I may properly refer to conditions as they exist today, as disclosed by a public report made to the Governor of the State of West Virginia by a commission appointed by him to investigate and report upon such conditions. The members of this commission were Bishop P. J. Donahue of the Catholic Diocese

of this State, Capt. S. L. Walker of the State Militia and F. O. Blue, State Tax Commissioner, men of the highest character and integrity. From this report and current history, it appears
801 that the effort to unionize West Virginia still continues and has more recently been directed to the Paint Creek and Cabin Creek fields in Kanawha County; that such efforts have led to such a condition of riot, bloodshed and general lawlessness as to require the Governor of the State to twice put the district under martial law to save life and property. I quote from the report as to the condition of the miners:

To this inquiry we have devoted special attention within the limits of the time and opportunity at our disposal, and after careful personal investigation, supplemented by a great body of formal sworn testimony sifted and tested by severe and exhaustive cross examination, this Commission has arrived at the unanimous conclusion that the general surroundings of the miners on Paint Creek and Cabin Creek respectively are very good, when compared with those of the miners of the few unionized plants on the right bank of the Kanawha and with those of the miners throughout the state and the nation. We have gone into their houses and carefully examined them. They are above the average of miners' homes in most places.

And as to wages:

A careful consideration of the evidence adduced leads us to the following conclusions:

(1) The average annual wage of miners in West Virginia for the years 1905-11, inclusive, is $554.26.

(2) The average annual wage of the miners on Paint Creek and Cabin Creek is from $600.00 to $700.00.

(3) The average wage on Paint Creek and Cabin Creek (non-union) is fully equal to if not greater than that of the miners in the very limited number of unionized plants in the state on the opposite bank of the Kanawha River.

These figures may appear small and inadequate, but, slender as they are, they exceed the average wage obtained in Illinois, a unionized state, which is but $510.86 a year. We have been unable to secure any official figures as to the average annual wage in the unionized states of Indiana, Western Pennsylvania and Ohio. But we are informed by experts and we believe that the average wage in the two states first mentioned probably falls a little below that prevailing in Illinois; while the annual wage in Ohio, owing to local mining conditions, falls a little below those of Western Pennsylvania. This classification, in the order of the rewards of labor, puts West Virginia at the head of the list. If we inquire into these
802 figures more closely we find they are very substantially affected by several causes, among which comes first the unwillingness of a large number of the miners to work more than four days a week at the most. A minute examination of the payrolls discloses the fact that sixteen or seventeen days in the month constitute a high average, and that many engaged in the mines decline to labor more than twelve or fourteen days. This is particularly true of some

of the native born miners and many colored men and results in the necessity of keeping twenty or thirty per cent more miners in a given operation than would be required if steady application to work were the rule. At several of the mines in the districts under investigation were found men wholly illiterate and without any special knowledge or skill, other than that acquired by their daily experience, earning four to five and in some cases seven six dollars a day of eight or nine hours; men with savings bank accounts of one or two thousand dollars and others who had purchased out of their savings small farms or other properties adjacent to the mines.

And as to the causes of the trouble:

This arises, in our judgment, from the efforts of the United Mine Workers to organize the union in the whole chain of plants along said creeks. Their desire is to make the present strike region the place for the insertion of the thin edge of the wedge of Unionism with the ultimate aim of organizing the whole state. The frank declaration on oath of Mr. Thos. Cairns, Local President of District No. 17, would appear to put this intention beyond the region of doubt. The United Mine Workers' association contends that this is essential to the well being of the seventy-six thousand or more miners of West Virginia. That by this means and this alone can their lot be improved, their rights safeguarded, and the standard of living so raised as to bring it up to a level befitting a citizen, howsoever lowly, of this republic. All classes of people, recognizing the force of the adage, "In union there is strength," do so organize. Even the operators themselves form associations; "Why," say the toilers, "should we also not unite in lawful combinations?" The operators cannot and do not resist this right as a general proposition, but their claim is that the peculiar industrial conditions in West Virginia would render it ruinous and therefore impossible for them to recognize the Union. The geographical position of this state is such, together with the small consumption within her own borders, that of her total coal output of over sixty millions of tons, she markets barely ten per cent within her own borders and
803 ninety per cent or more must be hauled to the market through the competing territories of Pennsylvania, Ohio, Indiana and Illinois known as the four competitive states; that the operators of said states have always on the floors of Joint miners' and mine-owners' conventions shown fierce and undisguised hostility to this state, endeavoring in every way to crowd her out of the market, and going the length of stating by the mouth of one of Pennsylvania's leading operators, that the opening of mines here at all was "an economic blunder." Resort has even been had to the Interstate Commerce Commission, resulting in reduction of rates to the material advantage of the competitors of West Virginia operators in freight differentials. It has been claimed, too, and with some appearance of probability, that the operators of the said four competitive states are hand in glove with the United Mine Workers in their attempts to unionize West Virginia so that the representatives of the coal interests of this state must go with their relative small representation into conventions to regulate conditions and prices and would

come home having rates imposed upon them which, taking into consideration the heavy differentials in railroad hauls, would practically put them out of business and close every mine in the state. They decline, they say, to be wiped out in such fashion: they claim the right to settle their own affairs within the borders of their own state. Even if they come to terms with the district authorities of the United Mine Workers here in West Virginia those terms may not be approved at the headquarters at Indianapolis, and all the labored attempts at amicable adjustment may fall through. Further they claim that the few Unionized mines in West Virginia do not and cannot obtain anything like an adequate return on the capital invested. And so, to probe this deplorable situation down to the bedrock of facts, the geographical position of West Virginia is largely responsible for all this industrial strife. Our retarded manufacturing development is also a contributing cause. The consumption of coal within our borders, as elsewhere noted herein, particularly by manufactories, is almost negligible. No state in the nation has more inviting natural resources nor offers greater inducements to manufacturing enterprise than West Virginia—great areas of superior coal for steam and coke, splendid timber of many species, almost inexhaustible supply of natural gas and unlimited water power awaiting to be utilized in the arts of industry. It is impossible not to recognize the merit of, and to sympathize with, many of the contentions on both sides of this unhappy quarrel. Most assuredly each party believes unreservedly in the justice of its claim.

It is in the attempted enforcement of them that each has
804 passed the limits of justice to say nothing of Christian charity and broad humanity. Two facts loom big over the smaller ones developed in this bulk of testimony—the desperate efforts and often unwarranted and unlawful acts of the United Miners to force the union into the disturbed districts, and the equally desperate, unwarranted and unlawful acts of the operators and their agents to keep the union out. Thus, for months before the actual break, union agitators, many of them strangers, attempted to invade Paint Creek and Cabin Creek to persuade the miners to join the union. They called meetings of the workers and described to them the hardships and injustice of their lot and the oppression under which they suffered. The wildest theories concerning the rights of property and the means of production were propounded and advocated, and doctrines closely verging upon anarchy were upheld with such effect that men, who before were living peaceably and in comparative prosperity, purchased Winchesters, revolvers, blackjacks, and other murderous weapons to shoot down the coal "barons" and their myrmidons. Mild eyed men, seventy-five per cent of them with usually cool Anglo-Saxon blood in their veins and with instincts leading to law and order inherited down through the centuries, gradually saw red, and with minds bent on havoc and slaughter marched from union districts across the river like Hughestion, Cannelton and Boomer, patrolled the woods overhanging the creek bed and the mining plants, finally massing on the ridges at the head waters and arranging a march to sweep down Cabin Creek and destroy every-

thing before them to the junction. Meanwhile, the operators hurried in over a hundred guards heavily armed, purchased several deadly machine guns and many thousands of rounds of ammunition. Several murders were perpetrated and all who could, got away; men, women and children fled in terror and many hid in cellars and caves. If ever there was a case for some strong measure like martial law, the conditions prevailing on Monday, September 2, 1912, the eve of the proclamation, presented it. In fact, in the opinion of expert witnesses on the scene, martial law, and martial law alone, was the only measure to meet the desperate situation. We believe, partly on the evidence adduced, and in part from the personal knowledge of two members of the Commission who were on the ground, one in active military service, that but for such proclamation taking effect on Tuesday, September 3rd, at daylight, there would have been great destruction of property and loss of life in the strike zone. The enormous quantities of Winchesters, revolvers and other weapons up to machine guns captured from both sides and brought to camp at Paint Creek Junction also
805 bore mute, but eloquent, witness of the height to which the passions of the opposing forces had mounted.

Now these propositions, trite and fundamental as they are, will assist us to apportion the blame for the strike and the subsequent disorders on Paint Creek and Cabin Creek and the close neighborhood:

First. Every man has a right to quit his employment and seek other work for any grievence he has or injustice which he may conceive to have been done to him, but

Second. He has absolutely no right to obstruct, molest, threaten or otherwise prevent another man from taking the position he has of his own accord abandoned. Organized society and natural law can never yield one jot or tittle on that head. To do so would be to acquiesce in the regime of brute force—a veritable reign of terror.

Third. Labor has the right to organize for its benefit, protection, increase of wages, and better living conditions, and to have recognition of such organization, but

Fourth. Its organization has no right to coerce by threats or violence any one to become affiliated with it when he does not desire to do so; nor to assault or put in bodily fear one who desires to labor without belonging to it; nor to destroy property of the employer who does not desire to contract with it; nor to violate its contract with its employer without cause.

There is abundant evidence before us that a reign of terror was attempted to be organized in the strike district and outside of it. It is true that the officers of the United Mine Workers professed to counsel moderation and a strict observance of law and order on various occasions, but there is testimony tending strongly to show that harangues delivered in public, and of which stenographic reports have been submitted as exhibits, incited the miners to violence and in some cases to murder. These harangues were in some instances delivered in the presence of officers of the United Mine Workers' Association and from platforms upon which they stood and from which they, too, spoke; but the murderous and anarchistic

utterances referred to were never disclaimed or disapproved by them either at the time or subsequent to their delivery. Furthermore, there is some evidence tending to show that officers stood by without interfering or protesting while non-union men were brutally beaten. Again, the warning to other miners from outside not to come into the strike region published for many weeks in their local organ and also filed as an exhibit and amounting in effect to a grave threat throws a strong light on the actual situation. We fear that the net result of the action and utterances of those acting and speaking under the apparent sanction and approval of the officers of the
806 United Mine Workers was to foment bitter feeling and to incite to serious breaches of the peace. In all this, even granting that they were not acting against any express law set down in the statute books, yet they were acting against the fundamental principles of right and justice.

These commissioners also examined the mining conditions existing in the Fairmount and Norfolk and Western regions of the state. I cannot extend this opinion by quoting further from it but am justified in saying that they found and report such conditions to be in effect very superior to those obtaining elsewhere in unionized fields; conditions under which men have remained in continuous employment for fifteen to twenty years; have saved money and purchased homes and farms; have furnished to them houses comfortable, with electric lights, some with shower baths, good sanitation and water supply, and with wages such as to enable the foreign born miners in the forty-four operations of the Consolidated Coal Company (Fairmont field) to send from $125,000 to $150,000 annually to their dependent relatives in Europe.

All the evidence in this voluminous record goes to show pretty conclusively that the fourteen years' struggle of this labor organization since it entered into the compact with the operators of Ohio, Western Pennsylvania, Indiana and Illinois in 1898 to unionize the operations in West Virginia has not been in the interest either of the betterment of mine labor in the State or of upholding that free commerce in coal between the states guaranteed by Federal law, but to restrain and even destroy it in West Virginia for the benefit of these unionized competitive States. It may be unfortunate for those states that nature has favored West Virginia, Kentucky and other southern states by giving them better coal and less expensive mining conditions, but this does not warrant the operators and miners there to combine and confederate for the purpose of depriving the consuming public of the right to purchase the better coal at the lower cost, if desired. Such a combination is clearly a common law conspiracy, too far reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust law. It is further, in my judgment, a combination or conspiracy against the rights of the many thousands of non-union miners in West Virginia who are entitled to enjoy the advantages in their labor that nature has given them.

But the question at once arises, how could this Union carry out this contract with the operators of Ohio, Western Pennsylvania, In-

diana and Illinois to substantially restrain or suppress coal
807 mining in West Virginia, Kentucky and other states by unionizing them? This brings us squarely to an examination of its constitution, manual, obligations, by-laws and rules, by which, according to the English decisions, the legality or illegality of such combinations is to be determined. Turning to these, which are in evidence and not denied, we find that when a miner is initiated into this organization he is required to take an obligation for life as follows:

I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow-worker on account of creed, color or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

That I will not reveal to any employer or boss the name of any one a member of our Union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it.

To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.

This obligation is required under assurance beforehand that it will require "nothing contrary to your civil or religious duties," yet it does in fact require him to alienate for life or until the Union absolves him "his freedom to dispose of his own labor or his own capital according to his own will * * * make himself a slave" contrary to all law, English, American and common, and in express violation of the bill of rights set forth in the Constitution of West Virginia. It binds him never to accept employment in place of a fellow member "idle for advancing the interests of the Union or seeking better remuneration for his labor" no matter how anxious he may be to secure work, how well satisfied he might be with the wage offered, and how much he may need the work by reason of a starving family on his hands to support. It further binds
808 him "to cease work at any time I am called upon by the organization to do so," regardless of the dire consequences that may result to him and those dependent upon him. It may well be said that such provisions under the law cannot be enforced. No, not legally, but practically it is different. His refusal to comply with this obligation subjects or may subject him to such social ostracism on the part of his fellow members as to compel obedience. They may taunt him with being without honor or integrity, they may call him

"black sheep," "scab" and other opprobrious epithets given new meanings in the English language because of just such conditions arising under the operations of these labor combinations, and they may and do drive him out of work and the community as shown by the facts set forth in many decisions of the courts of this country. But this is immaterial from a legal standpoint for, as I have shown, the law distinctly bans such obligations as unlawful and, therefore, the requiring them on the part of these labor organizations is unlawful. But to further show how complete control the Union thus obtains and how complete the surrender to such control on the part of the member is I quote further from the Constitution of its national organization as follows:

Article I.

Sec. 3. This organization shall be composed of International, District, Subdistrict and Local Unions.

Sec. 4. The International Union shall have jurisdiction over all Districts, Sub-Districts and Local Unions, which shall be governed by this constitution.

Article II.

Section 1. The officers of the Union shall be one President, one Vice-President, one Secretary-Treasurer, and an Executive Board to be composed of one member from each district under the jurisdiction of United Mine Workers, each district to elect its member of the International Executive Board, the President, Vice-President and Secretary-Treasurer to be members of the board by reason of their position.

Article IV.

Sec. 11. The funds of the organization shall be used for the purpose of assisting those who are in need from idleness or distress, when the payment of the same has been approved by the International Executive Board.

809 Article VII.

Cards.

Section 1. Local Unions shall provide each member with a Due Card, upon which the dues and assessments paid by the member shall be entered, which shall be his receipt for the same.

Sec. 2. Due Cards shall not admit any person to membership from one local to another, and to protect the membership of individuals who are unable to pay their dues because of no Local existing where they reside, the International, District and Sub-District Secretaries shall, upon the payment of dues and assessments by said member, issue the usual cards for the same; provided that this shall not apply to a member living in a locality where a Local Union is in existence.

Sec. 3. No person a member of the organization, who holds a Due or Transfer Card showing him to be a member in good standing,

shall be debarred or hindered from obtaining work on account of race, creed or nationality. Cards properly filled out and signed by the officers of miners' unions in foreign countries shall be accepted in lieu of initiation fees.

Sec. 4. Any member desiring to leave the mine where his Local is located and work elsewhere, shall immediately make application to the Secretary of the Local for a Transfer Card, and if he has paid all dues and assessments, the President and Recording Secretary shall issue a Transfer Card to him, which shall be attested by the Financial Secretary, providing the Local Union is in good standing with the International, District, and Sub-District Unions, which shall be accepted in any District, and in case such person cannot produce a Transfer Card he shall pay the regular initiation fee. All Transfer Cards shall be deposited as the laws of the District where work is secured may direct.

Sec. 5. When a person who has not been a member of the organization three months or more secures a Transfer Card *from* a Local Union in a District where a dispensation has been granted said Transfer Card shall not be accepted by any Local in a different District from the one in which the Local issuing the *same* is located, unless said Transfer Card is accompanied by an amount equal to the difference between the initiation fee by said member and the initiation fee provided for in the District where the card is deposited.

$10 Sec. 6. No card shall be issued to any member when the Local is three or more months in arrears to the International, District or Sub-District for dues or assessments. Officers of any Local Union issuing cards in violation of any Section of Article VII shall be fined $10.00 for each card issued, the fine to be collected in the same manner as dues and assessments.

Sec. 7. The transfer Card must show that the member receiving it has paid all dues and assessments for the month in which it was issued, and must also show at what class of labor he was employed.

Sec. 8. When a Transfer Card is issued to any member, it must be deposited by him with some Local Union or with the International Secretary-Treasurer within three months after the last day of the month in which it was issued to him, else the card will become void and he can only become a member again by initiation as a new member.

Sec. 9. When a member presents a Transfer Card to a Local Union at any mine where he works or desires to work, the Local Union must accept the same and admit him to membership in that Local, unless the local issuing the same is not in good standing as shown by the monthly report of the Secretary-Treasurer, or the person to whom the card is issued has not been a member of the organization for three months as provided for in Section 5 of this Article, and shall collect from him all dues and assessments from the time between the last day of the month in which the card was issued and the date of depositing the same.

Sec. 10. The Sub-District or International Secretary-Treasurer shall not accept a Transfer Card if the member is where he can deposit with a Local Union.

Sec. 11. The International Secretary-Treasurer shall prepare and send out monthly a statement of all Locals three months or more in arrears for dues and assessments, and no Local Union shall refuse to accept a Transfer Card from any Local unless it appears on said list as being in bad standing. Local Unions on strike shall be exempt from the provisions of this section.

Sec. 12. All Transfer Cards shall be made in book form, with two stubs attached. The books to be numbered, and each card in the book to be numbered and bear the number of the book. The stubs to be printed in conformity with the card itself. The
811 card and one stub to be filled out by the Recording Secretary and certified to by the President and Financial Secretary of the Local Union granting the same; one stub to be retained by the Local issuing the card for future reference, the other stub to accompany the card and must be immediately filled out by the Secretary of the Local where the card is deposited and returned by him to the Secretary of the Local that issued the card.

Sec. 13. The President, Financial and Recording Secretary of the Local Union shall keep a record of all Transfer Cards bought by, issued by and deposited in their respective Local Unions. The Auditing Committee shall compare their records every three months, and in the presence of the Local Union destroy all Transfer Cards that have been deposited that there is no dispute about.

Article XII.

Sec. 2. Districts may adopt such laws for their government as they may deem necessary; provided they do not conflict with the International Union.

Article XIII.

Sec. 2. Sub-Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with International and District constitutions or agreements entered into.

Sec. 3. All Local Unions within the territory of Sub-Districts already organized in any District, shall contribute and become a part of the same and comply with its laws, before they are entitled to pass-word or representation in either International or District organization.

Article XIV.

Section 1. Local Unions shall be composed of miners, mine laborers and other workmen, skilled and unskilled, working in and about the mines, except mine manager, top boss and persons engaged in the sale of intoxicating liquors, and shall be given such numbers as the International Secretary-Treasurer may assign them.

Sec. 2. All Locals shall be under the jurisdiction of the International, District, and Sub-District Unions, and may make such
812 laws for their government as they deem necessary, provided they do not conflict with the International, District and Sub-District Constitutions or agreements entered into. Any Local Union

or members thereof violating this section shall be subject to a fine of not less than five dollars.

And to further show how this Union undertakes to control the freedom of its members to work when and for whom they please, also its determination to destroy the right of the employer to conduct his own business as he pleases and to discharge and employ whom he pleases, I quote these sections of Art. X of this Constitution:

Section 1. When trouble of a local character arises between members of a Local Union and their employers, the officers of said Local shall endeavor to effect an amicable adjustment, and failing in this they shall immediately notify the officers of the District to which the affected Locals are attached, and said District officers shall immediately investigate the cause of complaint; and failing to effect a peaceable settlement on a basis that would be fair and just to aggrieved members, finding that a strike would best serve the interests of the locality affected, they may order the inauguration of a strike, but no local strike shall be legalized or supported by a District unless its inauguration was approved by the officers of the District or by the International Executive Board, upon an appeal taken by the aggrieved members from the decision of the District officers; any Local Union striking in violation of the above provisions shall not be sustained or recognized by the International officers.

Sec. 3. When any member of the United Mine Workers is suspended or discharged, it shall be the duty of the Mine Committee to immediately investigate the case, and if the member discharged is not guilty of an offense justifying the same, the grievance shall immediately be reported to the Sub-District and District President in writing, under the seal of the Local, and, if, upon investigation, the report of the Local Committee is found correct, the Sub-District and District President shall immediately insist upon the reinstatement of the suspended or discharged member.

Sec. 4. The International officers shall, at any time they deem it to be the best interests of mine workers in a District that is idle, for just and sufficient reasons, order a suspension in any other District or Districts that would in any way impede the settlement of the District affected; provided, that such action would conserve to the best interests of the United Mine Workers of America.

813 I also quote the following from the Constitution of District No. 6:

Article 1.

Sec. 1. This organization shall be known as District No. 6 of the United Mine Workers of America.

Sec. 2. One of the objects of this organization is to unite all employees in and around the coal mines of Ohio and the Pan Handle District of West Virginia.

Article VIII.

Section 1. In case of trouble arising in any local with the employer, it shall be the duty of the local officers to try to effect a settlement; failing in this the grievance shall be presented to the sub-district president in writing, who shall investigate the grievance or dispute and settle, if possible. Should he fail, he shall consult the District President who shall settle the dispute either by suspending work or such other methods as they may deem best. In case of a direct violation of agreements, the sub-district president or Local Union affected are authorized to order a suspension of work.

Sec. 2. When it becomes necessary for the District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated.

Article IX.

Section 1. The initiation fee in District 6 shall be $10.00, and all persons applying for and securing work in the mines who are not practical workers shall pay $10.00 initiation fee. Any person applying for work at any organized mine shall present a United Mine Workers' card. In case said person cannot present such a union card he shall pay the regular initiation fee.

Sec. 6. All persons employed as check-weighmen shall be members of the United Mine Workers for a period of six months before they are elected to such position. Notice shall be posted near
814 the weigh sheet at least three days before the election of a check-weighman, and no persons are entitled to vote except those who are assessed to pay him his wages.

Sec. 12. When a miner's son becomes old enough to work in mine he shall be given the preference over other applicants for work.

Sec. 15. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.

Sec. 17. That a fine of $10.00 in each individual case where it can be proven that a member of the Union leaves his district for West Virginia, or any other unfair mines, and remains there one month or more without having deposited his transfer card and returns without giving a satisfactory account of why he has not deposited his transfer card; and the fine to be collected by the Local Union where he works.

And these from the Constitution of Sub-District 5 of District 6:

Article I.

Section 1. This organization shall be known as Sub-District 5 of District 6, United Mine Workers of America.

Sec. 2. The object of this organization is to unite the mine employees of Belmont, Jefferson, Tuscarawas, Harrison and Carroll Counties in Ohio, and that part of Stark County, South of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio and Marshall Counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike.

Sec. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines.

Article IX.

Sec. 2. That a fine of $10.00 in each case where it can be proven that a member of our Union leaves his district for West Virginia or any other unfair mine, and remains one month or more without depositing a Transfer Card, and returns without giving a satisfactory account of why he has not deposited his Transfer Card, and a fine to be collected by the Local Union where he is working.

815 Sec. 3. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.

It very clearly appears from a study of these rules that (*a*) they undertake to require members of the organization to surrender their individual freedom of action; (*b*) to coerce non-union miners to join the union, whether wishing to do so or not, for they must be members "who work in and around the mines"; (*c*) to control or rather abrogate and destroy the right of the employer to contract, with the men independent of the organization; (*d*) to exclude his right to employ non-union labor if he desires; (*e*) to limit his right, in the absence of contract, to discharge whom he pleases, when he pleases, and for what reason he sees fit; and (*f*) to assume the right on the part of the organization, through its officers, to control the employer's business, to shut down his mine by calling out the men in obedience to their obligation, whenever it is deemed to the interests of the union regardless of the employer's interests or the effect that such action may have upon him, as regards loss, damage and necessary violations, on account thereof, of his existing contracts with others. To such extent in this direction does such assumption of power and control go, that it is directly provided that such suspension of operations may be ordered, even though there be no dispute between the employer and the union, but solely because such dispute exists between the union and some one or more of his rival operators in business in the same district. In all these particulars these provisions violate the law guaranteeing, under our free government, the rights of both the labor and capital involved, and, further, the rights of the public consuming the product of such labor and capital. But still further, and what manifestly is of far more vital importance, under the power so assumed by this close and compact organization, and by reason of these obligations and rules enforced by it upon its members, it is more than probable, that if allowed to unionize and control the

mining operations in West Virginia, it will be entirely able to fulfill its express contract of 1898 with its co-conspirators, the operators of Ohio, Western Pennsylvania, Indiana and Illinois, and "protect" them from the competition of West Virginia coals, restore to them their lost markets and practically destroy the coal mining industry of this state, to accomplish which the union has admittedly already spent hundreds of thousands of dollars and sacrificed human life, as yet to no avail. It is not to be assumed that because I have not discussed other of the rules and purposes of this organization
816 that I have ignored their meritorious and beneficent character; nor that I have not considered the very natural and human instinct inspiring the officers and members of this union, resident in other states and laboring under physical disadvantage in mining conditions, to regard their personal interests as paramount. Most of its officers have testified in open court before me and have fully convinced me that they are men sincere in the conviction of the integrity of their action, perfectly frank and truthful in their testimony, self-educated and who have by their own effort rightly acquired the leadership in their life work. So far as I am concerned, the law requires me to consider these rules of the organization and ascertain whether any of them are unlawful in character. If so, whether the unlawful ones dominate the actions and purposes of the organization, or whether the purposes contemplated by the unlawful ones are so intermingled with those designed by the lawful ones as to render separation impracticabe. If such domination of the unlawful prevails or such separation cannot be made, then under the authorities I have cited the organization becomes unlawful. In view of the undisputed testimony in this case I am constrained to believe both unlawful conditions exist as to these rules. They go far beyond those held to be unlawful, dominating and inseparable by the English cases which I have cited. They have permitted the officers of this organization to expend, by their own admission, hundreds of thousands of dollars of the funds derived from members bound by these rules, in an unlawful conspiracy to restrain trade upon such a large scale as to involve the whole vast coal mining industry of West Virginia.

The final question arises how is this plaintiff, the Hitchman Coal & Coke Company, affected and what right has it to complain and appeal for injunctive relief?

The evidence establishes these facts: Plaintiff is an operating coal mining company in the West Virginia field. Its mines are situate in what is known as the Pan Handle just across the Ohio river from Ohio, and this union assumes jurisdiction over this territory, incorporating it with some five counties in Ohio, in Sub-District 5 of District 6 of its organization. Plaintiff started operations in 1903 as a non-union mine. At this time a company having some stockholders identical with those of plaintiff, and others not such stockholders of plaintiff, was operating a union mine at Mt. Pleasant, Ohio. The officials of the union notified the plaintiff that if its mine were not unionized the Mount Pleasant Mine *mine* would be shut down by it.

On April 1, 1903, the demand of the union was conceded by
817 plaintiff and it became a union mine. The next day a strike was called by the union and plaintiff's men went out and remained out twenty-one days. This strike cost plaintiff $7,242.00. Its occasion was a dispute as to the scale price for run of mine coal and was compromised by the union accepting an advance of about one and a half cents per ton for run of mine coal over what the company had been paying and much less than had been demanded when the strike was called. The miners resumed work on May 23d, 1903, and worked until April 20, 1904, when another strike was called about the run of mine coal, the union officials not being satisfied with the prior year's compromise and insisting on what was called the average as distinguished from the tonnage basis. The plaintiff yielded and the average basis was established. This strike lasted until June 15th, 1904, fifty-five days, and cost plaintiff $17,000. On April 1, 1905, the union demanded a return to the tonnage basis, as being more profitable to the miner than the average one. This demand was conceded by plaintiff and the tonnage basis was resumed. A national strike was called for April 1, 1906. In anticipation of it, plaintiff sought to protect its fuel trade by arranging with the union officials for the men to continue work for that purpose, offering to pay the scale prices demanded by the union. This was at first agreed to upon condition that no commercial and only fuel engine coal should be mined. This permission was later withdrawn and the men ordered to strike, which they did on April 16, 1906. The men did not want to quit work and tried to get permission from their union officials to continue loading engine coal, for the reason that, if they were not allowed to do so, the B. & O. Railroad Company would haul in non-union coal and have it loaded into their engines from plaintiff's tipple and bins under the terms of plaintiff's contract with the railroad company. The union was notified too by plaintiff that if the men were called out on strike the mine would not be run union again. This availed nothing. The strike was called, coal was hauled from an Ohio union mine with which settlement had been made by the union, by the railroad and loaded on its engines over plaintiff's tipple. This strike continued until June 12, 1906, fifty-six days, and cost the plaintiff $24,500. This national strike was finally settled in July, 1906, by the adoption of the 1903 scale, which plaintiff from the start had offered to pay. But in the meantime the Hitchman miners had been promised benefits by the union which were not paid, and they were incensed because the Ohio coal had been allowed to be hauled and loaded on its engines by the railroad over plaintiff's tipple and because plaintiff's
proposition to pay the 1903 scale had not been accepted.
818 Thereupon a mutual agreement was entered into between plaintiff and these individual miners to the effect that the men should abandon the union and the company should operate the mine non-union. This was on June 12, 1906, and the agreement was evidenced by memorandum cards signed by the men, reading as follows:

"I am employed by, and work for, the Hitchman Coal & Coke Company, with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employe of the Hitchman Coal & Coke Company, and that the Hitchman Coal & Coke Company is run non-union, and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any effort amongst its employes to bring about the unionizing of that mine, against the company's wish. I have either read the above or heard same read."

The men surrendered their charter to the union and on June 25th, 1906, secured a charter from this State as a corporation under the name of the Independent Mine Workers of West Virginia. Prior to April 1, 1903, when the mine ran non-union, the company had no trouble whatever with its men, and since June 12, 1906, when it started non-union again, it has run continually without trouble. During the three years and two months from April, 1903, to June, 1906, when unionized, it had three strikes called that suspended its operation for a total of 162 days at a total cost or loss of $48,742.00.

In March, 1907, the sub-district convention of the union resolved "to take up the work of organizing every mine in the sub-district as quickly as it can be done." In accord with this resolution officials of the union, defendants here, called on the plaintiff's management and expressed their desire to reunionize the Hitchman mine. The company's officials declined the suggestion. The mine officials asked that the matter be referred to the company's board of directors. This was done and the board of directors declined to have anything to do with the union and so notified its officials. Reports were put in circulation among plaintiff's men to the effect that the mine was going to be unionized and that they had better join the union if they wanted to retain their jobs. Early in September, 1907, the defendant Hughes was sent by the union into the Pan Handle
819 territory to organize the non-union mines and compel recognition by them of the union. As a result of his work he secured twenty-two men to join the union and quit work at a mine known as the Glendale, which was owned by the same stockholders and run by the same management as the Hitchman. He also succeeded in organizing the Richland mine in that territory, and when its operator refused to recognize the union, shut it down. According to his statements, he succeeded in securing enough men at the Hitchman mine to agree to join the union to enable him to unionize it, and was about ready to and intended to shut it down if its management did not recognize the union. Thereupon the plaintiff company applied for and obtained the restraining order and temporary injunction in this cause. It is also established that Hughes and other officers of this union were beforehand fully informed of the contracts existing between plaintiff and its employes. These facts very clearly demonstrate such interest in this plaintiff in the prem-

ises as to warrant its appeal for aid from this court of equity. I conclude, therefore, that this organization, known as the United Mine Workers of America, is an unlawful one because, (*a*) of its principles as set forth in its constitutions, obligation for membership, and rules, which (1) require its members to surrender their individual freedom of action; (2) seeks to require, in practical effect, all mine workers to become members of it whether desirous of doing so or not; (3) seeks to control, and restrict, if not destroy, the right of the mine owner to contract with its employes independent of the organization; (4) to exclude his right to employ non-union labor if he desires; (5) to limit his right to discharge, in the absence of contract, whom he pleases, when he pleases and for any cause or reason that to him seems proper; (6) assumes the right on its part, by and through its officers, to control the mine owner's business by shutting down his mine, calling out his men upon indefinite strike in obedience to their obligation to the union, whether the men desire to quit work or not, whenever the union's officers deem it to be for the best interests of the union, regardless of the rights and interests of the mine owner, and regardless of his direct loss and damages and such indirect loss and damage as may be incurred by him by reason of the resultant violation of contracts by him with others. Adair v. United States, 208 U. S. 161, 52 L. ed. 436. I further conclude that it is an unlawful organization because, (*b*) of its procedure and practices in that (1) it seeks to create a monopoly of mine labor such as to enable it, as an organization, to control the coal mining business of the country, and (2) has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other
820 states, to control, restrain, and, to an extent at least, destroy the coal trade of the State of West Virginia. It has spent fourteen years' time and hundreds of thousands of dollars in effort to accomplish this unlawful purpose. The rules of law relating to the responsibility of individual members concerned in such combination and conspiracy are plain and well defined. Great latitude in establishing conspiracy by the admission of circumstantial evidence is allowed, circumstances tending in slight degree to a determination of the truth are allowed to be proved. Clune v. United States, 159 U. S. 590, 40 L. ed. 269. The acts and declarations of co-conspirators in execution of a conspiracy are evidenced against others of their number. Id.

"Where two or more are associated together for the same illegal purpose, any act to or declaration of one of the parties, in reference to the common object, and forming a part of the res gestæ, in its execution, may be given in evidence against the others." American Fur. Co. v. United States, 2 Pet. 358, 7 L. ed. 450.

On the question whether a combination is lawful or not, declarations of those engaged in it, explanatory of acts done in furtherance of its objects, are competent evidence after the combination has been proved. Wiborg v. United States, 163 U. S. 632, 41 L. ed. 289; Lincoln v. Claflin, 7 Wall. 132, 19 L. ed. 106. See also Sprinkle v. United States, 141 Fed. 811, decided by the Circuit Court of Appeals for this circuit, and Ellis v. Dempsey, 4 W. Va. 126, where these principles are fully upheld.

In the very recent cases (decided June 10, 1912) of Hyde v. United States, 225 U. S. 347, 56 L. ed. 1114, and Brown v. Elliott, 225 U. S. 392, 56 L. ed. 1136, it is held:

There may be a constructive presence in a state, distinct from personal presence, by which a crime committed in another state may be consummated, and render the person consummating it punishable at that place. Overt acts performed in one district by one of the parties who had conspired in another district * * * give jurisdiction to the court in the district where the overt acts are performed as to all the conspirators. Until a conspirator affirmatively withdraws from a continuing conspiracy there is conscious offending that prevents the statute from running.

The law just as clearly lays down the rules to determine what is an unreasonable restraint of trade.

"From the principles, which underlie all the cases, the inference must be necessarily drawn, that if there be any sort of business, which from its peculiar character can be restrained to no extent whatever without prejudice to the public interest, then the courts would be compelled to hold void any contract imposing any restraint, however partial, on this peculiar business; provided, of course, it be shown clearly that the peculiar business thus attempted to be restrained is of such a character that any restraint upon it, however partial, must be regarded by the court as prejudicial to the public interest." West Virginia Transportation Co. v. Ohio River Pipe Line Co., 22 W. Va. 600, 625.

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In deciding the case of United States v. Addyston Pipe and Steel Co., 29 C. C. A. 141, 158, 85 Fed. 271, 288, Judge Taft said that coal was an article of prime necessity. And in the case of Pocahontas Coke Co. v. Powhatan Coal and Coke Co., 60 W. Va. 508; 56 S. E. 254; 10 L. R. A. (N. S.) 268; 116 Am. St. Rep. 904, it is held that coal is properly classified under the head of necessaries.

The case of Pocahontas Coke Co. v. Powhatan Coal and Coke Co., supra, also holds—

"A contract, combination, or trust among various producers and sellers of a commodity, the direct and necessary or natural effect of which is to restrain competition and control the prices of such commodity, is in unreasonable restraint of trade, and void at common law, because contrary to public policy.

In determining whether or not a contract or combination is in unreasonable restraint of trade, the subject-matter of the contract or combination, the situation of the parties, and all the circumstances attending the transaction should be considered.

In determining whether or not a contract or combination is in unreasonable restraint of trade, it is immaterial whether or not the commodity which is the subject-matter of the contract or combination is of prime necessity, if the commodity is an article of legitimate trade or commerce.

In determining whether or not a contract is in unreasonable restraint of trade, all the powers of the contract should be considered, and its character determined, not alone by what has been done under it, but by what may be done under it when all of its powers shall have been fully exercised.

It is no defense to the illegality of a contract or combination which is in unreasonable restraint of trade to show that the prices of the commodity which constitutes its subject-matter have not been changed, or even that such prices have been lowered.

822 Unreasonable restraint of trade, which is only partial, is illegal.

In order that a combination or trust may be in unreasonable restraint of trade, it is not necessary that a complete monopoly be formed. The combination or trust is in unreasonable restraint of trade if it tends to monop-ly and is to the injury of the public."

The Supreme Court of the United States has held to the same view of the common law so far as the common law was considered in deciding the case of Standard Oil Co. of New Jersey, et al. v. United States, (1911) 221 U. S. 1, 55 L. ed. 619; and the case of United States of America v. American Tobacco Co. et als., and American Tobacco Co. et al. v. United States of America, (1911) 221 U. S. 106; 55 L. ed. 663; 31 S. C. 632.

In Loewe v. Lawlor, 208 U. S. 274, it was held that the Sherman Anti-trust Act "prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business;" and this includes "restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes" and that it "makes no distinction between classes. Organizations of farmers and laborers were not exempted from its operation, notwithstanding the efforts which the records of Congress show were made in that direction" and that "a combination of labor organizations and the members thereof, to compel a manufacturer whose goods are almost entirely sold in other States to unionize his shops and on his refusal so to do to boycott his goods and prevent their sale in States other than his own until such time as the resulting damage forces him to comply with their demands," is a "combination in restraint of trade."

I further conclude that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy, the coal mining industry of West Virginia in the interest of their co-conspirators, rival operators and producers in Ohio, Western Pennsylvania, Illinois and Indiana competitive fields, have sought and still seek to compel the plaintiff, the Hitchman Coal and Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful effort to monopo-

823 lize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its said employees. It is admitted in the testimony of Lewis, Sullivan and Savage that, if this injunction is dissolved, such efforts will be repeated. I do not stop now to further consider the law declaring efforts to secure the breach of contracts unlawful. I have fully considered this question in my former opinion in this case to which I now refer.

It therefore necessarily follows that the plaintiff had by reason of the damage and loss it had already incurred and the damage and loss threatened and imminent to it in futuro, just right to appeal to this court of equity for injunctive relief; that by reason of its unlawful organization, purposes and practices, as hereinbefore set forth, this organization, combination or Union, as now constituted, is unlawful and under the law, therefore, has no right to seek plaintiff's employees to become members thereof or to become party to its unlawful purposes and practices.

The injunction will be made perpetual.

Decree Perpetuating Injunction.

And at another day, to-wit: On the 18th day of January, 1913, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having its Principal Office at Wheeling, in said State and District, Plaintiff,

v.

JOHN MITCHELL, of Indianapolis, Indiana, and a Citizen of the State of Indiana, Individually and as President of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L. Lewis, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, of Blossburg, Pennsylvania, and a Citizen of the State of Pennsylvania, Individually and as Secretary-Treasurer of the United
824 Mine Workers of America and of the International Union United Mine Workers of America; William Green, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as President of District No. 6 United Mine Workers of America; D. H. Sullivan, of Coshocton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of District No. 6, United Mine Workers of America; George W. Savage, of Columbus, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, of Yorkville, Ohio, and a Citizen of the State of Ohio, Individually and as President of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, of Warrenton, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of Sub-District 5 of District 6, United Mine Workers of America; Lee Rankin, of Dillonvale, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and Thomas Hughes, of Shadyside, Ohio, and a Citizen of the State of Ohio, Defendants.

This cause came on this eighteenth day of January, 1913, to be finally heard upon the bill and its exhibits, the process duly served

upon T. L. Lewis, individually, and as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, individually, and as president of District No. 6, United Mine Workers of America; D. H. Sullivan, individually, and as vice-president of District No. 6, United Mine Workers of America; George W. Savage, individually, and as secretary-treasurer of District No. 6, United Mine Workers of America; A. R. Watkins, individually, and as president of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, individually, and as vice-president of Sub-District 5 of District 6, United Mine Workers of America; and Lee Rankin, individually, and as secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America; the separate answer of A. R. Watkins; the joint and several answer of all of said served defendants except said A. R. Watkins; the replication to said separate answer of said A. R. Watkins; the replication to said joint and several answer of all of said served defendants except said A. R. Watkins; the evidence, documentary and oral, introduced under orders entered November 5, 1910, and on taking of the testimony in the presence of the court instead of by means of depositions taken and filed in the cause, pursuant to the stipulation relating to the time, place and method of taking proof upon the issues joined entered into November 5, 1910, between the plaintiff and said served defendants by George R. E. Gilchrist, counsel for plaintiff, and by Charles E. Hogg, counsel for all of said served defendants, as evidenced by a consent order entered November 5, 1910, the transcript of the stenographic notes of said oral testimony and of the proceedings had during the trial of said cause pursuant to said stipulation; plaintiff's motion that the temporary injunction awarded in this cause May 26, 1908, be made perpetual, and the motion of all said served defendants by their said counsel that said temporary injunction be dissolved and that the bill on which it was issued be dismissed at the costs of plaintiff, and was argued by said counsel for plaintiff and by said counsel for said served defendants.

And the court having fully considered of its decree, and being of the opinion that the equities are with the plaintiff for the reasons set forth in its written opinion filed in this cause December 23, 1912, doth hereby find for the plaintiff on the issues joined pursuant to and in accordance with said written opinion filed on December 23, 1912, as aforesaid, which written opinion is made part hereof as fully as if set forth at large herein at this place; and the said motion of said served defendants to dissolve said temporary injunction and to dismiss the bill, upon which it was issued, is denied.

The court doth also overrule the objections of said served defendants to the introduction in evidence of Plaintiff's Documentary Exhibits Nos. 1, 2, 3, 4 and 5; items No. 1 to No. 9, inclusive, mentioned in an order entered in this cause November 5, 1910, the subject matter of said nine items being answers which were filed in this cause and on July 22, 1910, withdrawn; four items mentioned in an order entered in this cause November 5, 1910, the subject matter being the motion to modify the injunction and the subsequent proceedings in this court on that matter; three items mentioned in

another order entered in this cause November 5, 1910, the subject matter being what in this court relates to the appeal to the Circuit Court of Appeals; four items mentioned in an order entered in this cause November 5, 1910, the subject matter being efforts by
826 the defendants, some one or all of them, to unionize the plaintiff's mine after the restraining order in this case was granted; the record of the Circuit Court of Appeals in the matter of the appeal which was the subject of the order entered in this cause November 5, 1910; Plaintiff's Documentary Exhibits Nos. 6, 7, 8, 9, 10, 11, 12 and 13; seven items mentioned in an order entered in the Glendale case, in this court, November 5, 1910, the subject matter of the items being the answers which were filed in the Glendale case and subsequently withdrawn; four items mentioned in an order entered in the Glendale case November 5, 1910, in this court, the subject matter being the motion to modify the *the* injunction in the Glendale case and the subsequent action of the court in overruling that motion; Plaintiff's Documentary Exhibit No. 14; the order entered November 5, 1910, suspending further proceedings in the Glendale case pending the final decree of this court, or in an appellate court, in this cause; Plaintiff's Documentary Exhibits Nos. 15, 16, 17, 18, 19 and 20; Koch's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7 and 8; McKinley's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9; Cotts' Exhibits Nos. 5, 6, 7 and 8; Pickett's Exhibits Nos. 1 and 2; letter to J. C. McKinley from William Green, president of District No. 6, United Mine Workers of America, dated August 25, 1908; letter to J. C. McKinley from William Green, president of District No. 6, United Mine Workers of America, dated September 4, 1908; letter to J. C. McKinley from William Green, president of District No. 6, United Mine Workers of America, dated September 14, 1908; Austin's Exhibits Nos. 1 and 2; Upstill's Exhibit No. 1; Savage's Exhibit No. 1, and Lewis' Exhibit No. 1, which exhibits are all made subject by the served defendants of exceptions in the transcript of the oral testimony, and also in the exceptions in writing of the served defendants filed in this cause, which exceptions in writing embrace other exceptions to certain parts of the plaintiff's oral evidence, contained in the said transcript, which written exceptions are numbered from I to CXIV, inclusive, and the court having considered all the evidence in this cause, as well as said exceptions, is of opinion that there is sufficient, competent evidence to establish the conspiracy charged in the bill and the equities of the plaintiff, notwithstanding said exceptions, and without passing herein formally on said exceptions and each of them, the court doth hereby overrule said exceptions and each of them.

Plaintiff thereupon, by its said counsel, filed its petition setting forth that since the institution of this suit and during the pendency thereof, the said John Mitchell, sued as president of the United Mine
827 Workers of America and of the International Union United Mine Workers of America, ceased to hold such office; that the said T. L. Lewis, sued as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America, ceased to hold such office; that the said W. B. Wilson, sued as secretary-treasurer of the United Mine Work-

ers of America and of the International Union United Mine Workers of America, ceased to hold such office; that the said William Green, sued as president of District No. 6, United Mine Workers of America, ceased to hold such office; that the said D. H. Sullivan, sued as vice-president of District No. 6, United Mine Workers of America, ceased to hold such office; that the said A. R. Watkins, sued as president of Sub-District 5 of District 6, United Mine Workers of America, ceased to hold such office; that the said John Zelenka, sued as vice-president of Sub-District 5 of District 6, United Mine Workers of America, ceased to hold such office, and that the said Lee Rankin, sued as secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America, ceased to hold such office; that John P. White, of Oskaloosa, Iowa, is now president of the United Mine Workers of America and of the International Union United Mine Workers of America; that Frank J. Hayes, of Plainfield, Illinois, is now vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America; that Edwin Perry, of Oskaloosa, Iowa, is now secretary-treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; that John Moore, of Coshocton, Ohio, is now president of District No. 6, United Mine Workers of America; that the same John Zelenka is now vice-president of District No. 6, United Mine Workers of America; that John Albasin, of Bridgeport, Ohio, is now president of Sub-District 5 of District 6, United Mine Workers of America; that William Roy, of Klee, Ohio, is now vice-president of Sub-District 5 of District 6, United Mine Workers of America; and that William Applegarth, of Bridgeport, Ohio, is now secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America; that the said John P. White, Frank J. Hayes, Edwin Perry, John Moore, John Zelenka, John Albasin, William Roy and William Applegarth in their said named official capacities, respectively, are by representation through service upon their predecessors in office and as members of the United Mine Workers of America now before the court as members of said United Mine Workers of America and said officers, respectively, and praying that this cause may be discontinued as to the said John Mitchell, sued as president of the United Mine Workers of America and of the International Union United Mine Workers of America; T. L.
828 Lewis, sued as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America; W. B. Wilson, sued as secretary-treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; William Green, sued as president of District No. 6, United Mine Workers of America; D. H. Sullivan, sued as vice-president of District No. 6, United Mine Workers of America; A. R. Watkins, sued as president of Sub-District 5 of District 6, United Mine Workers of America; John Zelenka, sued as vice-president of Sub-District 5 of District 6, United Mine Workers of America, and Lee Rankin, sued as secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America, and that this cause proceed against the present officers, by name, John P.

White, as president of the United Mine Workers of America and of the International Union United Mine Workers of America; Frank J. Hayes, as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America; Edwin Perry, as secretary-treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America; John Moore, as president of District No. 6, United Mine Workers of America; John Zelenka, as vice-president of District No. 6, United Mine Workers of America; John Albasin, as president of Sub-District 5 of District 6, United Mine Workers of America; William Roy, as vice-president of Sub-District 5 of District 6, United Mine Workers of America; and William Applegarth, as secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America. And plaintiff, by its said counsel, thereupon filed its motion in writing asking that the prayer of the said petition be granted. Upon consideration of said petition and said motion, the court being of the opinion that it is proper to discontinue this cause as to those officers sued as such who have ceased to hold their said offices, and that it is likewise proper to substitute for them their successors in office named in said petition and in this order as such successors in said offices, and the court being also of the opinion that the said last named persons being the present officers are as such officers now before the court by representation through service having been had upon their said predecessors in office, sued as such officers and as members of the United Mine Workers of America, a voluntary organization or association, said motion is granted and it is ordered that this suit be discontinued as to said persons sued in their official capacities who have ceased to hold their said
829 offices, and that this suit proceed against those persons in their official capacities who are now the present officers as aforesaid.

And the served defendants filing their objections in writing to the granting of the prayer of said petition in which written objections the grounds therefor are set forth, and the court having considered said objections, the same are hereby overruled and disallowed, and said substitution made notwithstanding said objections.

It is adjudged, ordered and decreed that the defendants, John Mitchell, individually; T. L. Lewis, individually; W. B. Wilson, individually; William Green, individually; D. H. Sullivan, individually; George W. Savage, individually and as secretary-treasurer of District No. 6, United Mine Workers of America, and his successors in said office; A. R. Watkins, individually; John Zelenka, individually; Lee Rankin, individually; Thomas Hughes, individually; John P. White, of Oskaloosa, Iowa, as president of the United Mine Workers of America and of the International Union United Mine Workers of America and his successors in said office; Frank J. Hayes, of Plainfield, Illinois, as vice-president of the United Mine Workers of America and of the International Union United Mine Workers of America and his successors in said office; Edwin Perry, of Oskaloosa, Iowa, as secretary-treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America and his successors in said office; John Moore, of

Coshocton, Ohio, as president of District No. 6, United Mine Workers of America, and his successors in said office; the same John Zelenka, as vice-president of District No. 6, United Mine Workers of America, and his successors in said office; John Albasin, of Bridgeport, Ohio, as president of Sub-District 5 of District 6, United Mine Workers of America, and his successors in said office; William Roy, of Klee, Ohio, as vice-president of Sub-District 5 of District 6, United Mine Workers of America, and his successors in said office; William Applegarth, of Bridgeport, Ohio, as secretary-treasurer of Sub-District 5 of District 6, United Mine Workers of America, and his successors in said office; and each and every of them, their committees, agents, servants, confederates and associates, all persons now members of said United Mine Workers of America, and all persons who though not now members do become members of said United Mine Workers of America, and all persons combining and conspiring with the said hereinbefore designated persons, and all other persons whomsoever be, and they and each and every of them, are perpetually enjoined and restrained from interfering and from combining, conspiring, or attempting to interfere with the employees of the
830 plaintiff for the purpose of unionizing plaintiff's mine without plaintiff's consent, by representing or causing to be represented in express or implied terms, to any of plaintiff's employees, or to any person who might become an employee of plaintiff, that such person will suffer or is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, assigning, representing or causing to be represented in express or implied terms to such employee or employees that such loss or trouble will or may come by reason of plaintiff not recognizing the United Mine Workers of America, or because plaintiff runs a non-union mine.

From interfering and from combining, conspiring or a-tempting to interfere with employees of plaintiff for the purpose of unionizing plaintiff's mine, without plaintiff's consent, and in aid of such purpose knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff and be known to them while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, giving or assigning directly or indirectly as a reason for any such act so brought about, or enticement and leaving of plaintiff's service, that plaintiff does not recognize the United Mine Workers of America, or that plaintiff runs a non-union mine, or that the interest of the United Mine Workers of America requires that plaintiff shall not be permitted to run a non-union mine, or that the interest of the union will be best promoted thereby.

From interfering and from combining, conspiring or attempting to interfere with the employees of plaintiff so as knowingly and wil-

fully to bring about in any manner the breaking by plaintiff's employees of contracts of service, known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff, and be known to them, while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's employees, present or future,
831 knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, without plaintiff's consent, against plaintiff's will, and to plaintiff's injury.

From interfering with, hindering or obstructing any of the business of plaintiff, or its agents, servants or employees, in the discharge of their duties as such, at and about plaintiff's mine, or elsewhere, by trespassing on or entering upon the grounds and premises of plaintiff, or within its mine, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever, or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employees of plaintiff to refuse or fail to perform their duties as such employees.

From compelling or inducing or attempting to compel or induce by threats, intimidation, force, or violence, or abusive or violent language, any of the employees of plaintiff to leave its service or fail or refuse to perform their duties as such employees, or to compel or attempt to compel by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in or about plaintiff's mine and works from so accepting employment therein.

From entering upon or establishing a picket or pickets of men on or patrolling railroad or street cars passing through or adjacent to the plaintiff's property for the purpose of inducing or compelling by threats, intimidation, violence, violent or abusive language, or persuasion, any employee of plaintiff to fail or refuse to perform his duties as such, or for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to plaintiff's mine to accept employment with plaintiff, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, persuasion, or in any other manner whatsoever, to refuse or fail to accept service with plaintiff.

From compelling or inducing or attempting to compel or induce by threats, force, intimidation, or violent or abusive language, any employee of said plaintiff to refuse or fail to perform his duties as such employee, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employee to leave the service of plaintiff, and, by like methods, to prevent or attempt to prevent any person desiring to accept employment with plaintiff in or about its mine or works or elsewhere, from doing so by threats, violence, intimidation, or violent or abusive language.

832 From interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion, or entreaty with any person in the employ of plaintiff who has contracted with and is in the actual service of plaintiff to entice or induce him to quit the service of plaintiff or to fail or refuse to perform his duties under his contract of employment, and from ordering, aiding, directing, assisting, or abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid.

From congregating at or near the premises of plaintiff, and from picketing or patrolling said premises for the purpose of intimidating plaintiff's employees or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their service to plaintiff, and, in like manner, from inducing or coercing them to leave the employment of plaintiff, and from in any manner so interfering with the plaintiff in carrying on its business in its usual and ordinary way, and from interfering by threats, intimidation, violence, violent or abusive language, with any person or persons who may be employed or seeking employment by plaintiff in the operation of plaintiff's mine and works.

From, either singly or in combination with others, collecting in and about the approaches to plaintiff's mine and works, for the purpose of picketing or patrolling or guarding the streets and approaches to the property of plaintiff for the purpose of intimidating, threatening or coercing any of plaintiff's employees from working in its said mine or works, or any person seeking employment therein, from entering into such employment, and from so interfering with said employees in going to and from their daily work in and about the mine and works of plaintiff.

And from, either singly or collectively, going to the homes or boarding houses of plaintiff's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave plaintiff's employment.

It is adjudged, ordered and decreed that the served defendants, T. L. Lewis, individually, William Green, individually, D. H. Sullivan, individually, George W. Savage, individually, A. R. Watkins, individually, John Zelenka, individually, and Lee Rankin, individually, jointly and severally do pay all of the costs of this suit.

It is ordered that this cause be dropped from the docket.

And the defendants now signifying their intention to appeal from the foregoing decree, this cause is retained on the docket for six months from the date of the entry of the said decree, for the
833 purpose of enabling them to apply for and perfect said appeal.

This decree is entered by the court sitting in open court at Parkersburg where the cause was, by consent of court and counsel, transferred for the purpose of the entering of a final decree therein, but it is ordered that said decree be entered upon the order book of this court at Philippi where the cause is docketed and pending.

Enter: January 18, 1913.

ALSTON G. DAYTON, *Judge*.

Præcipe.

(Filed June 7, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL and Others, Defendants.

To the clerk of said court:

You are hereby respectfully informed that the defendants in the above styled cause intend to appeal from the decree entered therein on January 18, 1913, to the United States Circuit Court of Appeals for the Fourth Circuit, and the said defendants hereby indicate the following as the portions of the record which they will ask to be incorporated in the transcript for the said appeal:

(1) The return of the Marshal upon the process issued in the said cause, showing the names of the defendants upon whom the same was served to answer the bill filed therein.

(2) The bill of complaint filed in the said cause by the said plaintiff.

(3) The temporary injunction awarded in said cause at Philippi, West Virginia, May 26, 1908.

(4) The joint and several answer of the defendants Lewis, Green, Sullivan, Savage, Zelenka and Rankin and the several answer of Watkins, all filed September 5, 1910.

834 (5) The general replication of the plaintiff filed to the said answers on November 5, 1910.

(6) Order overruling the motion of the defendants Mitchell, Wilson and Hughes, made upon special appearance, to dismiss said suit as to them, and all the papers relating to such motion.

(7) The oral evidence of the plaintiff and defendants reduced to narrative form.

(8) The following documentary evidence: "Plaintiff's Documentary Exhibit No. 1"; "Plaintiff's Documentary Exhibit No. 2"; Plaintiff's Documentary Exhibit No. 3."

(9) The final decree entered in this cause on January 18, 1913, including the opinion of the Court accompanying the said decree.

(10) If the plaintiff in this cause shall ask to have incorporated into the transcript for said appeal the original answer of the defendant A. R. Watkins, filed May 26, 1908, and the same be incorporated therein, then the defendants desire to have incorporated in said transcript the amended answer tendered by said Watkins August 20, 1908, and the affidavits of said Watkins, Charles E. Hogg and Uriah Barnes filed in support of the right to file said amended answer.

(11) The petition for an appeal from the said decree of January 18, 1913; the assignment of errors referred to in said petition; the appeal bond; the decree filing petition for an appeal and assignment of errors; the decree allowing appeal; the stipulation of counsel, if any should be made, in relation to such documents as may be used without copying or printing the same on the hearing of the appeal in the United States Circuit Court of Appeals, or whatever other matter such stipulation may embrace.

(12) If the plaintiff in this case shall ask to have incorporated into the transcript for said appeal, the documentary evidence specified in the exceptions taken thereto by the served defendants, then the defendants in the above entitled cause desire to have incorporated into said transcript each and every exception taken in writing to the various items of documentary evidence which may be incorporated into said transcript at the instance and request of said plaintiff; including also all exceptions taken to the parts of the oral evidence
835 founded upon or relating to the said items of documentary evidence which may be embodied, at the instance of the plaintiff, in the said transcript.

CHAS. E. HOGG,
Attorney for the Defendants.

June 6, 1913.

Motion to Strike Defendants' Praecipe.

(Filed June 24, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY
v.
JOHN MITCHELL et als.

Now comes the plaintiff by George R. E. Gilchrist, its solicitor, and moves to strike out from the file in this cause the praecipe filed by the defendants in the Clerk's office on June 7, 1913, indicating the portions of the record to be incorporated into the transcript upon their appeal from the decree entered in this cause on the eighteenth day of January, 1913, and for reasons for such motion plaintiff says that while said praecipe shows that said defendants propose to appeal generally from said decree of January 18, 1913, yet they propose to incorporate into the record only part of the record which was before and was considered by the trial court in its arriving at and in its rendition of its said judgment and decree, and that said omitted parts of said record are material and essential and should be before any appellate court which is to or may review the said decree of said trial court.

Plaintiff further assigning grounds for its said motion to strike, says that it is not competent *to* defendants to file such a præcipe and avail themselves of any of the benefits otherwise allowed upon the filing of a proper præcipe.

GEORGE R. E. GILCHRIST,
Solicitor for Plaintiff.

836 *Counter Præcipe.*

(Filed June 24, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY
v.
JOHN MITCHELL et als.

To the Clerk of said Court and the Defendants in said cause:

Plaintiff hereby indicates in this its counter præcipe the following additional portions of the record in said cause to be considered by the Appellate Court upon the proposed appeal by the defendants from the decree entered therein on the eighteenth day of January, 1913, namely, all of the evidence, oral, written and documentary, which was before the trial court and considered by it in the arriving at and in making its said decree of January 18, 1913, so far as the præcipe filed by said defendants does not include all of said evidence, oral, written and documentary, so before the trial court as aforesaid.

GEORGE R. E. GILCHRIST,
Solicitor for Plaintiff.

Decree Settling Contents of Transcript.

And at another day, to-wit: On the 17th day of July, 1913, the following order was made and entered of record, to wit:

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
v.
JOHN MITCHELL and Others, Defendants.

On this twenty-fourth day of June, 1913, came the plaintiff by George R. E. Gilchrist, its attorney, and the defendants by Charles E. Hogg, their attorney, and the Court now having fully considered of the matters contained in defendants' præcipe filed herein under the provisions of Equity Rule 75, which was lodged with the Clerk on the seventh day of June, 1913, and plaintiff's motion to strike said præcipe, and plaintiff's counter præcipe, filed by it by permis-

sion of the Court this day, the time for filing said counter
837 præcipe having been extended by the Court, is of opinion and doth order that the transcript of record to be used upon appeal in this cause shall consist of the following:

1. Bill of complaint.

2. Temporary injunction awarded May 26, 1908.

3. Joint and several answer of all served defendants, individually and in their official capacities, excepting A. R. Watkins, filed September 5, 1910.

4. Separate answer of A. R. Watkins, individually and in his official capacity, filed September 5, 1910.

5. Order entered September 5, 1910, filing answer of all served defendants, individually and in their official capacities, excepting A. R. Watkins, and filing answer of said A. R. Watkins, individually and — his official capacity.

6. General replication of plaintiff to joint and several answer of all served defendants, individually and in their official capacities, excepting A. R. Watkins, and order entered filing same November 5, 1910.

7. General replication of plaintiff to separate answer of A. R. Watkins, individually and in his official capacity, and order entered filing same November 5, 1910.

8. Order entered November 5, 1910, overruling motion of defendants, Mitchell, Wilson and Hughes, to dismiss suit as to them, and all papers relating to said motion including the pleas in abatement filed by said defendants, Mitchell, Wilson and Hughes, respectively, in their individual and in their official capacities, and the motion in writing filed by plaintiff that said motion to dismiss be denied, that said pleas in abatement be overruled and that each of said unserved defendants be assigned to appear and answer over to the merits of the cause.

9. Motion made December 15, 1908, to dissolve in part and modify injunction, as embraced in an order entered December 15, 1908; an order entered December 15, 1908, deferring further proceedings in cause pending the Court's decision upon said motion; the opinion of the Court filed September 21, 1909, upon said motion; and the decree of the Court entered October 6, 1909, overruling said
838 motion and refusing to modify said injunction and continuing the same in full force and effect until the further order of the Court.

10. Consent order entered November 5, 1910, that all evidence not introduced by orders entered November 5, 1910, be introduced orally to the Court in its presence instead of by means of depositions taken and filed in cause, and fixing December 19, 1910, at 11 o'clock A. M. at the Court House in Philippi as the time and place when and where the hearing of such evidence shall commence, such hearings to be continued from day to day and from time to time as the Court may determine until concluded.

11. Constitution of United Mine Workers of America and International Union, otherwise identified as Plaintiff's Documentary Exhibit No. 1 (one).

12. Constitution of District No. 6 United Mine Workers of America, otherwise identified as Plaintiff's Documentary Exhibit No. 2 (two).

13. Preamble and Manual Constitution United Mine Workers of America, Sub-District 5 of District 6, otherwise identified as Plaintiff's Documentary Exhibit No. 3 (three).

14. Proceedings of the Eighteenth Annual Convention of United Mine Workers of America, held in the City of Indianapolis, Indiana, January 15 to 22d, inclusive, 1907, otherwise identified as Plaintiff's Documentary Exhibit No. 4 (four).

15. Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6 United Mine Workers of America, held in Wheeling, West Virginia, March 14, 15, 16, 18 and 19, 1907, otherwise identified as Plaintiff's Documentary Exhibit No. 5 (five).

16. Order entered November 5, 1910, and the items numbered one to nine, inclusive, mentioned therein, the subject-matter thereof being answers which were filed in the Hitchman case, and, on July 22, 1910, withdrawn.

17. Order entered November 5, 1910, and the four (4) items mentioned therein, the subject-matter thereof being efforts by the defendants, some one or all of them, to unionize the plaintiff's mine after the restraining order in this case was granted.

839 18. Plaintiff's Documentary Exhibits numbered 7 (seven), 8 (eight), 9 (nine), 10 (ten), 11 (eleven), 12 (twelve), 13 (thirteen), and 14 (fourteen), all of which relate to the case of the Glendale Coal Company against John Mitchell and others pending in this Court.

19. Order entered November 5, 1910, and the seven (7) items mentioned therein, the subject-matter thereof being answers which were filed in said Glendale case and subsequently withdrawn.

20. Order entered November 5, 1910, and the four (4) items mentioned therein, the subject-matter thereof being the motion of served defendants to modify the injunction in said Glendale case and the subsequent action of this Court in overruling that motion.

21. General replication of the Glendale Coal Company to the answer of the served defendants in said Glendale case.

22. Order entered November 5, 1910, suspending said proceedings in said Glendale case pending a final decree of this Court or in an Appellate Court in this cause.

23. Plaintiff's Documentary Exhibits numbered 15 (fifteen), 16 (sixteen), 17 (seventeen), 18 (eighteen), 19 (nineteen), and 20 (twenty), all of which relate to the case of the Richland Coal Company against John Mitchell and others, pending in this Court.

24. The oral evidence of the plaintiff and defendants reduced to narrative form as identified by the certificate of the Judge of this Court.

25. Exhibits of plaintiff's witnesses identified as follows:

Hitchman's Exhibit No. 1 (one). Cotts' Exhibits numbered 1 (one), 2 (two), 3 (three), 4 (four), 5 (five), 6 (six), 7 (seven) and 8 (eight). Koch's Exhibits numbered 1 (one), 2 (two), 3 (three), 4 (four), 5 (five), 6 (six), 7 (seven) and 8 (eight), McKinley's Exhibits numbered 1 (one), 2 (two), 3 (three), 4 (four), 5 (five),

6 (six), 7 (seven), 8 (eight) and 9 (nine). Pickett's Exhibits numbered 1 (one) and 2 (two). Albert Harrett's Exhibit No. 1 (one). Austin's Exhibits numbered 1 (one) and 2 (two).

26. Exhibits of defendants' witnesses introduced by plaintiff, identified as follows:

840 Savage's Exhibit No. 1 (one). Lewis' Exhibits numbered 1 (one), 2 (two), 3 (three) and 4 (four).

27. Exceptions taken by the served defendants to the evidence introduced by the plaintiff, including the reasons therefor, presented by said defendants upon the final hearing, and marked "Defendants' Exceptions," numbered from one to one hundred and fourteen, inclusive.

28. Final decree entered in this cause on January 18, 1913, awarding a perpetual injunction, and including the written opinion of the Court filed December 23, 1912, which by a provision of said final decree entered January 18, 1913, as aforesaid, is made a part of said decree.

29. Petition for appeal.

30. Assignment of errors.

31. Order entered July 10, 1913, filing petition for and awarding appeal.

32. Order entered July 10, 1913, approving bond.

33. Stipulation of counsel.

Said defendants protest against and except to the action of the Court in ordering that there shall be incorporated in the transcript of record to be used upon appeal in this cause the matters of evidence, documentary in character, which are mentioned in this order under the sub-headings numbered 8 (eight), 10 (ten), 14 (fourteen), 15 (fifteen), 16 (sixteen), 17 (seventeen), 18 (eighteen), 19 (nineteen), 20 (twenty), 21 (twenty-one), 22 (twenty-two), 23 (twenty-three), 25 (twenty-five) and 26 (twenty-six); and at the instance of the plaintiff the Court doth further order that to the foregoing matter contained within the foregoing 33 (thirty-three) sub-headings there shall be added and shall be embraced in the transcript of record to be used upon appeal in this cause the following:

34. Defendants' præcipe filed herein under the provisions of Equity Rule 75 which was lodged with the Clerk on the seventh day of June, 1913.

35. Plaintiff's motion filed June 24, 1913, to strike said præcipe.

841 36. Plaintiff's counter præcipe filed June 24, 1913.

This order was determined on and awarded as of June 24th, 1913, but inadvertently was not entered as of that date. It is now directed to be entered nunc pro tunc, July 17, 1913.

Memoranda for Appeal.

1. Petition for appeal filed July 10, 1913.
2. Appeal allowed by order entered July 10, 1913.
3. Appeal bond; dated July 10, 1913; penalty $300; Charles E. Hogg, principal and as surety; condition, for damages and costs.

4. Order entered July 10, 1913, approving bond.

5. Citation: dated July 10, 1913, returnable August 18, 1913; served on G. R. E. Gilchrist, solicitor, of record, July 10, 1913; and on him as attorney-in-fact July 22, 1913.

Assignment of Errors.

(Filed July 10, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL and Others, Defendants.

Assignment of Errors.

The defendants, T. L. Lewis, individually, William Green, individually, George Savage, individually and as Secretary-Treasurer of District 6 United Mine Workers of America, A. R. Watkins, individually, John Zelenka, individually, and Lee Rankin, individually (called the served defendants), John P. White, as President of the United Mine Workers of America and of the International Union United Mine Workers of America, Frank J. Hayes, as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America, Edwin Perry, as
842 Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America, John Moore, as President of District 6 United Mine Workers of America, John Zelenka, as Vice-President of District 6 United Mine Workers of America, John Albasin as President of Sub-District 5 of District 6 United Mine Workers of America, William Roy, as Vice President of Sub-District 5 of District 6 United Mine Workers of America, and William Applegarth, as Secretary-Treasurer of Sub-District 5 of District 6 United Mine Workers of America (the last eight above named persons hereafter called the substituted defendants), John Mitchell, W. B. Wilson and Thomas Hughes (the last three above named persons hereafter called the unserved defendants), come now on this the — day of July, 1913, and say that the Court erred in its decree rendered in the said cause on the 18th day of January, 1913, and file the following as their assignment of the errors committed by the entry of said decree:

First. The Court erred in perpetuating the injunction awarded in this cause upon the motion of the plaintiff.

Second. The Court erred in not dissolving the injunction awarded in this case upon the motion of the served defendants.

Third. It does not appear from the whole record that the amount in controversy as to any of the defendants exceeds two thousand dollars.

Fourth. On the theory of the case made by the plaintiff, the matter in controversy is its right to operate its coal plant on a non-union basis—that is, without a contract between it and its employes made collectively with them as members of the United Mine Workers of America—and there is no competent evidence to show that this right exceeds in value the amount of two thousand dollars as compared with its right to operate its plant under contracts with its employes made individually with its employes.

Fifth. The record nowhere discloses any acts imputed to the defendants threatening imminent substantial pecuniary loss to the plaintiff.

Sixth. It is not shown by the whole record that the defendants were attempting to unionize the plaintiff's mine, by the use of force, fraud, violence, or other unlawful means, against the consent of the plaintiff.

843 Seventh. It does not appear from the whole record that the defendants or any of them were attempting to unionize the plaintiff's mine against its consent by any means whatsoever.

Eighth. The whole record *does* not disclose any attempt on the part of the defendants or any of them, to unionize the plaintiff's mine, except by and with its consent.

Ninth. The record does not disclose any unlawful acts or act threatened or done by the defendants, or any of them, to the material injury of the plaintiff; and especially any injury exceeding two thousand dollars.

Tenth. In finding and declaring that the United Mine Workers of America is an unlawful association or organization.

Eleventh. In finding and holding that the constitution of the United Mine Workers of America and the International Union United Mine Workers of America is an unlawful instrument; and that the various parts, sections and clauses thereof, set forth in the plaintiff's bill, and in the opinion of the learned Court below, delivered on the final hearing of this cause, are contrary to law, and under which the defendants could not associate themselves together or unite for the purposes contemplated by said constitution.

Twelfth. In further finding and holding that the constitutions of District 6, and of Sub-District 5 of District 6, United Mine Workers of America, are unlawful instruments; and that the various parts, sections and clauses thereof in the plaintiff's bill set forth, and especially mentioned in the opinion of the learned Court below delivered on the final hearing of this cause, are against the laws of West Virginia, and under which the defendants cannot associate themselves together for the purpose and in furtherance of the objects contemplated by the said last named constitutions.

Thirteenth. In finding and holding that any of the parts, sections or clauses of any of the said three constitutions referred to and identified in assignments numbers eleven and twelve herein made are unlawful.

Fourteenth. In finding and holding that certain parts, sections and clauses of each of the said three constitutions, being in
844 themselves lawful, are so connected with and dependent upon the unlawful parts thereof, as to render each of the said three

constitutions wholly unlawful and under which the defendants cannot lawfully associate themselves together for the purposes and in furtherance of the objects contemplated by each of the said three constitutions.

Fifteenth. In finding and holding that the defendants and other members of the United Mine Workers of America, constitute a combination or conspiracy under the Act of Congress known as the "Sherman Anti-Trust Law."

Sixteenth. In finding and holding that the defendants are in conspiracy or combination with the coal operators of Western Pennsylvania, Ohio, Indiana and Illinois, known as the central competitive field, to unionize the coal field of West Virginia and against the consent of the operators in the West Virginia field, because there is no allegation of such conspiracy or combination made in the bill filed in this cause.

Seventeenth. In finding and holding that the defendants as members of the United Mine Workers of America are in a combination or conspiracy with the operators of said central competitive field, to unionize plaintiff's employes without its consent, as there is no such allegation of such combination or conspiracy made in the plaintiff's bill.

Eighteenth. In holding that the defendants had not the lawful right to use argument, reason and persuasion to solicit, invite or peaceably induce the plaintiff's employes to become members of the United Mine Workers of America; or to use any lawful means to have the employes of the plaintiff become members of the said labor organization.

Nineteenth. In overruling every one of the exceptions of the served defendants numbered from I to CXIV, inclusive, to certain documentary and oral evidence of the plaintiff, as noted in the said final decree, and in not sustaining each and every one of said exceptions, for the reasons set forth in said written exceptions.

Twentieth. In finding and holding that the defendants were attempting to interfere with the contracts existing between the plaintiff and its employes, and attempting to induce said employes to break said contracts.

Twenty-first. In holding the existence of jurisdiction under the circumstances of this case, to declare the United Mine Work-
845 ers an unlawful organization upon any ground whatsoever.

Twenty-second. In holding that the plaintiff had entered into lawful contracts with its employes—contracts not in contravention of public policy—and that the plaintiff is entitled to be protected by a court of equity in the enforcement of its said contracts.

Twenty-third. In declining to hold and adjudicate that the various contracts entered into between the plaintiff in this suit and its employes, was contrary to law, and against public policy, and illegal and void.

And the said substituted defendants say that the Court erred, with special reference to themselves, in the said decree as follows:

(*a*) In rendering any decree at all against the said served defendants.

(*b*) In perpetuating the injunction awarded in this cause against the said substituted defendants.

(*c*) In granting any relief to the plaintiff against the said substituted defendants without making them parties to the plaintiff's bill, and without issuing and serving process upon them to answer said bill, and without affording them an opportunity to make defense thereto.

(*d*) The rendering of a decree against the said substituted defendants and perpetuating the said injunction as to them operates to deprive them of their liberty without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

And the said unserved defendants say that the Court erred, with special reference to themselves, in the said decree, as follows:

(*aa*) In rendering any decree against the said unserved defendants.

(*bb*) In perpetuating the injunction awarded in this cause as to the said unserved defendants.

846 (*cc*) In granting any relief to the plaintiff against the said unserved defendants without serving process upon them to answer the plaintiff's bill, and without affording them opportunity to make defense thereto.

(*dd*) In overruling the motion of the unserved defendants to dismiss the suit as to them, upon their special appearance for the sole purpose of making such motion.

(*ee*) In rendering a decree against the said unserved defendants perpetuating the said injunction against them, the said Court depriving them of their liberty without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(*ff*) In rendering a joint and several decree against the said T. L. Lewis and the other served defendants in the said cause, adjudging that they individually do pay the costs of said suit.

CHAS. E. HOGG,
Solicitor for the Defendants.

Stipulation under Rule 23.

(Filed July 10, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY
v.
JOHN MITCHELL et als.

It is hereby stipulated and agreed that the clerk of this court shall make up a transcript of the record in the above styled cause, transmit the same to the Clerk of the United States Circuit Court of Appeals

for the Fourth Circuit, at Richmond, Va., and be printed, in accordance with Rule 23 of that court.

July 10th, 1913.

GEORGE R. E. GILCHRIST,
Counsel for Appellants.
CHAS. E. HOGG,
Counsel for Appellees.

847 *Stipulation of Counsel as to Record.*

(Filed July 17, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

HITCHMAN COAL & COKE COMPANY, Plaintiff,
vs.
JOHN MITCHELL and Others, Defendants.

Stipulation of Counsel.

It is hereby stipu-ated by and between the plaintiff to the above entitled cause by its attorney and the defendants by their attorney that in transcribing the record in the above cause upon the appeal granted said defendants by an order entered July 10, 1913, the Clerk shall omit therefrom the following documents and papers.

The process issued in said suit summoning the defendants to answer the plaintiff's bill filed herein and the returns made upon said process—it being admitted that process was duly issued against all the defendants and properly executed and returned as to them, except as to the defendants John Mitchell, W. B. Wilson and Thomas Hughes, which latter three were not served.

Also, the injunction bond required by the order awarding the plaintiff the temporary injunction and its approval—it being hereby admitted that the bond required by said order was duly executed and approved.

It is further hereby stipulated by the parties hereto that of the matter mentioned in the 36 (thirty six) sub-headings of an order entered June 24, 1913, directing what shall be included within the transcript of record to be used upon the appeal in this cause granted July 10, 1913, as aforesaid, the Clerk shall in transcribing the record omit therefrom all of the documents and papers, the originals of which the Court by its order may designate and require to be transmitted from the original files and records of this Court direct to the United States Circuit Court of Appeals for the Fourth Circuit.

GEORGE R. E. GILCHRIST,
Attorney for Plaintiff.
CHAS. E. HOGG,
Attorney for Defendants.

848 *Decree Extending Time for Filing Record.*

At another day, to-wit: On the 13th day of August, 1913, the following order was made and entered of record, to-wit:

In Equity.

HITCHMAN COAL & COKE COMPANY
v.
JOHN MITCHELL et als.

It appearing to the Court that the citation issued in this cause is returnable on August 18th, 1913; and it further appearing to the Court that by reason of the voluminous record therein the Clerk of this Court will not be able to complete the transcript of the record therein and file the same with the Clerk of the United States Circuit Court of Appeals on or before the return day of said citation, it is ordered that the time within which said transcript of record may be filed in said Appellate Court be, and the same is hereby, extended until the 1st day of October, 1913.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Northern District of West Virginia, ss:

I, C. B. Kefauver, Clerk of the District Court of the United States for the Northern District of West Virginia, hereby certify that the foregoing is a true and complete transcript of so much and such parts of the record of said Court in the equity cause of Hitchman Coal & Coke Company v. John Mitchell, et al., pending therein, as was directed by counsel and the Court to be transcribed in said cause, and certified to the United States Circuit Court of Appeals for the Fourth Circuit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at Philippi, in said District, this 12th day of September, 1913.

[Seal of Court.]

C. B. KEFAUVER, *Clerk.*

849 On the same day, to-wit, September 15, 1913, the original petition for an appeal, order allowing appeal, appeal bond, order approving bond and citation are certified up under Sec. 7 of Rule 14.

Same day, original exhibits (documents, papers, decrees, orders &c.), are certified up.

Same day, appearance of Charles E. Hogg is entered for the appellants.

September 17, 1913, appearance of George R. E. Gilchrist, is entered for the appellee.

November 25, 1913, twenty-five copies of the printed record are filed.

December 20, 1913 (November Term, 1913), cause is continued by the Court until the February term, 1914.

February 12, 1914 (February Term, 1914), cause came on to be heard before Pritchard, Knapp and Woods, Circuit Judges, and is argued by counsel and submitted.

May 28, 1914 (May Term, 1914), the Court announced and filed its opinion, which is as follows, to-wit:

Opinion.

Filed May 28, 1914.

850 United States Circuit Court of Appeals, Fourth Circuit.

. . . . . .

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,

versus

HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

[Argued February 12, 1914. Decided May 28, 1914.]

Before Pritchard, Knapp and Woods, Circuit Judges.

Charles E. Hogg (Charles J. Hogg on Brief) for Appellants, and Geo. R. E. Gilchrist, for Appellee.

PRITCHARD, *Circuit Judge:*

The plaintiff corporation presented its bill for injunction October 24, 1907, to the Honorable Alston G. Dayton, United States District Judge, in the Circuit Court for the Northern District of West Virginia, against John Mitchell and nine others, alleging itself to be a corporation under the laws of West Virginia, and the defendants to be citizens and residents of several different States other than West Virginia; that nine of said defendants first named are Presidents, Vice-Presidents and Secretary-Treasurers, re-
851 spectively, of the United Mine Workers of America; and of the International Union United Mine Workers of America; of District No. 6, United Mine Workers of America; and of sub-district 5 of District No. 6, United Mine Workers of America; and the defendant, Thomas Hughes, an organizing agent of said organization; that plaintiff is the owner of about 5,000 acres of coal, has a mine and mining plant on the Baltimore & Ohio Railroad, that is mining and shipping a daily output of about 1,400 tons of coal, largely under contracts, between 500 and 600 tons to the railroad for

its daily engine fuel, has large contracts for future delivery; that prior to April 1st, 1906, it operated its mine by employment of men affiliated with the United Mine Workers of America, but, on that day, a strike was ordered by the officers of the Union, and, on April 16, 1906, the men so employed, in obedience to the demands and orders of defendants, went out and ceased to work. It is charged that this strike was ordered because certain other operators refused to sign the scale demanded by the Union, and so far as plaintiff was concerned it was wholly without justification or excuse because it distinctly agreed to pay the scale price and any increased price fixed thereby from April 1, 1906, the date of the strike order, whenever it might be fixed and agreed upon, with which proposition the miners themselves, whose labor was involved, were entirely satisfied; that notwithstanding this, at the instance of defendants, its mine was shut down from April 16, to June 12, 1906, to its great financial loss and embarrassment by reason of its inability to comply with its existing contracts. The bill then sets forth in detail in effect that on the last named date in order to be able to run said mine it entered into a contract with its men whereby it agreed with them to run its mining operation wholly upon non-union basis, refusing absolutely to employ any union men, and whereby the men on their part agreed not to join or become members of this union and to work for plaintiff as non-union men; that plaintiff has since that time been running its mine under this contract with its men to the entire satisfaction of both, paying its men as high wages as paid in any of the union mines. It then charges the officers and
852 agents of the Union with full knowledge of the existence of this contract, to have repeatedly sought to have plaintiff violate it and agree to reunionize its mine, which plaintiff has refused to do, whereupon such union officers and agents are seeking by inducements, threats and intimidation, to induce plaintiff's employés, bound by said contract with it, to leave its service, break their contract, join the union and also to prevent other men from engaging in its employ, and this, it is charged, with the unlawful purpose to prevent any but union men to work in its mine, compel it to employ none but union men and to submit its business and its property to the jurisdiction and control of said union and its officers. The bill then proceeds to charge the United Mine Workers of America and its subordinate organizations to be unincorporated organizations, having unlawful purposes and designs to create a monopoly and trust in coal mining labor, and in support of these allegations sets forth in extenso, what purports to be excerpts from the constitutions and by-laws of the supreme and subordinate unions, together with the obligation required to be taken by its members and extracts from the proceedings of its national conventions. A distinct conspiracy on the part of defendants as individuals is charged to secure, by reason of their positions as officers of this union, the abandonment by the men of their contract with plaintiff, their joining the union, the inability of plaintiff to employ others, and the entire shutting down of its mine to its irreparable loss and injury.

The answer contains a general denial, which is substantially as follows:

That the United Mine Workers of America and its sub-ordinate associations or branches, by its officers, agents, employés and servants, have sought, and are seeking, by inducements, threats and intimidation, but without physical force, "to cause plaintiff's employés to leave its service and to cause others who have engaged to enter its service to break their engagements of service and not to work for plaintiff, and to prevent others from working for plaintiff, and all with the avowed and actual purpose of compelling plaintiff
853 to recognize said organization, and to force plaintiff to employ none but persons who are members of the United Mine Workers of America."

They deny that any of the expressed objects of the United Mine Workers of America are unlawful.

They deny that the appellants have entered into a combination or conspiracy under the name of the United Mine Workers of America, to unlawfully to persuade, entice and procure appellee's employés to break, violate and disregard their several contracts with the appellee, with the avowed purpose of compelling appellee to reunionize its plant without its consent, and deny that they have formed a conspiracy to compel, by threats and intimidation, appellee's employés to join said union.

They deny that Zelenka reported, and caused this report to be circulated among appellee's employés, that Zelenka, Green and Watkins (appellants), after a conference with appellee's general manager, had agreed with such general manager, that appellee's employés were allowed to join the United Mine Workers of America and deny that they caused the further statement to be circulated among said employés that they must join the union, or else they would be out of a job at an early day; and deny that they caused to be circulated a statement that only union men would be permitted to work at appellee's mine, and that those of appellee's employés who did not join the union would not be permitted to get a job any place else.

And they deny that the appellants are endeavoring to unionize the appellee's mine, and that they threaten to close down appellee's mine and keep it closed until appellee agrees to sign the scale and employ none but union labor; and they deny that the national organization of the United Mine Workers of America and its district and sub-district organizations are under their constitutions violating either the common or statutory law of the State of West Virginia.

And they deny that the appellants will, unless enjoined, by enticement, persuasion or coercion, bring about the shutting down of appellee's mine and the ultimate destruction of its business; and deny that they will compel the appellee to recognize the ap-
854 pellants as members of said labor organization, and will compel appellee to contract with its employés through appellants as officers of said organization, and they deny that they are about to indulge in any of the methods of accomplishing their purpose by the use of threats, intimidation and other unlawful means alleged in said bill.

Presented with this bill were some twenty-eight affidavits in support of its allegations. A temporary restraining order was granted until the next regular term of court to be held at Parkersburg, January 14, 1908, for which date plaintiff's motion for a temporary injunction was set down for hearing. This hearing, on motion of defendants, was continued until May 26, 1908, when plaintiff presented more than twenty additional affidavits and argued its motion for temporary injunction, counsel for defense stating they "did not desire to be heard in opposition to said motion so far as the granting of a temporary injunction at the time was concerned and not consenting but objecting thereto." The temporary injunction was on that day granted in exact accord with the terms of the restraining order.

Answers were filed, exceptions entered thereto, motions as to certain unserved defendants to have said bill dismissed as to them were made and a motion by defendants, disclaiming "any intention of conceding the truth of the allegations of the plaintiff's bill whereby fraud, coercion and intimidation or violence in any form whatsoever is imputed to them," was made to dissolve the injunction, "on the face of the bill and exhibits," in so far as said injunction restrained said defendants or any of them from the use of argument, reason and persuasion, to induce the employés of the plaintiff or any of them to become members of the United Mine Workers of America or any of its subordinate branches; so far as it restrained them from interfering or talking to any person or persons in the employment of the plaintiff, or about to enter the employment of the plaintiff, for the purpose of inducing such persons to become members of the United Mine Workers of America or any of its subordinate branches, in a peaceable and law abiding manner and unaccompanied by intimidation, force, fraud, violence, or coercion; also in so
855 far as it restrained defendants from visiting the homes of plaintiff's employés for the purpose of inducing them by reason, persuasion and argument, unaccompanied by force, fraud, intimidation, violence, or coercion, to become members of the United Mine Workers of America or any of its subordinate branches; in so far as it restrained defendants from going near the premises of plaintiff for the purpose of talking with or inducing the employés of plaintiff to become members of the United Mine Workers of America; in so far as it restrained from unionizing or attempting to do so plaintiff's mine, if by "unionizing" is meant action on the part of defendants to induce the employés of plaintiff to become members of the United Mine Workers of America by the use of argument, persuasion and reason unaccompanied by force, violence, coercion or intimidation; and also in so far as it restrained defendants from interfering with plaintiff's employés if by the term "interfering" is meant that defendants shall be precluded from interviewing and visiting plaintiff's employés for the purpose of inducing them to become members of the union.

This motion was deferred until further orders from the court, and on the 21st day of September, 1909, the court filed an opinion in which it held, among other things, that the defendants were

not entitled to have the injunction modified, and a decree in pursuance thereof was entered on the 6th day of October, 1909, from which an appeal was taken to this court, and same was dismissed for want of jurisdiction, 176 Fed., 549.

On the 23rd day of December, 1912, the court filed another opinion, and in pursuance thereof entered a final decree perpetuating the injunction theretofore granted, from which defendants took an appeal to this court.

The final decree entered herein was based upon the assumption that there was a conspiracy on the part of the defendants to unionize the plaintiff's mine without its consent, and to bring about the breaking of the contracts existing between the plaintiff and its employés, as well as to secure the breaking of the contract between appellee and its employés which had thereafter been entered into;
856 also to induce the employés to leave its service. These acts are inhibited by the injunction.

The injunction inhibits the defendants from combining, conspiring or attempting to interfere with appellee's employés, so as wilfully to bring about the breaking of their contracts of service with the appellee which appellee now has with its employés; from hindering or obstructing any of the business of appellee, its agents, servants or employés in the discharge of their duties, or in any manner obstructing appellee's business, with the purpose of compelling or inducing, by threats, intimidation, violence, violent or abusive language, or persuasion, any of the employés of the appellee to refuse or fail to perform their duties as such employés; from compelling or inducing or attempting to compel or induce, by threats, intimidation, force or violence, or abusive or violent language, any of the employés of plaintiff to leave its service, or refuse to perform their duties as such employés; or in such manner to prevent others seeking employment from accepting employment with the appellee. From entering or establishing a picket or pickets of men on, or patrolling the railroad or street cars passing through or adjacent to appellee's property, for the purpose of inducing or compelling, by threats, intimidation, violence, violent or abusive language, or persuasion, any employé of plaintiff to fail or refuse to perform his duties. Or for the purpose of interfering or talking to any person or persons on said railroad or street cars going to appellee's mine to accept employment with appellee, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, or in any manner whatsoever, to refuse or fail to accept service with appellee, from congregating at or near the premises of the appellee, and from picketing or patrolling said premises for the purpose of intimidating appellee's employés, or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them from rendering their service to appellee, and in like manner from inducing or coercing them to leave the employment of appellee, and from in any manner so interfering with appellee in carrying on its busi-
857 ness in its usual and ordinary way, and from interfering by threats, intimidation or violence, or violent and abusive language, any person or persons who may be employed or seeking employ-

ment by appellee, in appellee's mine and works; from either singly or in combination with others, congregating in and about the approaches to appellee's mine and works for the purpose of picketing or patrolling or guarding the streets or approaches to appellee's mine, for the purpose of intimidating, threatening or coercing any of appellee's employés from working in its mine or works, or any person seeking employment there- from entering into such employment, and from so interfering with said employés in going to and from their daily work in and about the mine and works of appellee; and, finally, from either singly or collectively going to the house or boarding houses of appellee's employés, or any of them, for the purpose of intimidating or coercing any or all of them to leave the appellee's employment.

It will be observed that the injunction was based upon the finding that the defendants had resorted to the use of force, violence, intimidation, abusive and violent language, and coercion as a means of obtaining membership in the United Mine Workers of America, from the appellee's employés, and also for the purpose of having these employés quit the service of the appellee, or by such means preventing others seeking employment with it from accepting its service as employés.

The appellee will hereinafter be referred to as "plaintiff," and the appellants as "defendants," such being the relative positions the parties occupied in the court below.

The facts are substantially as follows:

The Hitchman Coal and Coke Company was organized under the laws of the State of West Virginia, in the year 1901, and began operations at Benwood, Ohio County, West Virginia, in the early summer of that year. The opening up of the mine consumed some time, and the actual mining of coal did not commence until in the winter of 1902. At that time, however, the company did not ship any coal. The company began its operations upon a non-
858 union basis; that is, it employed its labor independently of and without relation to the organization known as the United Mine Workers of America.

It appears from the testimony of E. T. Hitchman that previous to its entering upon the operation of mining coal at Benwood, the Hitchman Company entered into a contract with the Baltimore and Ohio Railroad Company; and during the early part of its operations all the coal mined by the company was delivered upon the engines of the railroad company; the amount mined at first was very small; it practically commenced at nothing and gradually increased, until now this mine is a regular coaling station for the railroad company, and is its only coaling station in the vicinity of Benwood.

The coal company continued to operate its mine upon a non-union basis until the month of April, 1903, when it entered into a contract with its employés through the officers of the United Mine Workers of America, adopting the scale of wages demanded by the members of that organization, and agreeing to observe the rules and conditions of employment.

The company operated its mine upon what is known as a "union basis," for three years, or until some time in April, 1906; the first contract of agreement expired in 1904, and was renewed for a period of two years, or until April, 1906. At that time the men refused to work longer because no agreement could be made between the employés and the company as to the rate of wages and conditions of employment.

About June 21, 1906, after the mine had been shut down and operations suspended for a period of about fifty days, the company resumed operations upon a non-union basis, with the understanding between the officials of the company and its employés that the company would deal with each one of them individually from that time on, and that the men who had formerly been in the employ of the company were informed by its president that each man would have to seek employment for himself, and that the company would have no further relations with the organization known as the United Mine Workers of America.

After resuming operations in June, 1906, it was agreed between the company and its employés that the company's mine
859 would be operated upon a non-union basis; its board of directors passed a resolution whereby a fixed policy was adopted by the company to employ none but non-union laborers; the agreement of employment between the company and its men was verbal up to January, 1908, but about that time and since the institution of this suit the company issued employment cards, the exact language of which will be hereinafter quoted and referred to. Thereafter, each and every man who entered the company's employment was required to sign one of the cards in question before being accepted as an employé; and any applicant for employment who refused to sign the card was denied employment.

It appears from the testimony of R. J. Coits an employé of the Hitchman Coal & Coke Company that from and after June, 1906, up to and including the date of the taking of the testimony herein, the Hitchman Coal and Coke Company continued to operate its mine upon a non-union basis, with an understanding or agreement between it and its employés, that the company would employ none but men who were not members of the United Mine Workers of America; and from January 1, 1908, the men on their part agreed that they would not become members of the United Mine Workers of America so long as they continued in the employment of that company.

During all this time, from the early part of 1902 up to the time of the taking of testimony on behalf of the plaintiff in this case, the business of the Hitchman Coal and Coke Company has increased naturally and gradually, from a production and sale of about 17,000 tons of coal in 1902, to a production and sale of more than 281,000 tons for the first eleven months of the year 1910.

In the year 1902, all but about 800 tons of the coal produced by the Hitchman Company was sold to the Baltimore and Ohio Railroad Company, and delivered upon its engines at Benwood, West Virginia; while in 1910 more than half of the coal produced

was sold in the open market and was designated upon the books of the coal company as "commercial coal" as distinguished from "engine coal"; and nearly all of this "commercial coal" was
860 shipped to ports on the Great Lakes for transportation by vessel to the northwest country, for delivery at ports on Lake Superior.

Witness Cotts further testified that during all these years the prices received by the coal company for both "commercial coal" and "engine coal" would average from ninety-five cents to one dollar per ton; but during the time of the strike in the anthracite fields during the year 1903, the price for "commercial coal," prior to April 1, of that year, was about three dollars per ton, and also during this time, at the average price of from ninety-five cents to one dollar per ton, the average profit derived by the coal company from the mining and shipping and selling of coal was twenty-five cents per ton.

It also appears from the testimony of W. H. Koch, manager of the Hitchman Coal & Coke Company, that during the summer of 1907 the officials at that time in charge of the affairs of the United Mine Workers of America for the district in which the Hitchman Company's mine is located called upon the officers of the coal company, and discussed with them the renewal of the relations which had theretofore existed between that company and the miners' organization; at each of these meetings, at least one of which was held in the company's office, the officers of the company refused to consider the renewal of their former relations to the union, and the representatives of the United Mine Workers were informed that it was the fixed and determined policy of that company to employ none but miners who were not members of the union, and in September, 1907, about six weeks after the visit of the officials as above stated, Thomas Hughes, a representative of the United Mine Workers, visited Benwood and its vicinity in an attempt to induce the miners employed by the Hitchman and other coal companies operating in that community, to become members of the United Mine Workers.

Witness Koch further testified that in his work as organizer, of soliciting and securing miners to become members of the union, Hughes talked to the employés of the Hitchman and other companies upon the streets of Benwood, and, according to Wesley Corns' testimony, visited the men at their homes, and it is shown by
861 E. C. Pickett's testimony that Hughes addressed the men in open meetings, and talked with one or more of the officers of the coal company as to the reason why that company refused to employ any but non-union labor.

E. C. Pickett also testified that in an open air meeting which was attended by the superintendent of the coal company, Hughes simply argued to the men the advantages to be derived from the membership in the United Mine Workers of America.

It further appears from E. C. Pickett's testimony that as a result of the efforts of Hughes, about twenty or twenty-five men employed by the Glendale Coal Company, a separate corporation, but man-

aged from the same office and by the same men in charge of the operations of the Hitchman Company, were induced to become members of the United Mine Workers, and the next morning they were discharged by the superintendent of the Hitchman Company. This was in the latter part of September or the first of October, 1907.

We fully appreciate the important bearing the questions here presented have upon the welfare of the mine owners, as well as the laboring men, and are not unmindful of the delicate issues raised by the pleadings and proof in this cause.

That it is advisable to secure a just and fair solution of the labor problem by which equal protection to capital and labor may be secured is undoubtedly the wish of every patriotic citizen regardless of his station in life. That one who toils for his living is justified in employing all lawful methods for the preservation of his right as an American citizen to secure fair remuneration for his services, is established by the Federal and the State Courts. That such a person also has the right to join with others similarly situated, in order to promote their welfare as a class, is also established as the law of this country. But while this is so, it is equally well settled that the mine owner is entitled to the full protection of the law in the conduct of his business and the enjoyment of his property.

It is insisted by counsel that the defendants as members of the organization known as the United Mine Workers of America have been within their rights as to the transactions referred to in
862 the bill, and that they have not resorted to intimidation, violence or other unlawful methods, but, on the other hand, have been actuated solely by a desire to promote the general welfare of those who are employed as laborers in the various coal mines of the country, and that they have not at any time attempted to unionize plaintiff's mine as alleged in the bill.

The plaintiff insists that it has the right to employ only non-union labor, and that the conduct of the defendants in attempting to unionize this class of labor in the State of West Virginia is unlawful in that it is a violation of the constitution, the common law, and the statute law of that State.

The defendants insist that the policy adopted by the plaintiff is calculated to place those who seek employment of this kind at a great disadvantage; that it will prevent them from accomplishing by united effort that which is essential to the welfare of those whose only asset is their ability to earn a living by manual labor and that the action of the plaintiff in this instance in making an indirect attack upon their organization is such as to justify this class of laboring men in employing all lawful methods for the purpose of maintaining their organization, the only means by which they can protect their rights and promote their welfare.

It has heretofore been conceded, as a general rule, that a labor union may employ peaceable and persuasive methods for the purpose of keeping its organization intact, and thus enable it to care for those in distress, secure as high wages as possible, and, by united effort, secure the enactment of laws requiring the proper equipment of mines so as to render them safe and sanitary, and to do other things calculated to improve the conditions under which they labor, but the decree in this instance somewhat modifies this rule.

he most important and far-reaching question is raised by the as-
ment of error wherein it is insisted that the court below erred
olding that the United Mine Workers of America and its sub-
nate branches constitute an unlawful organization under the
titution, the common law, and the statutory law of the State of
West Virginia.

The learned judge who granted the injunction in this in-
stance filed a very able and exhaustive opinion (202 Fed.,
, in which it is held, among other things, that the United
e Workers of America is an unlawful combination at common
which he insists is still in full force in that State, and in sup-
thereof cites many English cases.

disposing of this case the court, among other things, said:
'or common law conspiracy, a number of the members of the
s-unions were prosecuted for combining to raise wages and for
declared purposes, and convictions were had."

ne court further said:

uch parts of the common law and of the laws of the State of
inia as are in force within the boundaries of the State of West
nia when this constitution (referring to the first constitution
ed by the State prior to its admission into the Union) goes into
tion, and are not repugnant thereto, shall be and continue the
f this State until altered or repealed by the Legislature."

king this as a basis, the learned judge insists that the common
nder which labor organizations have been declared unlawful
ngland is still in force in West Virginia, and that, therefore,
organization is unlawful, unless by statutory enactment the
on law has been modified or abrogated to such an extent as to
an organization of this kind to exist in that State.

do not deem it profitable to enter into an extended discussion
is phase of the question, believing as we do that while there
ecisions at common law by the courts of England in support
contention that labor unions are unlawful, yet such rule has
revailed in this country, except in a few of the earlier decisions
courts. Even in England combinations of this character were
proceeded against, as a general rule, when they were criminal
or prohibited by statutory law.

1 Eddie on Combinations, sec. 404, 405, in referring to
this question, says:

here seems to have been no rule of the common law against
nations of workingmen, except where such combinations were
of a criminal character or directly against some statutory
ion.

here are some dicta to the effect that such combinations would
lawful, and 'some traces may be found in the ancient books of
rine that it is criminal for one man, independently of a com-
on, to oblige another, by bond or otherwise, to abstain from
xercise of his proper craft or employment.' But even such
has no direct relation to a combination; its legality or ille-
rests upon considerations entirely foreign to those which con-
e validity of a combination.

"It is stated by an eminent authority that no case was ever cited prior to the year 1825, in which any person was convicted for a conspiracy in restraint of trade at common law for having combined with others for the raising of wages."

The following from Wright's Criminal Conspiracy is a note to the text under section 404:

"The text-books, down to at least 1800, appear to be silent as to the existence of any doctrine of the criminality at common law of combinations of masters of workmen. Neither in the earlier editions of Hawkins nor in East does the doctrine in question appear to be stated. So in the edition of Burn's Justice of 1810, it is not mentioned under the title 'conspiracy' and under the title 'servants' there are several statements of the statutes against combinations, but there is no reference to common law. The various acts against combinations for controlling masters or workmen which were passed in the eighteenth century (1725, 12 Geo. 1, ch. 34, extended by 1729, 22 Geo. 2, ch. 27, sec. 12; 1799, 39 Geo. 3, ch. 81; (1800) 39 & 40 Geo. 3, ch. 106, etc.), commence by declaring or enacting agreements for such purposes theretofore made to be 'illegal, null and void,' which would not have been necessary if they had been thought to be criminal at common law; and they then proceeded by independent enactment to make it punishable in the future to engage in them.

"The result of the whole appears to be that there is not sufficient authority for concluding that before the close of the eighteenth century there was supposed to be any rule of common law that combinations for controlling masters or workmen were criminal, except where the combination was for some purpose punishable under a statute expressly directed against such combinations, or was for conduct punishable independently of combination."

865

However, assuming it to be true that at the time the common law was incorporated as a part of the law of West Virginia, labor unions formed for the purpose of securing a higher rate of wages were held at common law by the English Courts to be a criminal conspiracy, yet we do not consider the same as now binding upon our courts, in view of the changed conditions in this, as well as other countries, incident to industrial development.

In the case of Everett Waddy Company v. Typographical Union, 105 Va., 188, the Supreme Court of that State said:

In the case of Everett Waddy Company v. Typographical Union, States and of the highest courts of a majority of the States in the Union that labor may organize as capital does for its own protection and to further the interest of the laboring class. They may 'strike' and persuade and induce others to join them, but when they resort to unlawful means to cause injury to others to whom they have no relation, contractual or otherwise, the limit permitted by law is passed and they may be restrained. Gray v. Trades' Council (Minn.), 97 N. W., 663; 63 L. R. A., 753; Am. St., 477, and cases there cited; Murdock v. Walker, 152 Pa., 195, 25 Alt., 492, 34 Am. St., 678; Otis Steel Company v. Local Union No. 218, 110 Fed., 700; Consol. S. & W. Co. v. Murray, 80 Fed., 810; Union Pac. R.

Co. v. Beuff, 120 Fed., 102; Allis-Chalmers Company v. Loge, 111 Fed., 264; Beck v. Railway Union (Mich.), 77 N. W., 13, 42 L. R. A., 407; 74 Am. St., 421; Plant v. Woods, 176 Mass., 492, 57 N. E., 1011; 51 L. R. A. 339, 79 Am. St., 330; Eddy on Comb., vol. 2, secs. 1031, 1035; Beech on Mono. and Indus. Trusts, secs. 98, 100, 102; Tideman on St. and Fed. Control of Persons and Property, vol. 1, sec. 114

"In many of the States of the Union there are statutes which provide for the incorporation of trades union and other labor organizations, and in all of them one of the permissible objects of incorporation is declared to be securement of better terms of employment; while at common law, as interpreted by the English
866 decisions and a few of the earliest decisions of the courts in this country, labor combinations formed for the purpose of controlling the rate of wages were regarded as a criminal conspiracy. But these early decisions of the courts of this country were soon departed from other cases, notably in Massachusetts, New York, and Pennsylvania, which placed labor combinations upon a plane of legal equality with capitalistic combinations, by holding that it was not a criminal conspiracy for workmen to combine for the purpose of enhancing the rate of wages, or for improving in any other way their relations with employers."

Also in the case of Carew v. Rutherford, 106 Mass., 14, the court in discussing this question said:

"* * * And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions. Commonwealth v. Hunt, 4 Met., 111; Boston Glass Manufactory v. Binney, 4 Pick., 425; Bowen v. Matheson, 14 Allen, 499.

"This freedom of labor and business has not always existed. When our ancestors came here, many branches of labor and business were hampered by legal restrictions created by English statutes, and it was a long time before the community fully understood the importance of freedom in this respect. Some of our early legislation is of this character. One of the colonial acts, entitled 'An act against oppression punished by fine and imprisonment such indisposed persons as may take the liberty to oppress and wrong their neighbors by taking excessive wages for their work, or unreasonable prices for merchandise or other necessary commodity as may pass from man to man. Anc. Chart., 172. Another required artificers, or handcraftmen/ to meet to labor, to work by the day for their neighbors, in mowing, reaping of corn and the -inning thereof. Id., 210. Another act regulated the price of bread. Id., 752. Some of our town records show, that under the power to make by-laws the towns fixed the prices of labor, provisions and several articles of merchandise, as late as the time of the revolutionary war. But experience and increasing intelligence led to the abolition of all such restrictions, and to the establishment of freedom for all branches of labor and business, and all persons who have been born and
867 educated here, and are obliged to begin life without property, know that freedom to choose their own occupation and to

make their own contracts not only elevates their condition, but secures to skill and industry and economy their appropriate advantages."

The growth and development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little if any concert of action on the part of the laboring people, owing to their helpless condition, due in the main to their ignorance. Their domination by the land owner and capitalist was absolute in most respects, and as a result they were as helpless as those held in slavery before our great war. Under such circumstances it is no wonder that we have many decisions in the past at common law, as well as the enactment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish, by organized effort, those things necessary to elevate them to a plane where they could assert those rights so essential to their welfare.

The industrial development of the world within the last half century has been such as to render it necessary for the courts to take a broader and more comprehensive view than formerly of questions pertaining to the relation that capital sustains to labor.

The first syllabus in the case of Powell v. Sims (5 W. Va., 1), is in the following language:

"The common law of England is in force in this State only so far as it is in harmony with its institutions, and its principles applicable to the State of the country and the condition of society."

The following cases are to the same effect: Baylor v. Baltimore & Ohio Railroad Company, 9 W. Va., 270; Shively v. Bowlby, 152 U. S., 1; Tunstall v. Christian, 80 Va., 1.

In view of the industrial changes indicated, many great problems are now presented to the courts that were wholly unknown at the time when many of the cases relied upon by plaintiff
868 were decided. It is now recognized by all civilized countries that labor is the basis of all wealth, and without which it is utterly impossible to accomplish anything in the industrial world, and such being the case, the laboring man is entitled to the fullest protection in the assertion of his right to demand adequate pay for any labor that he may perform.

Foreign immigration is increasing rapidly. Statistics show that over a million foreigners land on our shores annually, a majority of whom, owing to their former environments, are not capable of understanding and appreciating what it means to be an American citizen. A large percentage of this class of workmen are employed as miners. While we have no comment to make as to the advisability of restricting immigration (that being a matter which rests solely with the legislative branch of our government), yet we cannot shut our eyes to the conditions that exist as a result of this policy. That this class of labor, a vast number of whom are unable to read and write or understand our language, can secure a more substantial recognition of their rights as members of a labor union is undoubtedly true, and so long as these people are among us for the purpose of earning a living and thereby improving their condition, and at the same time adding to the wealth of our country, it

is the duty of this government to afford them equal protection under our constitution and the laws passed in pursuance thereof. That there is at this time a well defined struggle between capital and labor, each trying to protect its rights from its own point of view, is a condition and not a theory.

In this connection it is pertinent to consider the purposes of the United Mine Workers of America, which is composed of three branches, to-wit: National, District and Sub-District, all of which were declared to be unlawful by the lower court. In the preamble of the National Constitution of the organization is to be found a declaration of the purposes for which it was established, which is as follows:

"There is no fact more generally known, or more widely believed, than that without coal there would not have been any such grand achievements, priviliges and blessings as those which char-
869 acterize the twentieth century civilization, and believing as we do, that those whose lot it is to daily toil in the recesses of the earth, mining and putting out coal which makes these blessings possible, are entitled to a fair and equitable share of the same; therefore we have formed 'The United Mine Workers of America,' for the purpose of the more readily securing the object sought by educating all mine workers in America to realize the necessity of union of action and purpose, in demanding and securing by lawful means the just fruits of our toil. And we hereby declare to the world that our objects are:

"First—To secure an earning fully compatible with the dangers of our calling and the labor performed.

"Second. To establish as speedily as possible, and forever, our right to receive pay, for labor performed, in lawful money, and to rid ourselves of the iniquitous system of spending our money wherever our employers see fit to designate.

"Third. To secure the introduction of any and all well defined and established appliances for the preservation of life, health and limbs of all mine employes.

"Fourth. To reduce to the lowest possible minimum the awful catastrophes which have been sweeping our fellow-craftsmen to untimely graves by the thousands; by securing legislation looking to the most perfect system of ventilation, drainage, etc.

"Fifth. To enforce existing laws; and where none exist, enact and enforce them; calling for a plentiful supply of suitable timber for supporting the roofs, pillars, etc., and to have all working places rendered as free from water and impure air and poisonous gases as possible.

"Sixth. To uncompromisingly demand that eight hours shall constitute a day's work, and not more than eight hours shall be worked in any one day by any mine worker. The very nature of our employment, shut out from the sunlight and impure air, working by the aid of artificial light (in no instance to exceed one candle power), would in itself, strongly indicate that, of all men, a coal miner has the most righteous claim to an eight-hour day.

870 "Seventh. To provide for the education of our children by laws prohibiting their employment until they have at-

tained a reasonably satisfactory education, and in every case until they have attained fourteen years of age.

"Eighth. To abrogate all laws which enable coal operators to cheat the miners, and to substitute laws which will enable the miner, under the protection and majesty of the State, to have his coal properly weighed or measured, as the case may be.

"Ninth. To secure by legislation, weekly payments in lawful money.

"Tenth. To render it impossible, by legislative enactment in every State, for coal operators or corporations to employ Pinkerton detectives or guards, or other forces (except the ordinary forces of the State) to take armed possession of the mines in case of strikes or lockouts.

"Eleventh. To use all honorable means to maintain peace between ourselves and employers; adjusting all differences, so far as possible by arbitration and conciliation, that strikes may become unnecessary."

The constitution of District 6 contains the same declaration of purposes, with the following added:

"Twelfth. And to use all honorable means to elect members of our organization to legislate and enforce laws in State and National legislative assemblies that will bear equally upon all citizens of the United States, its territories and other dominions.

"And we further declare it to be the purpose of District 6, United Mine Workers of America, to give moral and material aid to all its members in good standing and to those who may be dependent upon them, and to render such assistance as may be possible to all our members socially and financially, and to create a relief fund for members in distress, subject to the discretion of the officers and Executive Board of District 6, United Mine Workers of America, as hereinafter provided."

The court below in its opinion referred to a number of provisions contained in the constitution and rules of this organization
871 which in its judgment rendered the same unlawful, the first being that a member is required to promise that he will cease to work whenever called upon to do so by the organization.

A careful examination of this provision fails to show on its face anything unlawful, while on the other hand common experience teaches us that a rule of this character is essential for the preservation of labor organizations. Without a provision of this kind, there would be no power of securing concert of action; no means by which united effort could be secured for the accomplishment of the aims and purposes of the organization. In the absence of proof to the contrary, it must be assumed that this power would be exercised wisely, and only when necessary to promote the interest of the organization in a legitimate manner. It would be inconsistent with reason to assume that this power would be exercised so as to prevent the operation of a mine, which would necessarily defeat the very object for which this organization was established, to-wit: the procurement of steady employment at remunerative wages.

The court below was also of the opinion that under the rules of the organization a member could be held as a slave, and thus pre-

vented from exercising his own free will. We fail to find any provision preventing one from ceasing to work at any time he may desire, and if he should do so, he would no longer be a member of the organization. One could also cease to be a member of the union by failing to pay his dues. Under these circumstances there is no possibility of one's being held as a member of the union contrary to his wishes.

The court below was further of the opinion that the union has the power to cause miners to become members thereof. We fail to find anything in the rules to justify the assumption that the union has an arbitrary power, by violence, intimidation or otherwise, to compel one to become a member of the organization. While it is alleged in the bill that the United Mine Workers of America is a secret, voluntary organization, this allegation is not only denied by the answer, but is shown to be incorrect by at least three witnesses,
872 who testified that they were familiar with the organization and its workings, that it is not a secret organization in the ordinary acceptation of the term.

Witness Savage, Secretary-Treasurer of District No. 6, United Mine Workers of America, among other things, testified that "The United Mine Workers of America was established and organized in 1890, at Indianapolis, Indiana, but the first ground work was laid at Columbus, Ohio; it is an open organization."

Witness Lewis, President of the United Mine Workers of America since 1908, and from April 1, 1900, until March 31, 1908, Vice-President of the United Mine Workers of America, testified, among other things, that

"There is nothing secret about the United Mine Workers, as was stated by Mr. McKinley. The only thing as to which there is any secret is what is called a joint meeting, when there is a joint scale committee meeting; then the operators request that the representatives of the press be kept out. That is for the purpose of keeping the representatives of the press from knowing their inside business. A stenographer takes the proceedings of the district and national conventions, and they are published; records of the meetings of the local unions are kept by the secretary; and any person who is interested who desires may go and examine the records of a local union."

Witness Sullivan, who was serving his second year as President of District 6, United Mine Workers of America, testified as follows:

"The United Mine Workers has always been an open organization; any one is at liberty to enter the conventions or local meetings who desires; its literature is for the public as well as for the members; there is nothing connected with it that is sought to be withheld from the public."

The court below was also of the opinion that the rules of the organization undertake to "control or rather abrogate and destroy the right of the employer to contract with the men independent of the organization." If it is meant by this statement that
873 under the rules it is possible by peaceable, persuasive and other lawful methods to induce a majority, if not all, of the miners of any particular locality to join the union and thereby place the mine owner in a position where it may be necessary for him

to negotiate with union labor in order to operate his mines, then the conclusion reached by the court below is entirely correct. However, the fact that such a result would be possible under this rule could not in any way affect the legality of the organization, because it has been repeatedly held by the courts that a labor union may use all lawful methods for the purpose of inducing others to join its order, and until the contrary is shown, it must be assumed that only lawful methods are to be employed for the accomplishment of such purpose.

In the case of My Maryland Lodge v. Adt. (Md.), 68 L. R. A., 752-7, the court said:

"* * * * They may even use persuasion to have others join their organization. They have an unquestionable right to present their cause to the public in newspapers or circulars in a peaceable way, but with no attempt at coercion. If ruin to the employer results from their peaceable assertion of these rights, it is a damage without remedy."

To the same effect is the case of Beck v. Railway, etc., Union, 48 Mich., 497.

Another ground relied upon by the court below is that the organization assumes the right through its officers, (1) to control the employer's business, (2) to shut down his mine by calling out men in obedience to their obligation whenever it is deemed to be to the interest of the union, regardless of the employer's interest, or the effect that such act may have upon him as regards loss, damage or necessary violation, on account thereof, of his existing contracts with others.

Relative to this question the witness, McKinley, a member of the plaintiff organization, testified, among other things, that it was the desire of the union, as he understood it, to have every employe in and about the bituminous coal mines of the United States and Canada, as well as the Anthracite mines, a member of the United
874 Mine Workers of America. It is admitted to be the purpose of this organization to induce all miners to join the union, and until the contrary is shown, it must be assumed that only lawful methods are to be employed by it for that purpose.

Witness Lewis also testified that "it is not now, and never has been the policy of the United Mine Workers' organization to use force or coercion or any unlawful methods to promote its jurisdiction or the growth of the organization, and the moment they attempt to extend their power or usefulness by that means instantly they will go out of existence." The witness further testifying says: "As to the statement of the witness, J. C. McKinley, that he thinks probably the first method of promoting the growth of the United Mine Workers is to ask the operators to compel the men to join the union," says he "never heard of that before: that its policy is to go into a community where there is a mine and get acquainted with some of the men who work there, and talk to them about the organization, and get them interested in joining; and after a sufficient number could be gotten together to agree that it was a good thing to join the union, a meeting would be called to organize those men, just the same as any other fraternal society."

In this connection it should be borne in mind that the defendants as members of this organization cannot secure employment in any mine without first entering into an agreement with operators as to the terms upon which they are to work. In other words, it is optional with the operators as to whether they shall operate their mines, and further as to whether they shall employ union labor.

It is also insisted by the court below that under these rules the operator has no right to employ non-union men even if he should desire to do so.

If the United Mine Workers of America in pursuance of this rule should resort to coercion, threats, intimidation or violence for the purpose of preventing the mine owner from employing non-union men, such conduct would be unlawful, and the courts would promptly restrain any one who might be a party to such
875 transaction. Indeed, it would be unlawful for an individual to undertake, by coercion, intimidation or threats to prevent a mine owner from exercising his own free will as to the employment of non-union laborers, or as to any other thing which he might deem necessary to be done in order to protect his property rights.

However, in this instance, the plaintiff has adopted a policy by which only non-union men may be employed. If the plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment at its mines, and such conduct be sanctioned by the law, by what process of reasoning can it be held that the defendants may not adopt the same method in order to protect their interests? If the plaintiff is to be protected in the use of such methods, and the defendants are to be restrained from using lawful methods for the purpose of successfully meeting the issue thus raised by the plaintiff, then indeed it may be truthfully said that capital receives greater protection at the hands of the courts than those through whose efforts capital in the first instance was created. But such is not the law, and when we consider the testimony as respects the conduct of the defendants, at and before the institution of this suit, we are of the opinion that the plaintiff has not by a preponderance of the evidence, shown that these defendants employed unlawful methods as alleged in the bill.

At one time this identical mine employed union labor, and in all probability would have continued to do so, had it not been for a controversy which arose as to certain adjustments and the parties failing to reach an agreement the plaintiff decided to employ only non-union labor.

It further appears that the plaintiff is paying the non-union men the same wages that are being paid union men. Therefore, under these circumstances, is it not as reasonable to infer that the plaintiff is endeavoring to place the laborers of that section in a position where it would be master of the situation, as it is to infer that the defendants are seeking to destroy the business of the plaintiff?

While it is true that the plaintiff has a perfect right to refuse
876 to employ union labor, is it not equally true that union labor, as we have stated, may by the employment of legitimate means, do that which is necessary to keep its forces together?

Surely we have not reached the point when capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law when they are attempting to assert rights that are just as important to their well-being as are the rights of those who have been more fortunate in accumulating wealth. He who "seeks equity must do equity." In other words he "must come into court with clean hands." If the courts of this country should by injunctive relief protect the mine owner in the enjoyment of his property rights, and restrain the laboring people from organizing their forces by declaring such organization unlawful, would not the mine owner then be in a position to control the situation so that he who has to toil for his daily bread would be placed in a position where if he exists at all, he must do so at such wages, and upon such terms as organized capital may see fit to dictate. However, we do not wish to be understood as intimating that the plaintiff or a majority of those who employ labor in this country would take advantage of a situation of this kind for the purpose of oppressing those who are at their mercy. The instances where such a course is pursued are exceptional. Thousands of manufacturing plants all over the country, as well as railroad companies and mining companies, are today of their own accord employing union labor, realizing as they do that such a policy on their part is to the advantage of the employer as well as the employee. In fact, under our constitution and laws, no undue advantages are given to either capital or labor, nor will the courts ever permit individuals or labor organizations by force, fraud or intimidation to prevent the mine owner from lawfully protecting his rights, but while this is true, equal protection should be guaranteed to labor and capital.

It was further held by the court below that under the rules of the organization the power is given to limit the right of the employer in the absence of contract to discharge whom he pleases, when he pleases, and for what he pleases. A careful examination of
877 the constitution of the National, District and Sub-District organizations fails to disclose anything to justify this conclusion.

We have carefully examined the constitution to ascertain whether there can be found therein a rule or provision which authorizes the control of the employer's business by the organization, but find nothing to sustain this view, unless it be based on certain incidents in connection with the Hitchman Coal & Coke Company while it ran its mines union.

The witness, McKinley, in speaking of the United Mine Workers, said:

"The term, a union mine, is one over which they have absolute control, and a non-union mine, one which is worked open shop, or in which the United Mine Workers are not recognized."

This statement as respects the extent to which the union assumes control over a union mine is flatly contradicted by the witness Savage, as well as by the testimony of Lewis and Sullivan. The witness Sullivan said:

"If the mine of the Hitchman Company had become unionized,

the men would obey the management of the mine and not the orders of the union; they could not remain in the union and disobey the directions and orders of the operators, against the wishes of the union. There are no rules of the organization whereby a unionized mine must submit its men to the paramount control of the union, and I have never known any such rules to be adopted by the organization."

He further testified that one of the many purposes of the organization is to fix a fair scale of wages that should be uniform, so far as possible, taking into consideration the varied conditions existing in the different sections of the coal mining territory. It should be borne in mind that the scale of wages is fixed by agreement between operators and miners. Experience teaches us that the complaint of an individual is treated with indifference as compared to the complaint that is made by an organized body of men. When
878 an individual makes a complaint, and it is refused, he must either quit work or submit to any terms that may be imposed upon him.

As a general rule employes of this kind possess but little property, owing to the fact that it requires the entire wages they earn to support their families from day to day. Under these circumstances they are unable to move from place to place to secure employment, and as a result they must accept such wages as may be offered.

Shutting down a mine by calling out men in obedience to their obligation is what is known as a "strike." Rule No. 10, which relates to strikes, is in the following language:

"No strikes shall take place at any time under the jurisdiction of Sub-District 5 of District 6, except for specific violation of agreement. That is, screens irregular; failure to pay on pay day without explanation; violation of mining laws by operators, or reductions from scale wages until the grievance of the mine affected has been thoroughly investigated by the officers of District 6, U. M. W. A. and operators interested. Any man or men that cause a stoppage of work at any mine in violation of this rule, shall be subject to dismissal at the will of the company."

This very clearly sets forth the causes wherein strikes are justifiable. The evidence in this case fails to show that these defendants have at any time tried by violence, intimidation, or fraud to induce the union men to quit working for the plaintiff.

A consideration of the purposes of this organization as set forth in its constitution impels us to the conclusion that there is nothing contained therein to justify the contention that its purposes are unlawful.

As we have already stated, we are of the opinion that even if at common law as originally adopted by the State of West Virginia, this organization was unlawful, it does not follow that that part of the common law is now applicable in that State, owing to the changed conditions to which we have referred. Nor do we find anything in the statute law of West Virginia to sustain the contention that this organization is illegal. The code of 1906, enacted
879 in 1890 (Acts, 1890, ch. 9, sec. 14), ch. 15, sec. 14, serial section 413, as amended in 1907 (Acts, 1907, ch. 78, sec. 19), among other things provides:

"Nor shall any person or persons, or combination of persons, by force, threats, menaces, or intimidation of any kind, prevent or attempt to prevent from working in or about any mine, any person or persons who have the lawful right to work about the same, and who desire to so work; but this provision shall not be so construed as to prevent any two or more persons from associating together under the name of knights of labor, or any other name they may desire, for any lawful purpose, or for using moral suasion or lawful argument to induce any one not to work in or about any mine."

This statute provides a penalty for its violation. Code, W. Va., Supp. 1909, sec. 413.

As amended it went into effect May 22, 1907, prior to the beginning of the institution of this suit, and this statute was enacted in 1890, the year in which the United Mine Workers of America were organized.

To say nothing of the legislative intent, the words of the foregoing statute by implication at least recognized labor unions. Referring to the use of labels or trademarks by labor unions, etc., there appears in the Code of 1906, as section 1, chapter 67, serial sec. 2859, the following language:

"Whenever any person, firm or corporation, or any association or union or working men, has heretofore adopted or used, or shall hereafter adopt or use any label, trademark, term, design, or device or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise, or other product of labor, as having been made, manufactured, such person, firm, corporation or association or union or working men, or by a member or members of such association or union, and shall register the same as provided in section three of this act, it shall be unlawful to knowingly counterfeit or imitate such label, trademark, term, design, device or form of advertisement, or knowingly use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of such label, trademark, term, design, device or form of advertisement."

880 The fact that the legislature of that State enacted this statute, which has for its purpose the protection of labor unions in the use of what is known as a trade-mark, clearly indicates that the legislature recognized labor unions as lawful.

In the case of Tracy vs. Banker, 170 Mass., 270, the Supreme Court of that State uses the following language in regard to the effect of legislation of this kind:

"The label is part of the well known machinery of trades unions, and the use of it is found, if a finding is necessary, to be of value to the union and its members. It would not be traveling too far from the record, perhaps if we should assume that the use of the label is in fact, as certainly it might be, of far more economic importance to the union than are many or most of the trademarks, strictly so-called, which are protected by the courts. * * *

"It is impossible to believe that, when the statute mentions unincorporated unions, it does not refer to trade unions. It authorizes such to adopt, as well as to record, a label. Therefore it creates a

it, if the court is unable to recognize one without its aid. If it plies to trade unions, it must be taken to apply to them as they inarily are; that is, as associations of workmen, not as manufurers or venders of goods. It contemplates that the labels would applied to merchandise, as of course they must be, and as these els are. * * *

"If, as we think, the statute expressly creates or recognizes the ht of trade unions to be protected in the use of labels for trade ion purposes, the suggestion that the association represented by plaintiff is an unlawful association falls of itself. It is too late make such a contention as to trade unions generally, even apart m the statute under which this suit is brought. But the general rposes of this union are similar, so far as we know, to the general rposes of other unions."

In view of what we have said as to the status of these organizations common law, and the further fact that there is an implied, if not rect recognition of labor unions by statute in West Virginia, and ere being no enactment declaring the same to be unlawful, we e of the opinion that the court below erred in declaring these organizations to be unlawful at common law.

51 At the final hearing the plaintiff introduced certain documentary evidence bearing upon the question as to whether the fendants had entered into a combination with operators and coal roducers in Ohio, Western Pennsylvania, Illinois and Indiana, ompetitive fields, to compel the plaintiff to submit to contractual lations with the United Mine Workers of America relating to the mployment of labor and production, contrary to the wishes of laintiff.

This evidence was offered in support of plaintiff's oral testimony, nd consisted of the proceedings of the various joint conferences of oal operators and coal miners of the States in question, held during he years 1906, 1907, 1908, 1910 and 1911; also book entitled Official Mining Scale of Association of Pittsburg Vein Operators f Ohio for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America;" also book entitled "United Mine Workers of America, District No. 6, Ohio. Issued by he Authority of the Executive Board of District No. 6 (Ohio Members), United Mine Workers of America. G. W. Savage, Secretary-Treasurer. For scale year April 1, 1908, to March 31, 1910;" also book entitled "Detailed Mining Scale for Sub-District 5 of District 6, U. M. W. of A. Effective from April 1, 1910, to March 31, 1912;" also "Excerpts from President T. L. Lewis' Report to the Twentieth Annual Convention of the United Mine Workers of America, held at Indianapolis, Indiana, in January, 1911, as published in the United Mine Workers Journal in its issue of January 19, 1911;" also "Expenditures of the United Mine Workers of America for the year 1910;" also "Income of the United Mine Workers for the year 1910."

Thirteen exhibits of this kind were introduced over the objections of counsel for defendants.

The court in referring to this phase of the question said:

"I further conclude that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy, the coal mining industry of West Virginia in the interest of the co-conspirators, rival operators and producers in Ohio, Western Pennsylvania, Illinois and In-
882 diana, competitive fields, have sought and will seek to compel the plaintiff, the Hitchman Coal and Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful efforts to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its said employees."

The documentary evidence consisted of the declarations of a small percentage of the miners and operators who were present at these conferences. It was not shown that either before or after these declarations were made that those participating in the conference had entered into a conspiracy for an unlawful purpose. Indeed, these declarations were brought out in response to a proposition on the part of the miners for an increase of wages. A fair interpretation of the evidence shows that it was the purpose of the defendants to induce the miners of West Virginia to become members of the organization, and thereby secure as high wages as possible, compatible with the successful operation of the mines of that State by the respective owners. They had a perfect right to form a combination to accomplish such purposes by peaceable and lawful methods, and so long as they refrained from resorting to unlawful measures to effectuate the same they could not be said to be engaged in a conspiracy to unionize plaintiff's mine.

As we have already stated, the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance. Therefore, the court erred in holding the organization to be unlawful upon the theory that it was guilty of a conspiracy.

The opinion of the court below is based upon the ground that the defendants, and those associated with them prior to, and at the time of the institution of this suit, had formed themselves into a conspiracy for the purpose of unionizing the plaintiff's mines without its consent, and for violation of the constitution, common, and statutory law of West Virginia.

883 Chief Justice Fuller in Pettibone vs. United States, 148 U. S., 197, defined conspiracy as follows:

"A conspiracy is a combination of two *of* more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

Being of the opinion that this is a lawful organization, it necessarily follows that in order to entitle the plaintiff to the relief which it seeks, it must be made to appear that at, and before the institution of, this suit, the United Mine Workers of America were attempting to carry out the purposes of their organization by the use of unlawful means.

Considerable evidence was introduced by the plaintiff as to what occurred in the vicinity of the plaintiff's mine.

Paul Leonard, Superintendent of the Richland mine, was introduced, and among other things testified that he had met a man by the name of Thomas Hughes on the Richland Coal Company's property, and had had a talk with him in regard to the organization; that Hughes told him that it was his purpose to organize the Panhandle District of West Virginia. Among other things, the counsel put the following question to him:

"Q. What did you understand him to say his meaning was when he said that he was there to organize the Panhandle District?

A. Why, that he would make them join the United Mine Workers or tie them up, were the words he used to me."

Counsel also asked him the following question:

"Q. Did he (meaning Hughes) make any explanation as to what he meant by tying up the Panhandle?

A. That they would organize us and we would recognize the union." The witness further says: "My understanding of it was that if the company did not recognize this union that the mines would be shut down."

This was a threat by one who was without power to execute
884 same. Nowhere do we find any evidence tending to show that Hughes was authorized to shut down any of the mines of that vicinity. It should also be remembered that Leonard further testified that Hughes said nothing about the plaintiff's mine.

Austin, another witness for plaintiff, testified that he saw Hughes around there several times in the store and on the streets, and he also identified a card which was in the following language:

"Notice: To the Miners of the Hitchman mine. There will be a mass meeting Friday evening at 6:30 P. M., at Nick Heil's Base Ball Grounds for the purpose of discussing the principles of organization. President Green will be present. All miners are cordially invited to attend."

These people, the defendants assert, had a right to hold a meeting at the base ball grounds for the purpose of discussing in an orderly manner the matters that related to their organization, and that this is especially true, inasmuch as the meeting was called for a lawful purpose, and the public generally invited to attend.

Witness Knapp also testified that he had taken down and carried away one of the notices that had been posted on a telephone pole; that Hughes had stopped him in the street, just as he was entering a private driveway, and said things to him that he did not suppose should be repeated in the presence of the court; that he attacked him very maliciously and vigorously, and was very mad.

We fail to understand upon what grounds the plaintiff or its agents claimed the right to prevent the defendants from holding meetings for the purpose of discussing matters relating to their organization.

Robert Myers was also introduced as a witness by the plaintiff, and among other things, testified as follows:

"Q. Did you have any talk with a man by the name of Thomas Hughes?

A. I remember him; yes, sir.

885 Q. You remember a man by that name?

A. Yes, sir.

Q. What was he doing there—if he was about the Hitchman Mine—if you recall?

A. Well, he explained to me that he was trying to organize the place again.

Q. What is that?

A. To organize the Hitchman coal miners again.

Q. What do you mean by organizing?

A. To get us organized—organized back into the United Mine Workers of America.

Q. What did he say to you?

A. Well, he said it would be very nice thing if we would go back again; and so he said if I would put my name down and give him fifty cents on a book (he did not show me the book, but said it had lots of names down on it of the Hitchman coal miners); he said if I would give him fifty cents I would be entitled to a union card to go any place and get a job, if the Hitchman company would fire me, and he would put my name down on his book.

Q. Did you give him the fifty cents?

A. No, sir.

Q. What did you say to him on that subject?

A. Well, I said I would not do anything like this; he might be a stranger and I did not know that he was the man that he said he was, and anyhow, I was awful careful in putting my name down to anything. He told me that he was a good friend of Mr. Koch, and that Mr. Koch had nothing against having the place organized again. He said he was a friend of his and I made the remark that I would ask Mr. Koch and see if it was so; and he said, no; that was of no use, because he was telling me the truth.

Q. Did he show you any book?

A. No, sir; I was trying to see the names on the book, but he would not show me anything. He told me he had it and I asked him how many names was on it and he said he had about enough to 'crack off.'

Q. What is that?

A. That is what I didn't understand.

Q. Did you ask him what he meant by 'crack off?'

A. The time was too short; no, sir. I was waiting for my street car to go home on and I went on the car.

Q. Did you say anything to Hughes about the job that you then had at the Hitchman mine?

A. Yes, sir.

Q. Well, what did you say, if you can recollect?

A. Well, I told him that I didn't care much about being organized again, because I had too much experience already how it goes. I told him I was in several strikes and there wasn't anybody that helped me out, and I had to beg the company to get my job back again after I lost my job.

886 Q. Did you say anything to him about having any property?

A. Yes, sir; I told him it was impossible for me to go any place else, because I could not walk around with my property on my back and hunt another job. I says, 'I have work where I am now and as long as the company treats me as they are treating me, I will not do anything against them that they didn't like to have."

Mike Papage, another witness for the plaintiff, testified as follows:

"Q. What did he talk to you about?

A. Oh, he tried to get me along with him to help him out so he could get the Hitchman mine organized again.

Q. In what way did he ask you to help him?

A. To help him to get the people together, and everything, and he was to pay me for it.

Q. Were there at that time many men employed at the Hitchman mine who were foreigners?

A. Yes, sir.

Q. Did you speak their language?

A. Yes, sir.

Q. Could he speak their language?

A. No, sir.

Q. Did he want you to interpret—you understand what interpret means?

A. Yes, sir.

Q. Did he want you to interpret what he said to those men?

A. Yes, sir.

Q. Did you do it?

A. No; I would tell him I won't do it.

Q. Then what did he say?

A. He got mad and went away.

Q. After that did you see him any more?

A. Yes, sir.

Q. How did he treat you after that? I mean how did he treat you when you did not agree to interpret for him?

A. Why, he came to my house—the second time he came to my house.

Q. You mean he came to your house a second time?

A. Yes, sir.

Q. Then he had been there before?

A. No; not before.

Q. The second time you talked to him he came to your house. Is that the idea?

A. Yes, sir.

Q. Well, what did he say then?

A. He tried to get me to interpret again, and promised me a good job and everything else.

Q. Did that appeal to you then? Did you agree to do it then or not?

A. No, sir; I would tell him I had nothing to do with him any more.

887 Q. Why did you tell him that?

A. They blamed me for not getting the men organized; they said it was my fault that the people kept on working.

Q. And that Hughes could not organize the mine?

A. Yes, sir.

Q. Did Hughes tell you that?

A. Yes, sir; he said that is what he heard off of the people.

Q. That is, you mean, the men that were working in the mine.

A. Yes, sir.

Q. Did he tell you at any time how he was getting along?

A. No.

Q. Did he succeed in organizing the men there? Did he organize the men at the Hitchman mine?

A. No.

Q. Did the mine continue working while he was there?

A. Yes, sir."

James Stewart, another witness for the plaintiff, testified as follows:

"Q. Were you about the Hitchman mine working there in the fall of 1907, when Thomas Hughes was there?

A. Yes, sir.

Q. Did you see Thomas Hughes there?

A. Yes, sir; I saw him there several times.

Q. Did you have any talk with him?

A. Yes, sir; I talked with him several times.

Q. Did you hear him talk with any other persons?

A. He was around there all the time and he was talking to everybody he would come to.

Q. To men employed at the Hitchman Mine?

A. Yes, sir.

Q. Did he tell you what he was there for?

A. Yes, sir.

Q. What was it?

A. He told me he was there to try to organize the mine.

Q. Did he say what his business was?

A. Yes, sir.

Q. What was it?

A. He said he was an organizer.

Q. For what?

A. For the United Mine Workers, and that he was there for that purpose. But I knew him before he came around there.

Q. You did know him before that?

A. Yes, sir.

Q. What did he say to you, if anything, with relation to organizing the mine?

A. I do not remember all that he did say, but I remember one certain thing that he said. He told me during one night that he was going to have a meeting called up there. I do not know
888 what the date of it was, but it was in the latter part of August or first of September. He told me he had a couple of meetings there, but he did not seem to think it was any good; but he told me he was forming a kind of secret order among the men. He

said he had a few men—he did not state the number of them—and he said each man was supposed to give him so much dues to keep it going; and then he said after he got the majority he would organize the place. He asked me what I had to say about it, and I told him my job at the present time was satisfactory and the men had agreed with the company not to organize and not to have anything to do with the organization, and I told him I did not want to have any trouble and nothing to say, anyway; and I think that was the last time I saw Hughes around there. I saw him after that across the river, but I didn't have any talk with him.

Q. Did he say anything to you about quitting work at the Hitchman and going to a union mine?

A. Yes, sir; he told me about it. He said he would get me a job, and I told him that might be all right about that, but I told him I did not think he could place me in any job any better than the one I had at the present time; and that is about as far as that went.

Q. You say you remember of some meeting being held?

A. Yes, sir.

Q. What kind of a notice did he put out for the meetings?

A. Well, I could not just say about the notices.

Q. Did he mark on the pavements, or anything of that kind?

A. Well, there was names around there, about meetings, but I do not know whether he wrote them, or who wrote them. I could not state just what was on them, but we miners claimed that that was what the purpose was.

Q. Were there calls for meetings marked on the pavements?

A. Yes, sir.

Q. In chalk or some substance like that?

A. It was in chalk.

Q. White chalk?

A. Yes, sir.

Q. Was that done anywhere near the Hitchman mine?

A. Well, the one I saw was right in front of Wilhelm's saloon, on the sidewalk.

Q. Where is Wilhelm's saloon, with reference to the mine?

A. It was about 150 yards north of the mine.

Q. Did you attend any of the meetings that he held?

A. No.

Q. Did he say anything to you along the line of thought that unless you joined the union at that time, if the mine were unionized you would not get a job?

889 A. Yes, sir; he stated to me that if we did not go in the local, or stay away from there and work where mines were organized, that we would not ever be able to get a job in a union mine, but I have worked in two union mines since that, and had two union cards, and then came back to the Hitchman.

Q. Did you hear him talk with others along the same line?

A. Yes, sir; he talked with them all about the same, that I ever heard him talk to.

Q. Did you hear him tell them that unless they joined then, that if the mine was organized they would be out of a job and they could not get any?

A. He was talking to me and there was five or six or seven sitting there in a bunch, and they all heard just the same as I did about it.

Q. Did he say what he was going to do with the men when he got enough to organize?

A. Yes, sir.

Q. What did he say he was going to do?

A. He stated when he got a majority he was going to organize the mine. I expect the meaning of it was that he was going to organize whether it was against the company or not.

Q. Did he say anything about shutting the mine down if they did not unionize it?

A. He stated it that way—that whenever he got a majority he was going to organize or they would close the place down.

Q. In point of fact, did he get a majority and unionize the mine or not?

A. No, sir; I think he failed."

On cross-examination, this witness further said:

"Q. Well, then, while he was there he was trying to get men to join the union?

A. Yes, sir.

Q. And he invited you to join the union?

A. Yes, sir.

Q. And told you he thought it would be better for you to join, didn't he?

A. Yes, sir; that is what he said.

Q. And he said if you worked there and happened to be discharged, you could not get into a union mine?

A. That is what he said.

Q. His idea was that there were a great many more union mines across over in Ohio than there were non-union, wasn't it?

A. I expect that was what he meant.

Q. Well, did he give you any further reasons why he thought it would be better for you to join the union?

A. No; not just exactly."

The foregoing was substantially all the evidence that was introduced as to what occurred in the vicinity of plaintiff's mine
890 prior to the institution of this suit, to show that the defendants had entered into a conspiracy as alleged.

While it is not denied by the defendants that they sought by peaceable methods to induce those employed by the plaintiff to join the union, yet they stoutly contend that at no time since the mine has been operated as a non-union mine have they employed unlawful methods. We fail to find that there is sufficient legal evidence to show that the defendants entered into a conspiracy or combination for the purpose of unionizing the plaintiff's mine. While there was evidence admitted by the court below as to statements made by certain officials of the United Mine Workers of America, and the coal operators of Pennsylvania and other States, bearing upon this question, yet there is no evidence to show that the United Mine Workers of America combined, or formed themselves into a con-

spiracy for the purpose of unionizing plaintiff's mines after it started to run its mine non-union in June, 1906.

The declarations of Hughes and Rankin are incompetent as against the organization, its officers and members, inasmuch as there is not sufficient legal evidence to establish the fact that the defendants as members of the United Mine Workers of America prior to and at the time of the institution of this suit formed a conspiracy, nor is there sufficient evidence to show that Rankin and Hughes were parties to such alleged conspiracy.

While Hughes was a representative of the organization, his authority only permitted him to use argument and persuasion to induce the employés to become members of the organization. This was shown by the evidence of the witness Savage.

A considerable portion of the evidence bearing upon the alleged unlawful conduct of the union in connection with the operation of the plaintiff's mine relates to the time that it was running its mine union, and the period intervening between the time it ceased operations at its mine until it resumed on a non-union basis in June, 1906. For instance, the plaintiff complains of what happened during the strike which occurred when the mine employed union labor. Evi-
dence was also introduced to show why the plaintiff did not
891 continue to operate its mine on a union basis. This evidence
shows that the real difference at that time was as to the price or scale to be paid for run of mine coal. While this evidence tends to show why the plaintiff declined to operate its mine on a union basis, it cannot have any material bearing upon the issues raised by the pleadings in this cause, and is, therefore, as to matters now in controversy, a closed incident.

Each party was at arms' length from that time on, and the refusal on the part of the plaintiff to continue the employment of union labor, had the effect of severing the relations that had theretofore existed between the plaintiff and the defendants. Therefore evidence tending to show that prior to that date the defendants were engaged in a combination or conspiracy, and by intimidation, violence, and coercion were trying to prevent the plaintiff from operating its mine, would be incompetent. In other words, even though it appears from the evidence in question that the conduct of the defendants was reprehensible in the highest degree at the time that the mine was being run on a union basis, we conceive of no possible theory upon which such evidence would be competent as affecting the conduct of the defendants in this instance, inasmuch as the evidence fails to show that after the mine began to be operated on a non-union basis that they united and conspired to use violence, intimidation, and coercion to prevent the plaintiff from operating its mine. In other words this record clearly shows that the plaintiff for the avowed purpose of protecting its interests adopted a policy by which its mines were to be operated on a non-union basis. At the time of the adoption of this policy by the plaintiff, the negotiations between plaintiff and defendants ceased, therefore the question now presented is: Have not the defendants the right as an organization to use all means within their power to organize miners into unions, provided, that in so doing, no unlawful methods are employed?

The court below among other things expressed the view that the United Mine Workers of America constituted a combination or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, under what is known as the Sherman Anti-Trust Law, 26 Stat. L. 209.

892 We do not deem it necessary to discuss this proposition at any great length. In the first place there is nothing in the pleadings to raise the question as to whether the United Mine Workers of America are liable under the statute in question, and any evidence that may have been introduced bearing upon this point was therefore immaterial and should have been rejected. There is another reason why we think that this question cannot under any view of the case arise in this controversy, to-wit, we do not understand that a private person can question the validity of a combination or conspiracy under the Sherman Anti-Trust Law for the purpose of having the same declared to be unlawful. The scope of this act is disclosed in the case of National Fire Proof Company vs. Mason Builders' Association, 169 Fed., 259, in which the court said:

"But the complainant asserts that the agreement in this case is positively unlawful and not merely negatively invalid—that it contravenes both national and State statutes against combinations, and thus does give rights of action to injured persons. With respect to the Fed. Statute, it is not obvious in what way a trade agreement between builders and bricklayers, relating to their work in the State of New York, can be said to directly affect interstate commerce; but the consideration of this question is not necessary because a person injured by a violation of the federal act cannot sue for an injunction under it. The injunctive remedy is available to the government only. An individual can only sue for threefold damages." Greer vs. Stoller (C. C.), 77 Fed., 2. Also the case of Minnesota vs. Northern Securities Co., 194 U. S. 48, is to the same effect.

The court below also reached the conclusion that the defendants have caused and are attempting to cause the non-union members employed by the plaintiff to break a contract which it has with the non-union operators. The contract in question is in the following language:

"I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employe of the Hitchman Coal and Coke Company; that

893 the Hitchman Coal and Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal and Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any effort amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read."

It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employe continues to work for the plaintiff he shall not join this organization, nevertheless, there is nothing in the contract which requires such employes to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employes under this contract may, if they deem proper, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the non-union men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the non-union miners to become members of their organization.

Under these circumstances we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization.

This is an age of co-operation through organization. In fact organization is the only means by which united effort can
894 be secured in any branch of human endeavor. The doctors, dentists, school-teachers, wholesale and retail merchants, bankers and manufacturers, and in fact every branch of industry in this country, are organized for the purpose of the mutual protection of the respective parties interested. Such being the case, it is just as essential, and perhaps more important, that the laboring people should organize for their advancement and protection, than it is for any of the vocations we have mentioned.

While labor and capital are vitally interested in the proper solution of these questions, it should be remembered that the public is likewise interested, and in some instances affected to a greater extent than either labor or capital on account of the disputes and law suits growing out of these matters. Therefore, it may be properly said that these questions have a bearing upon the welfare of a large percentage of our people, and this is especially true as respect- the coal industry. For instance, the suspension of the operation of coal mining in this country would in all probability result in a coal famine, which would, in a large measure, embarrass the manufacturers, to say nothing of the effect it would have upon the individual consumer, and all reasonable means should be employed to avert such a disaster. Therefore we deem it our duty to define the rights of the parties to this controversy, in so far as we may under the facts of this case, so as to set at rest as many as possible of the vexatious ques-

tions that are a source of irritation, as well as productive of much litigation.

In the first place, it should be understood once and for all that so long as capital employs legitimate means for the protection of property rights, that it is to be accorded the protection of the law, but this does not mean that capital may, by improper methods, form combinations for the purpose of preventing labor from organizing for mutual protection. Likewise, it should be definitely understood that the laboring men have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living; give their children moral and intellectual training; and secure the enactment of legislation re-
895 quiring mine owners to adopt such methods as may be necessary to keep their mines in a sanitary condition, and, above all, to adopt methods to minimize, as much as possible, the occurrence of the awful catastrophes by which so many human lives have been lost. It should be understood that when a controversy arises between labor and capital that the use of dynamite or any other unlawful methods on the part of the representatives of labor, whereby property and human lives are destroyed, is not to be tolerated by the courts.

The relative rights of the parties are entitled to equal consideration, and we feel sure that when such controversies arise that they will be dealt with in the same spirit that actuates the courts in adjusting the differences between individuals, wherein questions are involved affecting the ordinary transactions of life.

Until it is provided by state and national legislation that labor disputes shall be settled by arbitration, it will be the duty of the courts to determine questions of this character, when a proper case is presented. Under the law as it now exists, when property or personal rights are involved, the courts alone can furnish adequate relief. However, while this is true, we think that care and caution should be exercised in the issuance of injunctions of this character.

We are inclined to the belief that in some instances a reasonable delay in the issuance of the writ would have a tendency to bring about a settlement between the parties by which the rights of both could be amply protected, and thus avoid the expense incident to litigation, to say nothing about the injury sustained by the employer as well as the employe, occasioned by the suspension of operations.

In no instance should a union be restrained from using lawful and peaceable methods for the purpose of maintaining its organization, but while this is true, the court should restrain those who by violence, coercion, and intimidation seek to deprive the mine owner of the right to use his property as he may see fit.

We have carefully considered the cases relied upon by the plaintiff, but are of opinion that they do not apply to case at bar. For
896 the reasons stated, the decree of the court below is reversed, and the cause remanded with instructions to dismiss the bill at plaintiff's costs.

Reversed.

897 *Decree.*

Filed and Entered June 1, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,
vs.
HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby reversed, with costs; and that this cause, be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dismiss the bill at plaintiff's cost, in accordance with the opinion of this Court.

J. C. PRITCHARD.

June 1, 1914.

898 *Order Staying Mandate.*

Filed June 1, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,
vs.
HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

Upon the application of counsel for appellee and for good cause shown,

It is ordered that the mandate of this Court in the above entitled cause, be, and the same is hereby stayed pending application of the appellee to the Supreme Court for a writ of certiorari, provided said application is made on or before October 13th, 1914.

J. C. PRITCHARD,
Senior Circuit Judge Presiding.

June 1, 1914.

899 *Petition for an Appeal.*

Filed August 15, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,
vs.
HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Decided May 28, 1914.

Petition for an Appeal to Mr. Justice Pritchard.

To the Honorable Jeter C. Pritchard, Circuit Judge:

Your petitioner, the above named Hitchman Coal and Coke Company, a corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 28th of May, 1914, does hereby appeal from said decree (which is not final) for the reasons set forth in the assignment of errors filed herewith, and your petitioner prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such court, in such cases made and provided. And your petitioner further prays that the proper order relating to the required security to be required of it be made.

Your petitioner further avers that as the Honorable Circuit Court of Appeals for the Fourth Circuit, in which said decree was rendered, is not in session, and will not be for some time, your petitioner hereby applies to the Honorable Jeter C. Pritchard, a Judge of said Court, to allow such appeal, and to make all necessary orders in reference to the same.

900 Your petitioner avers that in accordance with the rules of this court it hereby petitions your Honor in vacation to allow said appeal, and prays that you will make all necessary orders therein as the law and rules direct, and your petitioner as in duty bound will ever pray.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Attorneys for Appellant.

Assignment of Errors.

Filed August 15, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

In Equity.

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,
vs.
HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Assignment of Errors.

Now comes the defendant in the above entitled cause and files the following assignment of errors upon which it will rely upon the prosecution of its appeal in the above entitled cause, from the decree made by this Honorable Court on the 28th day of May, 1914.

I.

That the said Circuit Court of Appeals erred in rendering its said decree of the 28th day of May, 1914, which concludes with this following statement: "For the reasons stated, the decree of this court below is reversed, and the cause remanded with instructions to dismiss the bill at plaintiff's costs."

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II.

That said Circuit Court of Appeals erred in reversing the final decree rendered by the said District Court of the United States for the Northern District of West Virginia on December 23, 1912 (and entered January 18, 1913), perpetuating the injunction theretofore granted, and denying the motion of these appellants (then defendants) to dissolve the temporary injunction and to dismiss the bill.

III.

That said Circuit Court of Appeals erred in reversing that part of the decree of said District Court in which it was held that the said United Mine Workers of America and its subordinate associations or branches constitute an unlawful organization, said Circuit Court of Appeals declaring that, "A consideration of the purposes of this organization as set forth in its constitution impels us to the conclusion that there is nothing contained therein to justify the contention that its purposes are unlawful."

IV.

That said Circuit Court of Appeals erred in reaching the following conclusion:

"As we have already stated, we are of the opinion that even if at common law as originally adopted by the State of West Virginia, this organization was unlawful, it does not follow that that part of the common law is now applicable in that State, owing to the changed conditions to which we have referred * * * we are of opinion that the court below erred in declaring these organizations to be unlawful at common law."

V.

That said Circuit Court of Appeals erred in reversing the following conclusions reached by said District Court: "I further conclude (said the District Court) that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy the coal mining industry of West Virginia in the interest of their co-conspirators, rival operators and producers of Ohio, West Pennsylvania, Illinois and
902 Indiana, competitive fields, have sought and still seek to compel the plaintiff, the Hitchman Coal and Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful efforts to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its employees." In reversing those conclusions, reached by said District Court, the said Circuit Court of Appeals erred in declaring that "As we have already stated, the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance. Therefore, the court erred in holding the organization to be unlawful upon the theory that it was guilty of a conspiracy."

VI.

That said Circuit Court of Appeals erred in reversing those parts of said final decree of said District Court in which the appellants herein (then defendants) were "perpetually enjoined and restrained from interfering and from combining, conspiring, or attempting to interfere with the employees of the plaintiff for the purpose of unionizing plaintiff's mine without plaintiff's consent," by all of the various means set forth particularly and in detail in said final decree of said District Court.

VII.

That said Circuit Court of Appeals erred in refusing to perpetuate said injunction, decreed in said District Court, by reversing said decree and ordering the dismissal of said bill, because it thereby deprived the said Hitchman Coal and Coke Company of its contractual and property rights, as described in its bill of complaint, and as guaranteed to it by the Fifth Amendment, and by the Fourteenth Amendment to the Constitution of the United States.

VIII.

The said Circuit Court of Appeals erred in reversing that part of the decree of said District Court in which it was held that the United Mine Workers of America constitute a combination or conspiracy in restraint of trade or commerce, under what is known as the Sherman Anti-Trust Law. Before discussing the contested construction of that Federal statute, as involved in this case, said Circuit Court of Appeals said: "The court below among other things expressed the view that the United Mine Workers of America constituted a combination or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, under what is known as the Sherman Anti-Trust Law, 26 Stat. L. 209." Said Circuit Court of Appeals erred in reversing the construction put by said District Court upon said Sherman Anti-Trust Law, greatly to the detriment of the contractual and property rights of said Hitchman Coal and Coke Company, as set forth in the bill of complaint and as guaranteed to it by the Constitution and statute laws of the United States.

Wherefore the appellant, the said Hitchman Coal and Coke Company, prays that said decree of said Circuit Court of Appeals be reversed, and that it enter such decree as may be directed by the Supreme Court of the United States.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Attorneys for Appellant.

Order Allowing Appeal.

Filed August 15, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,

vs.

HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

904 On motion of George R. E. Gilchrist and Hannis Taylor, solicitors and counsel for complainant, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States. And it appearing in the opinion of the undersigned Judge of the said Circuit Court of Appeals, that certain original papers filed in the District Court and by an order entered in that court on the 17th day of July, 1913, settling the contents of the transcript of the record on appeal from that Court to this Court, transmitted to this Court for its consideration in connection with said appeal, and as part of the record of said case on appeal, are papers which should be inspected by the Supreme Court of the United States on its consideration of this case, it is hereby ordered that the clerk of this court do *transport* the same to said Supreme Court in connection with the transcript, such original papers to be returned to this court on the consideration of the cause in the Supreme Court.

It is further ordered that the bond on appeal be fixed at the sum of four thousand ($4,000.00) dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Dated August 15th, 1914.

J. C. PRITCHARD,
U. S. Circuit Judge.

Appeal Bond.

Filed August 15, 1914.

Know all men by these presents, that we, Hitchman Coal and Coke Company, a corporation, as principal, George R. E. Gilchrist and William H. Koch, both of Wheeling, West Virginia, as sureties, are held and firmly bound unto John Mitchell, individually, T. L. Lewis, individually, W. B. Wilson, individually, William Greene, individually, D. H. Sullivan, individually, George W. Savage, individually, and as Secretary-Treasurer of District No. 6 United Mine Workers of America, and his successors in said office, A. R. Watkins, individually, John Zalenka, individually, Lee Rankin, individually,

Thomas Hughes, individually, John P. White, of Oskaloosa,
905 Iowa, as President of the United Mine Workers of America and of the International Union United Mine Workers of America and his successors in said office, Frank J. Hayes, of Plainfield, Illinois, as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America and his successors in said office, Edwin Perry, of Oskaloosa, Iowa, as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America and his successors in said office, John Moore, of Coshocton, Ohio, as President of District No. 6 United Mine Workers of America and his successors in said office, the same John Zalenka as Vice-President of District No. 6 United Mine Workers of America and his successors in said office, John Albasin, of Bridgeport, Ohio, as President of the Sub-District 5 of District 6 United Mine Workers of America and his successors in said office, William Roy, of Klee, Ohio, as Vice-President of Sub-District 5 of District 6 United Mine Workers of America and his successors in said office, William Applegarth, of Bridgeport, Ohio, as Secretary-Treasurer of Sub-District 5 of District 6 United Mine Workers of America and his successors in said office, in the full and just sum of four thousand ($4,000.00) dollars, to be paid to the said parties above named, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this fifteenth day August, in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately at a court held by the Circuit Court of Appeals of the Fourth Circuit in a suit depending in said Court between John Mitchell, individually, T. L. Lewis, individually, W. B. Wilson, individually, et al., Appellants, vs. Hitchman Coal and Coke Company, a corporation, Appellee, a decree was rendered against the said appellee on May 28, 1914, and entered on June 1st thereafter, and the said Hitchman Coal and Coke Company having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said John Mitchell, and the other- as named above, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Hitchman Coal and Coke Company shall prosecute said appeal to
effect, and answer all damages and costs if it fail to make its
906 plea good, then the above obligation to be void; else to remain in full force and virtue.

HITCHMAN COAL & COKE CO.,
By W. H. KOCH, *Treas. & Mgr.* [SEAL.]
GEORGE R. E. GILCHRIST. [SEAL.]
W. H. KOCH. [SEAL.]

Sealed and delivered in presence of and approved by:
J. C. PRITCHARD,
United States Circuit Judge.

Citation.

Issued August 15, 1914.

UNITED STATES OF AMERICA, *ss:*

United States Circuit Court of Appeals, Fourth Circuit.

No. 1220.

JOHN MITCHELL, Individually; T. L. LEWIS, Individually; W. B. WILSON, Individually, et al., Appellants,
vs.
HITCHMAN COAL AND COKE COMPANY, a Corporation, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

To John Mitchell, Individually; T. L. Lewis, Individually; W. B. Wilson, Individually; William Greene, Individually; D. H. Sullivan, Individually; George W. Savage, Individually and as Secretary-Treasurer of District No. 6, United Mine Workers of America, and his successors in said office; A. R. Watkins, Individually; John Zalenka, Individually; Lee Rankin, Individually; Thomas Hughes, Individually; John P. White, of Oskaloosa, Iowa, as President of the United Mine Workers of America and of
907 the International Union United Mine Workers of America, and his successors in said office; Frank J. Hayes, of Plainfield, Illinois, as Vice-President of the United Mine Workers of America and of the International Union United Mine Workers of America, and his successors in said office; Edwin Perry, of Oskaloosa, Iowa, as Secretary-Treasurer of the United Mine Workers of America and of the International Union United Mine Workers of America, and his successors in said office; John Moore, of Coshocton, Ohio, as President of District No. 6, United Mine Workers of America, and his successors in said office; the same John Zalenka, as Vice-President of District No. 6, United Mine Workers of America, and his successors in said office; John Albasin, of Bridgeport, Ohio, as President of the Sub-District 5 of District 6, United Mine Workers of America, and his successors in said office; William Roy, of Klee, Ohio, as Vice-President of Sub-District 5 of District 6, United Mine Workers of America, and his successors in said office; William Applegarth, of Bridgeport, Ohio, as Secretary-Treasurer of Sub-District 5 of District 6, United Mine Workers of America, and his successors in said office, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 14th day of September,

A. D. 1914, pursuant to an order allowing an appeal filed and entered in the clerk's office of the Circuit Court of Appeals of the United States for the Fourth Circuit, from a final decree rendered May 28, 1914, and entered on June 1, thereafter, in that certain suit, being in equity No. 1220, wherein the said Hitchman Coal and Coke Company, a corporation, is plaintiff and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable Jeter C. Pritchard, United States Circuit Judge for the Fourth Circuit, this 15th day of August, 1914, and of the Independence of the United States the one hundred and thirty-eighth.

J. C. PRITCHARD,
U. S. Circuit Judge.

908 Executed this 17th day of August, 1914, by delivering a true copy of the within citation to Charles E. Hogg, in person, counsel of record for appellants in above case, in the City of Richmond, Virginia, a place within my district.

JOHN G. SAUNDERS,
United States Marshal.
By CARTER H. HARRISON,
Deputy U. S. Marshal.

Marshal's fees	$2.00
Marshal's expenses	.10
	$2.10

909 UNITED STATES OF AMERICA, *ss:*

United States Circuit Court of Appeals, Fourth Circuit.

No. 1220.

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911 Coke Company, a corporation, is plaintiff and appellant and you are defendants, and appellees, to show cause, if any there

be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable Jeter C. Pritchard, United States Circuit Judge for the Fourth Circuit, this 15th day of August 1914, and of the Independence of the United States the one hundred and thirty-eighth.

J. C. PRITCHARD,
U. S. Circuit Judge.

Executed this 17th day of August, 1914, by delivering a true copy of the within citation to Charles E. Hogg, in person, Counsel of Record for Appellants in above case, in the City of Richmond, Virginia, a place within my district.

JOHN G. SAUNDERS,
United States Marshal,
By CARTER H. HARRISON,
Deputy U. S. Marshal.

Marshal's	Fees	$2.00
"	Expenses	.10
		$2.10

[Endorsed:] Citation. Original. Office of United States Marshal, Eastern District of Virginia. Received Aug. 17, 1914. 3357.

912 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, this 21st day of August, A. D. 1914.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals,
Fourth Circuit,
By CLAUDE M. DEAN, *Deputy Clerk.*

Endorsed on cover: File No. 24,361. U. S. Circuit Court Appeals, Fourth Circuit. Term No. 241. Hitchman Coal and Coke Company, appellant, vs. John Mitchell, individually; T. L. Lewis, individually; W. B. Wilson, individually, et al. Filed September 4, 1914. File No. 24,361.

Office Supreme Court, U. S.
FILED
OCT 9 1914
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 6[redacted] 11

HITCHMAN COAL AND COKE COMPANY, A CORPORATION,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*,
Respondents.

PETITION AND MOTION OF HITCHMAN COAL AND COKE COMPANY, A CORPORATION, FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Counsel for the Petitioner.

PRESS OF GIBSON BROTHERS, INC., WASHINGTON, D. C.

CITATIONS.

CITATIONS.

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Supreme Court of the United States

OCTOBER TERM, 1914.

No. 617.

HITCHMAN COAL AND COKE COMPANY, A CORPORATION,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*,
Respondents.

PETITION AND MOTION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

The petition of Hitchman Coal and Coke Company, for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Fourth Circuit, to bring before this Honorable Court the case No. 1220, there pending, entitled, John Mitchell *et al.*, appellants, *v.* Hitchman Coal and Coke Company, appellee. In Equity, No. 1220.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States.

1. Your petitioner, Hitchman Coal and Coke Company respectfully represents that in the District Court of the United States for the Northern District of West Virginia, the above named petitioner on October 24, 1907, com-

menced a suit in equity for injunctive relief against the above named respondents, averring among other things, the following:

> "Your orator further says that unless enjoined by this Court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and will compel your orator to contract with its employees through the said defendants as officers of the said associations under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the Union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and further will compel your orator to agree that each of its future employees as members of the said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employees would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator *which distinctly violate your orator's contractual, common law, statutory and constitutional rights as a citizen of the State of West Virginia.*"

After protracted litigation a final decree was rendered in said cause on January 18, 1913, in favor of petitioner,

awarding to it a perpetual injunction against the United Mine Workers of America. In the course of his opinion District Judge Dayton said:

> "The final question arises how is this plaintiff, the Hitchman Coal and Coke Company, affected and what right has it to complain and appeal for injunctive relief? The evidence establishes these facts:"

After stating the facts thus established, the Court said:

> "I conclude, therefore, that this organization, known as the United Mine Workers of America, is an unlawful one because, (a) of its principles as set forth in its constitutions, obligation for membership and rules which (1) require its members to surrender their individual freedom of action, (2) seeks to require, in practical effect, all mine workers to become members of it whether desirous of doing so or not, (3) seeks to control, and restrict, if not destroy, the right of the mine owner to contract with its employees independent of the organization, (4) to exclude his right to employ non-union labor if he desires, (5) to limit his right to discharge, in the absence of contract, whom he pleases, when he pleases and for any cause or reason that to him seems proper, (6) assumes the right on its part, by and through its officers, to control the mine owner's business by shutting down his mine, calling out his men upon indefinite strike in obedience to their obligation to the Union, whether the men desire to quit work or not, whenever the Union's officers deem it to be for the best interests of the Union, regardless of the rights and interests of the mine owner, and regardless of his direct loss and damages and such indirect loss and damage as may be incurred by him by reason of the resultant violation of contracts by him with others. Adair v. United States, 208 U. S. 161, 52 L. ed. 436. I further conclude that it is an unlawful organization because, (b) of its procedure and practices in that,

(1) it seeks to create a monopoly of mine labor such as to enable it, as an organization, to control the coal mining business of the country, and (2) has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other states, to control, restrain and, to an extent at least, destroy the coal trade of the State of West Virginia. It has spent fourteen years time and hundreds of thousands of dollars in effort to accomplish this unlawful purpose. The rules of law relating to the responsibility of individual members concerned in such combination and conspiracy are plain and well defined. Great latitude in establishing conspiracy by the admission of circumstantial evidence is allowed, circumstances tending in slight degree to a determination of the truth are allowed to be proved. Clune v. United States, 159 U. S. 590, 40 L. ed. 269. The acts and declarations of co-conspirators in execution of a conspiracy are evidence against others of their number. Id. * * *

"In Loewe v. Lawlor, 208 U. S. 274, it was held that the Sherman Anti-trust Act 'prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business;' and this includes 'restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes' and that it 'makes no distinction between classes. Organizations of farmers and laborers were not exempted from its operation, notwithstanding the efforts which the records of Congress show were made in that direction' and that 'a combination of labor organizations and the members thereof, to compel a manufacturer whose goods are almost entirely sold in other states, to unionize his shops and on his refusal so to do to boycott his goods and prevent their sale in states other than his own until such time as the resulting damage forces

him to comply with their demands,' is a 'combination in restraint of trade.'

"I further conclude that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy, the coal mining industry of West Virginia in the interest of their co-conspirators, rival operators and producers in Ohio, Western Pennsylvania, Illinois and Indiana competitive fields, have sought and still seek to compel the plaintiff, the Hitchman Coal & Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful effort to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its said employees."

In the course of its opinion the Court also said:

"As regards the second aspect, the relation of these organizations to the general public as consumers of the products of capital and labor it must be admitted that, in the absence of special legislation such as that of England, (of doubtful constitutionality at least in this country under the written constitutions, Federal and State, thereof) it is just as unlawful for labor to combine to form a trust or monopoly as it is for capital to do so. The same rule of common law governs the one as the other and the Act of Congress, known as the Sherman Anti-Trust Law, I conceive to be simply declaratory of this principle. The latest construction of this act by the Supreme Court set forth in the Standard Oil Company *v.* United States, 221 U. S. 1 and United States *v.* American Tobacco Company, 221 U. S. 106 is that 'it prohibits all contracts **and combination**

which amount to an unreasonable or undue restraint of trade in interstate commerce.' By the English authorities, I have hereinbefore cited, it will be perceived that the same doctrine of the 'unreasonable' restraint of trade has been applied there as against these labor organizations."

After citing the case of Adair *v.* United States, 208 U. S. 161, the Court said:

"In this latter case the Supreme Court holds such a provision 'to be an invasion of personal liberty, as well as of the right of property, guaranteed by the Fifth Amendment to the Constitution of the United States.' This leaves the Act of June 29, 1886, Ch. 567, 24 Stat. L. 86, 7 Fed. Stat. Ann. 334, entitled 'An Act to legalize the incorporation of National Trade Unions,' as our only Federal law in amendment or modification of the Common Law upon the subject of Trade Unions. * * *

"Further citation of authority would seem to be unnecessary to establish the proposition that under Federal legislation and that of West Virginia the common law is in full force and that the several propositions I have set forth are the principles of law to govern in the determination of this case. * * * *It may be unfortunate for those states that nature has favored West Virginia, Kentucky and other southern states by giving them better coal and less expensive mining conditions, but this does not warrant the operators and miners there to combine and confederate for the purpose of depriving the consuming public of the right to purchase the better coal at the lower cost, if desired. Such a combination is clearly a common law conspiracy, too far reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust law. It is further in my judgment, a combination or conspiracy against the rights of the many thousands of non-union miners in West Virginia who are entitled to enjoy the advantage in their labor that nature has given them.*

> "* * * In all these particulars these provisions violate the law guaranteeing, under our free government, the rights of both the labor and capital involved and, further, the rights of the public consuming the product of such labor and capital. But still further and what manifestly is of far more vital importance, under the power so assumed by this close and compact organization, and by reason of these obligations and rules enforced by it upon its members, it is more than probable, that if allowed to unionize and control the mining operations in West Virginia, it will be entirely able to fulfill its express contract of 1898 with its co-conspirators, the operators of Ohio, Western Pennsylvania, Indiana and Illinois and 'protect' them from the competition of West Virginia coals, restore to them their lost markets and practically destroy the coal mining industry of this state to accomplish which, the Union has admittedly already spent hundreds of thousands of dollars and sacrificed human life, as yet to no avail."

2. From said final decree rendered in favor of this petitioner on January 18, 1913, by said District Court, an appeal was taken to the said Circuit Court of Appeals for the Fourth Circuit, and was there argued on February 12, 1914, before Circuit Judges Pritchard, Knapp and Woods, the first named delivering the opinion and judgment of the Court on May 28, 1914, reversing the decree of the Court below, and remanding the cause with instructions to dismiss the bill at plaintiff's costs. In the course of its opinion the Circuit Court of Appeals, speaking through Judge Pritchard, said:

> "We fully appreciate the important bearing the questions here presented have upon the welfare of the mine owners, as well as the laboring men, and are not unmindful of the delicate issues raised by the pleadings and proof in this cause.

"That it is advisable to secure a just and fair solution of the labor problem by which equal protection to capital and labor may be secured is undoubtedly the wish of every patriotic citizen regardless of his station in life. That one who toils for his living is justified in employing all lawful methods for the preservation of his right as an American citizen to secure fair remuneration for his services, is established by the Federal and the State Courts. That such a person also has the right to join with others similarly situated, in order to promote their welfare as a class, is also established as the law of this country. But while this is so, it is equally well settled that the mine owner is entitled to the full protection of the law in the conduct of his business and the enjoyment of his property. * * *

"The most important and far-reaching question is raised by the assignment of error wherein it is insisted that the Court below erred in holding that the United Mine Workers of America and its subordinate branches constitute an unlawful organization under the constitution, the common law, and the statutory law of the State of West Virginia.

"The learned judge who granted the injunction in this instance filed a very able and exhaustive opinion (202 Fed., 510), in which it is held, among other things, that the United Mine Workers of America is an unlawful combination at common law, which he insists is still in full force in that State, and in support thereof cites many English cases. * * *

"The Court below in its opinion referred to a number of provisions contained in the constitution and rules of this organization which in its judgment rendered the same unlawful, the first being that a member is required to promise that he will cease to work whenever called upon to do so by the organization.

"A careful examination of this provision fails to show on its face anything unlawful, while on the other hand common experience teaches us that a rule of this character is essential for the preservation of labor organizations. * * *

"The court below was also of the opinion that under the rules of the organization a member could be held as a slave, and thus prevented from exercising his own free will. We fail to find any provision preventing one from ceasing to work at any time he may desire, and if he should do so, he would no longer be a member of the organization. One could also cease to be a member of the union by failing to pay his dues. Under these circumstances there is no possibility of one's being held as a member of the union contrary to his wishes.

"The court below was further of the opinion that the union has the power to cause miners to become members thereof. We fail to find anything in the rules to justify the assumption that the union has an arbitrary power, by violence, intimidation or otherwise, to compel one to become a member of the organization. While it is alleged in the bill that the United Mine Workers of America is a secret, voluntary organization, this allegation is not only denied by the answer, but is shown to be incorrect by at least three witnesses, who testified that they were familiar with the organization and its workings, that it is not a secret organization in the ordinary acceptation of the term. * * *

"Another ground relied upon by the court below is that the organization assumes the right through its officers, (1) to control the employer's business, (2) to shut down his mine by calling out men in obedience to their obligation whenever it is deemed to be to the interest of the union, regardless of the employer's interest, or the effect that such act may have upon him as regards loss, damage or necessary violation, on account thereof, of his existing contracts with others. * * *

"It is also insisted by the court below that under these rules the operator has no right to employ non-union men even if he should desire to do so.

"If the United Mine Workers of America in pursuance of this rule should resort to coercion, threats, intimidation or violence for the purpose of preventing

the mine owner from employing non-union men, such conduct would be unlawful, and the courts would promptly restrain any one who might be a party to such transaction. Indeed, it would be unlawful for an individual to undertake, by coercion, intimidation or threats to prevent a mine owner from exercising his own free will as to the employment of non-union laborers, or as to any other thing which he might deem necessary to be done in order to protect his property rights. * * *

"In view of what we have said as to the status of these organizations at common law, and the further fact that there is an implied, if not direct recognition of labor unions by statute in West Virginia, and there being no enactment declaring the same to be unlawful, we are of the opinion that the court below erred in declaring these organizations to be unlawful at common law. * * *

"The court below among other things expressed the view that the United Mine Workers of America constituted a combination or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, under what is known as the Sherman Anti-Trust Law, 26 Stat. L. 209.

"We do not deem it necessary to discuss this proposition at any great length. In the first place there is nothing in the pleadings to raise the question as to whether the United Mine Workers of America are liable under the statute in question, and any evidence that may have been introduced bearing upon this point was therefore immaterial and should have been rejected. There is another reason why we think that this question cannot under any view of the case arise in this controversy, to wit, we do not understand that a private person can question the validity of a combination or conspiracy under the Sherman Anti-Trust Law for the purpose of having the same declared to be unlawful. * * *

"The court below also reached the conclusion that the defendants have caused and are attempting to cause the non-union members employed by the plain-

tiff to break a contract which it has with the non-union operators. The contract in question is in the following language:

"'I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employe of the Hitchman Coal and Coke Company; that the Hitchman Coal and Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read. * * * Under these circumstances we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization.' * * *

"While labor and capital are vitally interested in the proper solution of these questions, it should be remembered that the public is likewise interested, and in some instances affected to a greater extent than either labor or capital on account of the disputes and law suits growing out of these matters. Therefore, it may be properly said that these questions have a bearing upon the welfare of a large percentage of our people, and this is especially true as respect the coal industry. For instance, the suspension of the operation of coal mining in this country would in all probability result in a coal famine, which would, in a large measure, embarrass the manufacturers, to say nothing of the effect it would have upon the

individual consumer, and all reasonable means should be employed to avert such a disaster. Therefore we deem it our duty to define the rights of the parties to this controversy, in so far as we may under the facts of this case, so as to set at rest as many as possible of the vexatious questions that are a source of irritation, as well as productive of much litigation."

3. Petitioner further avers that it thus clearly appears from an inspection of the opinions and judgments rendered in this case, first by said District Court in favor of petitioner, and second, by the Circuit Court of Appeals against petitioner, that "the plaintiff's declaration claimed that the controversy turned on a construction of the laws of the United States, and both courts below dealt with the case on that assumption." Fla. Cent. & P. R. Co. *v.* Bell, 176 U. S. 321. Inherent in this case from the beginning and patent upon the face of the bill filed by petitioner, is the fact, entirely apart from the question of diversity of citizenship, that the contractual and property rights sought to be protected by said bill depend upon the terms of the Fifth and Fourteenth Amendments to the Constitution of the United States, and upon the terms of the Sherman Anti-Trust Law, 26 Stat. L. 209. As a citizen of West Virginia petitioner is necessarily a citizen of the United States, and as such it is entitled to the full protection of its constitution and laws. Slaughter House Cases, 16 Wall. 36. *District Judge Dayton's opinion deals, from beginning to end, with the contractual and property rights of petitioner, as protected by the terms of the Fifth and Fourteenth Amendments and by the Sherman Anti-Trust Law.* On page 34 of his opinion [Record, p. 783] he refers directly to the case of Adair *v.* United States, 208 U. S. 161, with the observation that "In this latter case the Supreme Court holds such a pro-

vision 'to be an invasion of personal liberty as well as of the right of property guaranteed by the Fifth Amendment to the Constitution of the United States;' " and on page 60 [Record, p. 806] he says: "Such a combination is clearly a common law conspiracy, too far-reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust Law." The opinion and judgment of the Circuit Court of Appeals consists of a difference of view as to the construction and application of Federal law, constitutional and statutory, as applied by District Judge Dayton to the facts of this case.

4. Your petitioner further avers that by reason of the foregoing the said decree of the Circuit Court of Appeals is not final, it having been settled by this court that a "judgment of the Circuit Court of Appeals cannot be held final on the ground that the jurisdiction of the Circuit Court was dependent entirely upon diverse citizenship, where the plaintiff's declaration claimed that the controversy turned on a construction of the laws of the United States, and both courts below dealt with the case on that assumption." Thus advised by counsel petitioner, after the adjournment of said Circuit Court of Appeals, presented a petition to Circuit Judge Pritchard for an appeal upon the ground that the decree of said court made against petitioner on May 28, 1914, is not final, for the reason that, entirely apart from the question of diverse citizenship, the merits of this case depend upon a construction of the laws of the United States, constitutional and statutory, and that both courts below dealt with the case on that assumption. After deliberate examination Judge Pritchard concluded that the contention of petitioner in that regard was well taken, recognizing the fact at the same time that there are grave and far-reaching questions of

federal law involved in this record which have not so far been passed upon by this court. Acting under that conviction Judge Pritchard, on August 15, 1914, "ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States." Petitioner further avers that such order has been fully complied with; that such certified transcript has been duly filed; and such appeal now stands as No. 617 on the docket of this court.

5. Your petitioner further avers that it appears from the foregoing that while by reason of diversity of citizenship the said District Court and the said Circuit Court of Appeals for the Fourth Circuit unquestionably had jurisdiction of this cause, petitioner has always contended and contends now that the jurisdiction of the United States Courts is not dependent entirely upon the fact that the opposing parties to this suit are citizens of different States, but upon the further fact that this case is one arising under the Constitution and laws of the United States. And while petitioner and its counsel are convinced that, for that reason, the said decision and decree of said Circuit Court of Appeals is not final, yet, as the interests involved are so great, and the federal questions involved so vital and far-reaching, your petitioner has determined as a matter of prudence to apply to this court, according to a well established practice, for a review of said final decree by certiorari, as provided in section 240 of chapter 231 of vol. 30 of the Statutes at Large. As a predicate for that application petitioner hereby submits to the court the following statement of the case as presented in the courts below:

6. This suit is against John Mitchell, Thomas L. Lewis and others, individually, and as officers and representatives of the United Mine Workers of America. The bill was filed October 24, 1907, in the Circuit Court of the United States for the Northern District of West Virginia, and upon its showing a restraining order was issued that day. On May 26, 1908, a temporary injunction was granted. Subsequently, the served defendants sought to have the terms of the injunction so modified as to permit the United Mine Workers to go ahead and by persuasion, or by other means, not including, however, force, fraud, violence, intimidation or coercion, unionize plaintiff's men, and consequently its mine. This motion was overruled, and subsequently the served defendants appealed to the Circuit Court of Appeals for the Fourth Circuit, which Court, on March 11, 1910, on motion of plaintiff, dismissed the appeal for want of jurisdiction, and remanded the cause to the Circuit Court of the United States for the Northern District of West Virginia for further proceedings. 100 C. C. A. 137, 176 F. 549. All of the answers theretofore filed were afterwards in that Court withdrawn by leave of that Court, but upon the insistence of plaintiff were not allowed to be taken from the file. New answers were filed still later, to which plaintiff replied generally, and on issue being joined a stipulation was entered into November 5, 1910, under which by order of that Court all evidence not introduced by orders entered that day was directed to be introduced orally to that Court in its presence instead of by means of depositions taken and filed in the cause, and fixing December 19, 1910, at 10 o'clock A. M., at the Court House in Philippi, as the time and place when and where the hearing of such evidence should commence. The taking of this evidence covered December 19, 20, 21, 22 and 23, 1910, and March 14, 15, 16, 17, 18, 20, 21, 22 and 23,

1911, and at the conclusion thereof plaintiff moved that the injunction of May 26, 1908, be made permanent, while the served defendants moved that it be dissolved and that plaintiff's bill be dismissed.

Following the conclusion of the trial in that Court, the case was argued orally, and by briefs filed, and that Court having rendered its decision thereon and filed its written opinion December 23, 1912, a final decree was entered in that Court on January 18, 1913, and an appeal was then taken by the defendants from that Court to the Circuit Court of Appeals.

Passing to the proof it is safe to say that the material allegations of the bill filed in the lower Court have been abundantly sustained. And it is also safe to say that no controversy arose in that Court over the material facts. So the issue here is rather one of law on those facts.

Therefore, before applying the law which plaintiff claims should apply to the facts let us see what those facts are.

The bill is comprehensive and charges that the United Mine Workers of America are a monopolistic combination designed to bring into its membership and under its control all men who work in or around the coal mines of the United States, and that in pursuit of its unlawful purposes it has sought and still seeks to compel plaintiff to run a union mine, or failing that, then to quit business.

The evidence in the case is voluminous. In part it consists of the oral testimony before the Court, taken stenographically and duly transcribed, a book containing the Constitution of the International Union, United Mine Workers of America, Revision 1907, a book containing the Constitution of District No. 6 United Mine Workers of America, with all amendments to January 12, 1907, a book containing the Preamble and Manual

and Constitution United Mine Workers of America, Sub-District 5 of District 6, Revision 1907, a book containing the Proceedings of the Eighteenth Annual Convention of the United Mine Workers of America held in the City of Indianapolis, Indiana, January fifteenth to twenty-second inclusive, Nineteen seven, a book containing the Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6 United Mine Workers of America, held at Wheeling, West Virginia, March 14, 15, 16, 18, and 19, 1907, a small pamphlet entitled "United Mine Workers of America, District No. 6, Ohio, issued by the authority of the executive board of District No. 6, Ohio Miners, United Mine Workers of America, G. W. Savage, Secretary-Treasurer, for scale year, April 1, 1908, to March 31, 1910," a book entitled "Interstate Conventions, 1906, Joint Conference Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana and Illinois, Indianapolis, Indiana, January 25th to February 2nd, and March 20th to 29th, 1906," a book entitled "Joint Convention of the Illinois Coal Operators Association and the United Mine Workers of America, District Twelve, held at Springfield, Illinois, May 17 to June 1, 1906," a book entitled "Interstate Convention of 1908. Joint Conference of Coal Miners and Operators of Western Pennsylvania, Ohio and Indiana, held at Toledo, Ohio, April 14–17, 1908," a book entitled "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, March 8–29, 1910," a pamphlet containing the Report of President T. L. Lewis, Twentieth Annual Convention of United Mine Workers of America, a pamphlet containing the Report of Vice-President John T. White, Twentieth Annual Convention of United Mine Workers of America, Indianapolis, Indiana, January 19, 1909, a pamphlet containing the Report of Secretary W. D. Ryan, Twentieth Annual

Convention of United Mine Workers of America, a pamphlet entitled "Official Mining Scale of Association of Pittsburg Vein Operators for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America, and containing the "Conditions of the Columbus Day Wage Scale 1898," in effect April 1, 1906, and ending March 31, 1908, a book entitled "Official Mining Scale of Association of Pittsburg Vein Operators for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America. Adopted May 19, 1910. In effect April 1, 1910, and ending March 31, 1912," and the Report of President Lewis to the Convention of United Mine Workers of America held at Indianapolis, Indiana, January, 1911, as it appears in the United Mine Workers' Journal of January 19, 1911.

The defense objected to the admission of all of this material as evidence, but the objection was overruled, and the same and other objections reduced to writing were subsequently in the lower Court filed in the cause, considered by that Court, and by that Court overruled.

The evidence covers an equivalent of more than 8,000 pages made up of the pleadings, proceedings, oral evidence taken on the trial, and documentary matter of one kind or another introduced in evidence. The printed record contains only a portion of the actual record. It contains the oral testimony reduced in the main to narrative form. But as shown by the order of the Circuit Court of Appeals [Record p. 904] allowing an appeal to this Court certain original papers which were sent to that Court by the District Court have been sent by the Circuit Court of Appeals to this Court and supplement the printed record.

Facts Proved.

The existence of the United Mine Workers of America as an organization dates from January, 1890. As a body they were initially made up of several others which had theretofore been warring with each other, and had, of course, been unsuccessful in their special field of endeavor. And the founders had in mind the creation of a body which would be national in character and national in power. In doing this a far-sighted policy was pursued. The organization had its National Constitution, which in later years was changed in name to International owing to the inclusion of mine workers outside of the United States. It had also its District Constitutions and its Sub-District Constitutions. It has those today. The Sub-Districts have their Locals, which are the equivalent of Lodges. In representation these Locals make up a Sub-District Convention. District Conventions are made up of delegates from Locals in the given District. And the National Convention is made up of delegates from the Locals in all the Districts. Certain power is given to each body to legislate. And each body has a President, a Vice-President and a Secretary-Treasurer. National or International matters are disposed of by the National Conventions, District by District Conventions, and Sub-District by Sub-District Conventions. The defense introduced testimony that the organization of the United Mine Workers of America was patterned after the United States Government, and after the State, County and Township governments. And theoretically that seems to some extent to be borne out by an examination of literature of the Union. For it appears that Locals have and exercise all the powers they wish which have not been in express terms delegated to the Sub-Districts, Sub-Districts all not delegated to the Districts, and Districts all

not delegated to the National or International Union. But the order is inverse; the analogy not complete. And from this attempt to apply to a labor union governmental principles of a political nature there has grown a National body, the rules and regulations of which, taken together in their International, District, Sub-District and Local features, are a chaotic mass, some lawful and some unlawful, but pregnant with unmeasured and unmeasurable abuse of unlimited and unregulated power.

The United Mine Workers of America are a secret body, and no part of it, International, District, Sub-District or Local, is incorporated.

Its purposes are made known to mine workers through men who are sent out by the National President as organizers. These organizers may do their work secretly or openly, but in practice they are governed by the rule that the end justifies the means. Upon a Local being organized, one-half or thereabouts of the Charter Fee is paid to the organizer.

Starting with a membership in 1890 of about 20,000 there were less than 10,000 members in 1896. This is said to have been due to the unsuccessful National strike of 1894. The work of organizing was then pushed, and in 1897, with a membership of about 40,000, another National strike was declared. That strike was unsuccessful too, and as a result the membership fell to 32,000 in 1898. It was then that the leaders recognized the futility of their efforts and came to a realization of the fact that unless some other methods were adopted the United Mine Workers of America would dwindle away as had been the case with other labor unions in the mining fields. So they proposed to certain operators in Western Pennsylvania, Ohio, Indiana and Illinois that a joint meeting between themselves and the United Mine Workers'

representatives be held at Chicago to figure out if possible some way whereby, ostensibly, strikes could be avoided. The operators to whom this proposition was made and by whom it was acted upon were employers of the bulk of the membership of the United Mine Workers of America. This meeting, upon being held, resulted in what is known as the Chicago Agreement of 1898. By it what is known as the Joint Interstate Movement was established. It was designed to be and with two interruptions has been a continuous movement to date. By that agreement the miners secured an eight hour day in the Central Competitive Field and in turn agreed to protect the operators of that field from competition from the non-union fields. What measures were adopted and taken and what are now being used are in evidence. Some of them will be referred to in treating of the activities of the Union.

The bulk of the membership in 1898 resided in Western Pennsylvania, Ohio, Indiana and Illinois. That is so today. The coal produced in those sections of the United States competed in common markets in the north and west in 1898. That is so today. Therefore, the plan of the United Mine Workers of America to bring about and perpetuate a Joint Interstate Movement in that part of the country between themselves and operators engaged in competition with each other. And the name Central Competitive Field referred to those states as well as to their geographical location within the United States. That is so today.

While the Chicago Agreement of 1898 brought the eight hour day to the Union, in return for which the Union agreed to protect the operators of the Central Competitive Field from competition from the non-union fields, the eight hour day was not all the Union got by

any means. By the 5th Clause of the Chicago Agreement of 1898 it was provided

> "That on and after April 1, 1898, the eight hour work day with eight hours' pay, consisting of six days per week shall be in effect in all of the districts represented, and that uniform wages for day labor shall be paid the different classes of labor in the fields named, and that internal differences in any of the states or districts, both as to prices or conditions, shall be referred to the states or districts affected for adjustment."

Pursuant to the comprehensively suggestive terms of that clause of the agreement, and of a resolution passed for the purpose by the Scale Committee of the Interstate Convention held at Chicago which resulted in the making of the Chicago Agreement of 1898, a Joint Interstate Convention was held at Columbus in March, 1898, for the making of a uniform day work scale based upon the districts upon which the mining prices were based. This latter Convention evolved what is known as the Columbus Day Wage Scale. It established an inside day wage scale for an eight hour day, but failed to establish any wage scale for outside day labor. Of the inside day wage scale the Columbus Agreement says:

> "The above scale was arrived at by taking the average of the wages paid in all the competitive districts, and reducing said average to an eight hour day, then adding the advance to said average to correspond with the advance in price of mining to be paid April 1 next."

Regarding the failure to make a scale for outside day labor, that Convention passed a resolution reading as follows:

"Whereas, We have failed to agree upon a uniform rate of wages for the different classes of outside labor for the entire competitive field owing to the variation of conditions over which we have no control:

"*Resolved*, That the employing of outside day laborers around the mine, and wages to be paid the same, shall be left entirely to the employers and such employes in all the competitive districts, and the question of uniform wages for outside labor be referred to our next Interstate Joint Convention.

"*Resolved*, That where any members of the present force of outside day labor in the competitive field prefer to work in the mine in preference to accepting the wages offered for their services as outside day laborers, they shall be given places in the mine to mine coal."

Subsequently, a wage scale for outside day labor was agreed upon. And through this Joint Movement the wages of all men who work in and around the mines in Union territory are now fixed. The prices are competitive having regard not to the earning power of the men but to the competition existing between the operators participating in the Joint Movement, and to the competition those same operators encounter from coal from the non-union fields.

By the 5th Clause of the Chicago Agreement of 1898, the United Mine Workers of America succeeded in establishing the check-off system and the closed shop. Both of these are prominent features of the Union.

By the check-off the operators are made the collection agents of the Union, and compelled to collect from their employes and pay to the Union's officials what the Union demands from its members who are in the employ of the operators. The experience of the leaders of the United Mine Workers had shown them that their members were slow and uncertain pay. Hence the check-off system was

devised. And with what wisdom it was devised and is still adhered to is shown by a consideration of the fact that these officials received in 1910 from the operators dealing with them more than $1,500,000.00.

By the closed shop concession the Union has succeeded in so intrenching itself that it has closed shop wage agreements covering all the men employed in and around all the mines in Ohio, Indiana, Illinois, Michigan, Iowa, Kansas, Missouri, Oklahoma, Texas, Arkansas, part of Kentucky, part of British Columbia, part of Washington, all of Wyoming and Montana, Northern Colorado until some recent trouble there, part of Central Pennsylvania and the greater part of Western Pennsylvania.

The operators who participated in the establishment of the Joint Interstate Movement evidently thought they would receive enough benefit from the suppression of competition from the non-union fields to warrant them conceding the check-off and the closed shop. But reports of the later Joint Interstate Conventions are filled with bitter reproaches. And although the United Mine Workers as an organization have to date waged an industrial war against the non-union fields the Union operators still complain of the competition from those fields and urge the mine workers to greater efforts along the same line, and to other and more desperate and unlawful acts.

In sharp contrast to the manifest disposition of the Union operators to get from under the jurisdiction of the United Mine Workers is the attitude of the Union's officials. These know and assert their power and say to the operators of mines in unionized territory that those mines must be run Union, or not at all. And being confronted with a United Mine Worker membership of more than 300,000, but now at the time of the preparation of

this statement, although, of course, outside of the record, claimed to be more than 400,000, and with an income of more than $1,500,000.00 per annum, the operators must perforce and do submit.

Following the granting of the check-off the Union had plenty of money to employ organizers. And the power of organizers was increased by the granting of the closed shop wage agreement. Membership increased from 32,000 in 1898 to 61,000 in 1899, from 61,000 in 1899 to 115,000 in 1900 and from 115,000 in 1900 to 198,000 in 1901. And then came the 1902 Anthracite Strike, and a reduction of membership to 175,000. Following the settlement of that strike which was waged to compel recognition of the Union, the work of the organizers was resumed. Membership increased from 175,000 in 1902, to 247,000 in 1903, from 247,000 in 1903 to 251,000 in 1904 and from 251,000 in 1904 to 264,000 in 1905. In 1906 a National strike was called, and membership dropped to 230,000. The 1906 strike was a disastrous one for the Union, but upon its settlement and funds coming to hand again from the check-off paid in by the operators in Union territory, the work of organizers was again resumed. Since then the work of organizing all the coal mines in the country has progressed to such a degree that in December, 1910, the Union had over 300,000 members, while the organization claims that it now has over 400,000 members and that there are now over 350,000 miners in the United States who are not members of that organization.

In this recital of this part of the history of the United Mine Workers of America, we have not sought to mention all the National strikes, and no mention has been made of the other innumerable strikes the organization has been concerned in.

Some idea of the warring proclivities of the Union may be derived from a consideration of the fact that from

1900 to 1910, both years inclusive, the National organization paid out of its own treasury more than $8,000,000.00 in support of strikes. The United Mine Workers spent more than $1,250,000.00 in Alabama for strike purposes and were finally run out of that state: nearly $1,500,000.00 for the same purpose in the Anthracite fields: $329,000.00 for the same purpose in the Irwin Field in Pennsylvania: and $669,000.00 for a like purpose in West Virginia, and with the result that in West Virginia their officials claim they are run out of the state, or their lives endangered if they stay, after being discovered.

Such is a part of the history of the United Mine Workers of America; and it is of their own making.

We will ask attention next to some of their principles, methods of procedure, and practices.

The Constitution of the International Union contains this clause:

"ARTICLE I.

SECTION 2. The objects of this Union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes."

The Constitution of District No. 6 contains this clause:

"ARTICLE I.

SEC. 2. One of the objects of this organization is to unite all employes in and around the coal mines of Ohio and the Panhandle District of West Virginia."

The Constitution of Sub-District 5 of District No. 6 contains these two clauses:

"ARTICLE I.

SEC. 2. The objects of this organization is to unite the mine employes of Belmont, Jefferson, Tuscarawas, Harrison and Carrol Counties in Ohio, and that part of Stark

County south of Canton, other than the Massilon Seam, and Hancock, Brooke, Ohio and Marshall Counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike."

"ARTICLE I.

SEC. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines."

In connection with this design, evidenced by their Constitutional provisions, to control all labor employed in and around the coal mines of the country, the organization in its recent National Conventions has taken steps to bring about the solidification of its forces with the forces of the Western Federation of Miners, and the including of both of their organizations in a new department of the American Federation of Labor to be known as the Mining Department. The language of that part of the Resolutions relating to the Western Federation of Miners and that particular feature is as follows:

"We declare in favor of forming a mining department under the jurisdiction of the American Federation of Labor to control the mining industry of the American Continent, along similar lines to those departments which are now organized under the jurisdiction of the American Federation of Labor."

The United Mine Workers of America and the Western Federation of Miners have an agreement for the mutual exchange of membership transfer cards, and both unions are integral parts of the American Federation of Labor. The purpose of the American Federation of Labor as an integral whole is to bring all the International and National organizations of labor in this country into one family or federation of unions, and at the same time not to take

away from the International and National unions the power and authority to regulate their own affairs.

Some of the rules and conditions enforced by the United Mine Workers of America are:

Men shall not work on idle days without permission of the Union, but if allowed to work such work must be evenly distributed amongst the mine's employees.

If railroad cars in which coal for shipment is to be loaded are not at the mine within thirty minutes after starting time the miners are to go home and not work that day.

If an operator shall so manage his business that four of his employes are out of cutting or drilling when work time comes in the morning, the mine committee may shut the mine down for the next day.

Sons of members of the United Mine Workers are to be given the preference of going into the mines when becoming of proper age.

Each two men shall have two working places in the mine, and the operator shall not employ more men until each two men have two working places.

The turn shall be uniform throughout the mine, in entry driving as well as mining coal in rooms.

Members of the mine committee are not to be required to stay at their working places in the mine if while away they are looking after the interests of the Union.

The men upon going to work in the mine are to be paid for two hours' work whether the mine runs two hours or not.

There shall be but one loader in each entry.

If the miner fails to produce clean coal the operator may close down his mine, but may not discharge the miner.

A miner may not be transferred from his working place inside the mine to a working place outside the mine unless he consents and unless in addition he is paid inside scale wages for outside work.

Where one company operates more than one mine on the same line of railroad in the same vein of coal the work between the respective mines shall be divided and made as nearly equal as business conditions will permit.

If for any grievance, real or supposed, any of the workmen shut down the mine each employe shall pay the company one dollar per day during such shut down; and if because of any grievance with any employe, real or supposed, the company shuts down its mine, it shall pay one dollar per day to each workman in and around the mine during such shut down.

Officers of the United Mine Workers may close down mines whenever they deem it to be for the best interests of the Union.

When officers of the United Mine Workers of America close down a mine, they may, if they deem it wise, close every other mine in the District, or they may distribute the men from the mine which they have closed down into any other mine or mines in the same District.

A method of procedure in the matter of Joint Interstate agreements is that whatever is agreed to is subject to either the previous or the subsequent ratification of the entire organization of United Mine Workers. The officials of that body have repeatedly tried to compel the operators who meet them in Joint Convention to admit the miners from other sections of the country who have, as those operators claim, no interest whatever in the result to be arrived at by the particular Joint Convention. And in reply to that objection it appears from the evidence that the Union's officials contemplate enforcing whatever agreement is arrived at regardless of the fact that particular operators or miners are not parties to the Joint Convention which may have agreed to the particular scale.

Some of the practices of the United Mine Workers of America are by their officials to drive operators out of

business who incur their displeasure. This is done by means of strikes called or induced by them so that the operator is no longer able to operate his mine. Other things indulged in by the United Mine Workers are:

They have sent out men to the trade to boycott West Virginia coal.

They aim to have all wage agreements expire on the same date, both in the Anthracite and in the Bituminous Fields, and then by strike or by cessation of work throughout the entire United States compel compliance with their demands.

They engage in politics and maintain lobbies for the purpose of affecting legislation.

They put operators at a disadvantage who refuse to go into the Joint Interstate Movement.

They compelled operators in the Southwest territory to join the operators' association by refusing to allow their members to work for operators who did not join that operators' association upon that association agreeing not to employ any man who was not a member of the United Mine Workers of America.

They have constantly aimed to involve West Virginia and other non-union fields in local or National strikes: and that is their aim today.

Through their President, the defendant Mitchell, they threatened to stop every mine in the Pittsburgh district by filling them with organizers, if necessary, in order to compel compliance with their wishes. Mitchell boasted of this.

They recognize that organizing the mine workers of the non-union fields is the all important problem which confronts their Union, and they are constantly aiming to increase the cost of the West Virginia operators' coal through organizers and secret agents sent out to stir up strife.

We come now to a consideration of the relations which once subsisted between the United Mine Workers of America and the Hitchman Coal & Coke Company.

The Hitchman Coal & Coke Company opened and at first in 1903 operated its mine non-union. At the same time in 1903 the same persons owning the capital stock of the Hitchman Coal & Coke Company, together with some other persons not owners of any of the capital stock of the Hitchman Coal & Coke Company opened and operated a Union mine at Mount Pleasant, Ohio. Sometime prior to April 1, 1903, the United Mine Workers secretly placed organizers in the Hitchman mine. These men worked as miners. When these organizers had worked up a sentiment amongst the Hitchman miners in favor of joining the Union, the officials of the United Mine Workers notified the management of the Hitchman mine that unless the Hitchman mine was run Union they would close down the Mount Pleasant mine. Being confronted with that alternative, the management of the Hitchman mine agreed that if their employes wanted to join the Union no objection would be interposed provided the Union was run right. An official of the Union then formally organized the men into a Local of the United Mine Workers. The organizers disappeared, and the next day after the local was organized the men were called out on a strike. This was on April 2, 1903, and the men remained out until May 23, 1903. The occasion of the strike was that the Union's officials claimed that the Hitchman mine was not paying scale price on run of mine coal. The United Mine Workers then had a rule which is still in force—that the price for mine run shall be five-sevenths of the price of screened coal based upon the Hocking Valley. That scale even in Ohio was then as it is now a dead letter. Run of mine coal in Ohio is in practice paid

for on the screened coal basis. The coal is mined and screened, and so paid for, and, if sold run of mine, is then all put together again. At the Hitchman mine, the railroad engine fuel was then and is now run of mine. When the Local was organized in 1903 the Coal Company was paying what it considered the proportionate price for run of mine coal based upon the screened coal price for the kind of coal at that mine, but paid for by the car. And when the strike was called to enforce the Hocking Valley price of five-sevenths the price of screened coal, the Hitchman management stated that such price was prohibitive, but agreed to permit a test to be made at which the Union's officials should be present to determine the true ratio between screened coal and slack at that mine. The Union's officials declined to do this until May 23, 1903, during which time the mine was kept idle, and the men not allowed to go to work. On May 23, 1903, the mine resumed work under an agreement that a two weeks' test be made. A test was made for a few days' by the Union's officials and then abandoned by them. They then settled with the Company on a price which was much less than the scale price for which the strike was called. The agreed price accepted as correct by these officials as the result of this test was about one cent and a half per ton more than the Company had been paying for run of mine coal paid for by the car prior to the men joining the Union. And that basis so established by that test has ever since it was made been the basis upon which the Company has paid its men for run of mine coal. That strike cost the Company $7,242.00.

On April 20, 1904, the Union's officials again called the Company's men out on strike. This time it was about the run of mine coal. They were not satisfied with the 1903 settlement and wanted to try what they called the average

as distinguished from the tonnage basis. They kept the men out and the mine idle until June 15, 1904. When work was resumed it was on the average basis. This strike cost the Company $17,000.00.

When April 1, 1905, came the officials of the Union insisted on returning to the tonnage method on the basis of the 1903 run of mine settlement as the men claimed they made more money under that than they did on the average basis. The Company then readopted the 1903 tonnage basis.

As the time approached for the National strike which was called for April 1, 1906, the Company's management tried to arrange with the Union's officials to have the men continue at work and take care of the engine fuel trade. The Company offered to pay the 1903 scale, for which the Union's officials contended as the result of a modification of the demands of the United Mine Workers of America resultant upon the holding of the second 1906 Joint Interstate Convention between the miners and operators of the Central Competitive States. The Union's officials agreed to let the men employed at the Hitchman mine work under those conditions provided the Company did not mine any commercial coal and only took care of the railroad engine trade. But this permission was withdrawn afterwards and the men were ordered to quit work and did quit work on April 16, 1906. The men were out and the mine was idle until June 12, 1906. Before quitting work on April 16, 1906, the men employed at the mine tried to get permission from their officials to continue work loading engine coal, and explained that unless they were allowed to do so the B. & O. Railroad Company would haul in non-union coal and have it loaded into their engines from the Hitchman Company's tipple and bins. And in addition to that the Company's management notified these

Union officials that if they called the men out on strike the mine would not be run Union again.

While the Hitchman mine was still being kept idle, these same officials, through the defendant Sullivan, effected a settlement with the Lorain Coal & Dock Company, and coal was shipped from the Wheeling Creek mine near Bridgeport, Ohio, to the Hitchman mine and loaded over that Company's tipple and from that Company's bins into engines of the B. & O. R. R. Co. It was part of the Railroad Company's contract with the Hitchman Company that in case of strikes at the Hitchman mine, the Hitchman Company would load over its tipple and from its bins into the B. & O. engines such coal as the B. & O. R. R. Co. might furnish for that purpose. This coal came from the same mine that the defendant Lewis worked at, when working in the mine, at his home in Bridgeport, Ohio. In addition to that, the Lorain Coal & Dock Company was a party to and represented by the same person at the Joint Interstate Conventions held in 1906, 1908 and 1910 between the operators and miners of the States of the Central and Competitive Field, that the defendant Sullivan settled the strike with.

The Hitchman Coal & Coke Company was not a member of any operators' association and was not a party to any of these Joint Interstate Conventions.

The settlement of this strike so far as the Lorain Coal and Dock Company was concerned was made by the defendant Sullivan between May 16, 1906, and May 20, 1906, and on May 22, 1906, B. & O. Railroad cars were found at the Hitchman mine loaded with coal from the Wheeling Creek mine which was taken up over the tipple and loaded into engines of the B.

& O. Railroad Company from the bins of the Hitchman Coal & Coke Company. The National strike of 1906 was not really settled in Sub-District 5 of District 6 until at a Joint Convention of miners and operators which was held at Wheeling, July 24th, 25th, 26th and 27th, 1906, when a settlement was effected on the basis of the 1903 scale.

During the period of time the Hitchman mine had been run Union, that is from April, 1903, to April, 1906, the Company paid nearly $10,000.00 to the Union's officials as check-off.

When the strike of 1906 came the men expected to receive benefits. They were not paid the benefits they were entitled to, and this fact coupled with the knowledge that Union coal was being loaded into the B. & O. engines over the Hitchman Coal Company's tipple and from its bins, which was mined at the Wheeling Creek mine of the Lorain Coal & Dock Company, at Bridgeport, Ohio, Lewis's home, made them discontented and indignant. They resented the fact that their Union officials would allow the Lorain Coal & Dock Company's mines to operate and yet would not let the Hitchman mine run when its management had offered to pay the 1903 scale, the very scale the Union was contending for.

The 1906 strike cost the Hitchman Company $24,500.00, and together with $17,000.00 in 1904 and $7,242.00 in 1903, made a loss of $48,742.00 in the three years the mine was operated Union.

By June 12, 1906, the Union men who had struck under orders April 16, 1906, came to an agreement of their own with the management of the Hitchman Coal & Coke Company, and the mine resumed work non-union. It has been run so ever since, and is running so today. And

it is noteworthy that from the time the mine was opened up non-union in 1902 to April 1, 1903, when the mine started to run Union, there had been no strike of any kind, and that from June 12, 1906, to this date, or for more than the last eight years the mine has not lost a single day on account of labor trouble, and that all it has been threatened with has been that caused by the United Mine Workers of America in their efforts to reunionize plaintiff's men and mine and to re-assert their sway.

About the time, or shortly after the men started to work non-union at the Hitchman mine, the officials of the United Mine Workers of America came after and got the Charter they had issued to the Local when it was organized in 1903, and also got the seal. They wanted the money the Local had, but this was refused them, and they were told that the men at the Hitchman mine had paid the money into the Local treasury and that they were going to use it to get out a State Charter for an independent mine workers' organization. This plan was consummated and the record shows that on June 25, 1906, a Charter was issued by the Secretary of State of the State of West Virginia to the Independent Mine Workers of West Virginia.

The evidence establishes that beginning with June 12, 1906, the Company and its men entered into contracts whereby the men were to work non-union and the mine was to be run non-union, and that on this subject a memorandum employment card put into use in the Company's office on January 1, 1908, and used ever since and in use now is a correct statement of the agreement of employment entered into when the mine resumed work non-union June 12, 1906. The memorandum card is as follows:

"I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I

am not a member of the United Mine Workers of America and will not become so while an employe of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said Company, and agree that while I am in the employ of that Company that I will not make any efforts amongst its employes to bring about the unionizing of that mine against the Company's wish. I have either read the above, or heard the same read."

In this connection, plaintiff filed a list of 579 names of its employes who beginning with January 1, 1908, and down to March 8, 1911, had signed such cards, and submitted the cards themselves for verification. These cards still remain in the custody of the Clerk of the Court.

When the United Mine Workers of America held their National Convention in January, 1907, at Indianapolis, Indiana, they were confronted with a decreased membership, depleted funds and an interruption in the Joint Interstate Movement. They promptly, by Convention action, took steps to recover the lost ground. And the minutes of their proceedings show that they passed a resolution approving the enforced action of their officers in having largely withdrawn the organizing forces because of want of funds, but at the same time directed that work to be resumed as soon as the state of the Union's finances would warrant it. That Convention also instructed the International officers to negotiate with the operators of the Central Competitive Field for an interstate meeting to be held sometime prior to

the time of expiration of the contracts the Union then had, and a suitable length of time prior to April 1, 1908. These officers were also instructed to make a reasonable effort to secure the admission of all soft coal producing states desiring admission to the Joint Interstate Movement.

After months of work on the part of the Union, the 1908 Joint Interstate Convention was arranged for and subsequently held, but the operators from Illinois refused to participate. The miners from Illinois demanded admittance to that Convention, but were not admitted owing to the refusal of the operators from Western Pennsylvania, Ohio and Indiana to allow that unless the operators of Illinois could be induced to return. And it was then announced by the Union's officials that whatever agreement might be entered into at that Convention would have to be ratified by vote of the entire membership of the United Mine Workers. And the record shows that subsequently by a referendum vote of the entire membership of the United Mine Workers the two year contract negotiated at the 1908 Joint Interstate Convention was approved. And in addition an adjournment of that Convention was had until the first Tuesday in February, 1910, at 10 o'clock A. M., in the City of Toledo, Ohio. It was declared by that Convention that the Illinois operators and miners should be a part of the Central Competitive Joint Movement, and they were urged to become part of it, and to join in the next Joint Interstate Convention to be held in February, 1910.

Having seen that the National Convention of the United Mine Workers held in 1907 took steps to bring about the holding of a Joint Interstate Convention in 1908, for the same Central Competitive States, and also took steps to proceed with the organization of the non-union fields in accordance with previous plans to

suppress the competition the operators of the States composing the Central Competitive Field had been so long complaining of, let us now see what really was next done on that line. And at this point we will ask the Court's attention to the effect of this general attempt at organizing all non-union fields as it was applied to the Hitchman Coal & Coke Company.

When the Annual Convention of the United Mine Workers of Sub-District 5 of District No. 6 was held at Wheeling in March, 1907, the defendant Rankin made a report as Secretary-Treasurer in which he said:

"We have one mine at Bellaire, O., and five mines in the Panhandle District which I believe should be organized. I believe those mines can be organized, and in my opinion this Convention should adopt some plan to organize those mines."

The evidence shows that he referred to the Hitchman mine, the Glendale and the Richland, amongst the five.

The Convention then passed the following resolution:

"RESOLUTION NO. 8.

Whereas, There are mines in the Panhandle District and Ohio that are not organized, and believing every mine should be organized, be it

Resolved, By this Ninth Annual Convention that the Sub-District officers together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done."

The evidence also shows that the Hitchman mine, the Glendale and the Richland were amongst those intended to be affected by Resolution No. 8.

Pursuant to that action, the officers of District No. 6 and of Sub-District 5 of District No. 6 took up the question of organizing the non-union mines in the Panhandle

District, and some of these defendants as such officers visited the management of the Hitchman mine and held a conference at the office of the mine at the mine.

And other conferences were subsequently had in Wheeling. These officials stated plainly that they wanted to organize the men and mine again, and resume their former contract relations with the Hitchman Company. The management of the mine declined to entertain the suggestion and reminded them of the warning given prior to the time the men were called out on strike April 16, 1910, that the mine would not be run Union again if that strike was called. The officials finally asked that the question of reunionizing be submitted to the Company's Board of Directors. That was done; the Board of Directors refused to have anything whatever to do with the Union and these officials and this action was promptly made known to them. These dealings ran along into the summer of 1907, and as a result reports were put in circulation by the Union's officials that the mine was going to be unionized, and that unless the men joined the United Mine Workers they would soon be out of their jobs.

The evidence also shows that each year during the time intervening between the opening of lake navigation, usually about December first, coal is shipped from West Virginia, Pennsylvania and Ohio to Lake ports for shipment by vessel to points in the north and west, from which points it is then distributed to the trade and to consumers generally. During this period of time operators make every effort to increase their working force of miners so as to take care of what lake trade they can get. It is also in evidence that the Hitchman Company had a large lake tonnage contracted for in the summer and fall of 1907, and that the defendants were aware of that. And so with that information they sought to cripple that mine by circulating

reports that the mine was to be unionized. This deterred many miners from taking employment and also deterred the management of the Hitchman Company from hiring men indiscriminately for fear of the mine being filled with organizers.

The same persons who were the owners of the capital stock of the Hitchman Coal & Coke Company were the owners of another mine adjoining the property of the Hitchman Company. That mine was called the Glendale mine. It is so called and so owned now. The operation of that mine is managed from the office of the Hitchman Company by the same persons who manage the Hitchman mine. It was so in 1907.

Early in September, 1907, the defendant Thomas Hughes was sent by the officials of the United Mine Workers into the Panhandle District of West Virginia with instructions to organize the non-union mines, and compel them to recognize the Union or else be shut down. He visited the Hitchman mine, the Glendale and the Richland. As a result of his work, he succeeded in organizing the men at the Richland mine, and when the operator controlling that mine refused to recognize the Union Hughes shut the mine down. At the Glendale mine, Hughes succeeded in having twenty-two men join the Union and quit work. The loss of twenty-two men crippled that mine, but it still continued to operate non-union. At the Hitchman mine, Hughes, according to his statements, succeeded in having enough men agree to join the Union to enable him to unionize the mine, and he was about ready to shut it down, which he also stated he would do, if the management did not recognize the Union.

At this stage of the proceeding, the Hitchman Company, the Glendale Company and the Richland Company

applied to the Circuit Court of the United States for the Northern District of West Virginia for injunctive relief. And a similar restraining order was issued in each one of the three cases.

At the Hitchman mine so great had been the disturbance created by the attempt to organize the men there that with the number the Company could safely employ it was unable to fulfill its contracts for delivery of coal for the lake trade from its mine, and from ten to fifteen thousand tons of coal had to be bought elsewhere.

The evidence also establishes that prior to the time Hughes was sent to the Hitchman mine the officials of the United Mine Workers, defendants, had been made fully acquainted with the terms of the contractual relation existing between the Hitchman Coal & Coke Company and its employes; and it also appears that while Hughes was at the Hitchman mine trying to organize its men he also was informed of the same thing.

All of the defendants have that knowledge now.

In order to facilitate this application for certiorari to this Honorable Court, the said Circuit Court of Appeals on the very day on which it entered its final decree in this cause, to-wit, June 1, 1914, entered the following order: "It is ordered that the mandate of this Court in the above entitled cause, be, and the same is hereby stayed pending application of the appellee to the Supreme Court for a writ of certiorari, provided said application is made on or before October 13, 1914."

Your petitioner presents herewith as a part of this petition a brief containing an exposition of the questions of law involved, and a certified transcript of the entire record of said cause in said Circuit Court of Appeals, supplemented by the original documents heretofore described.

Wherefore your petitioner prays that a writ of certiorari issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, demanding said Court to certify and to send to this Court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of said Court of Appeals in this case, which was entitled in that Court, "John Mitchell *et al.*, Appellants *v.* Hitchman Coal and Coke Company, Appellee, In Equity, No. 1220," to the end that this cause may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem proper, and that said decree and judgment of the Circuit Court of Appeals may be reversed by this Honorable Court. Petitioner further prays that the transcript of the record on the appeal heretofore described as No. 617, be allowed to stand as a return to the writ of certiorari to be issued herein, the same containing all the essential papers and records for such submission and for such return. And your petitioner will ever pray.

HITCHMAN COAL & COKE COMPANY,
A CORPORATION, BY ITS COUNSEL,
GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Counsel and Solicitors for the Petitioner.

DISTRICT OF COLUMBIA }
City of Washington. } ss.

George R. E. Gilchrist being duly sworn, deposes and says that he is one of the counsel for said petitioner, Hitchman Coal & Coke Company, a corporation; that he joined in the preparation of the foregoing petition, and that the allegations thereof are true, as he verily believes; that in his opinion the petition is well founded as to matters of fact and as to matters of law, and that the case is such that the prayer in the petition should be granted by this Honorable Court.

GEORGE R. E. GILCHRIST.

Subscribed and sworn to before me this 8th day of September, 1914.

ISAAC R. HITT,
Notary Public, D. C.

[SEAL.]

My commission expires January 29, 1914.

I, Hannis Taylor, a member of the bar of this Honorable Court, hereby certify that I joined in the preparation of the foregoing petition for certiorari; that the same is not for the purpose of delay, and that in my opinion said petition is meritorious and well founded in law, and ought to be granted and the writ issue.

HANNIS TAYLOR,
Of Counsel.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

HITCHMAN COAL & COKE COMPANY, A CORPORATION,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*,
Respondents.

Comes now said petitioner, the Hitchman Coal and Coke Company, by its undersigned counsel, and moves this Honorable Court to require by writ of certiorari or other proper process directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, the said Court to certify to this Court for its review and determination a certain cause in said Court of Appeals lately pending, wherein the respondents, John Mitchell *et al.*, were Appellants, and your petitioner, the Hitchman Coal and Coke Company was Appellee; and to that end now presents herewith its petition, with a certified copy of the entire record in said cause as it is in said Circuit Court of Appeals, supplemented by the original documents heretofore described.

GEORGE R. E. GILCHRIST.
HANNIS TAYLOR,
Counsel for Petitioner.

ARGUMENT.

I.

WHY THE WRIT OF CERTIORARI SHOULD BE GRANTED IN THIS CASE.

It is well settled that this court will require a case to be certified by the Circuit Court of Appeals when the questions involved are of "*gravity and general importance*," affecting the interest of the nation in its internal or external relations; or in the interest of uniformity of decision. Ex parte Lau Ow Bew, 141 U. S. 583; The Conqueror, 166 U. S. 114; Forsythe *v.* Hammond, 166 U. S. 514; Montana Min. Co. *v.* St. Louis Min. and M. Co. 204 U. S. 204. No more conclusive evidence can be given of the "gravity and general importance" of the vital and far-reaching questions involved in this case than that contained in the extended and exhaustive discussions of them contained in the learned opinions delivered in the District Court and in the Circuit Court of Appeals. Judge Dayton opens his opinion with this statement:

> "On September 21, 1909, I filed a written opinion in this cause, reported in 172 Fed. 963. I there stated the purposes and objects of the bill and the proceedings had thereon and in the cause to that date. I do not, because of the necessary length of this opinion (99 printed pages), *made necessary by the gravity and importance of the questions involved*, deem it expedient to reiterate the statement of the case there made. * * * I have given several months' consideration and study to the questions involved. * * * In all these particulars these provisions violate the law guaranteeing under our free government, the rights of both the labor and capital involved and, further, *the rights of the public consuming* the product *of such labor and capital.*"

The Circuit Court of Appeals, speaking through Judge Pritchard, has said:

> "We fully appreciate the important bearing the questions here presented have upon the welfare of the mine owners, as well as the laboring men, and are not unmindful of the delicate issues raised by the pleadings and proof in this cause. * * * The most important and far-reaching question is raised by the assignment of error wherein it is insisted that the Court below erred in holding that the United Mine Workers of America and its subordinate branches constitute an unlawful organization under the constitution, the common law, and the statutory law of West Virginia. * * * While labor and capital are vitally interested in the proper solution of these questions, it should be remembered that the public is likewise interested, and in some instances, affected to a greater extent than either labor or capital on account of the disputes and law suits growing out of these matters. *Therefore, it may be properly said that these questions have a bearing upon the welfare of a large percentage of our people, and this is especially true as respect the coal industry.* For instance the suspension of the operation of coal mining in this country would in all probability result in a coal famine, which would, in a large measure, embarrass the manufacturers, to say nothing of the effect it would have upon the individual consumer, and all reasonable means should be employed to avert such a disaster. Therefore we deem it our duty to define the rights of the parties to this controversy in so far as we may under the facts of this case, so as to set at rest as many as possible of the vexatious questions that are a source of irritation, as well as productive of much litigation."

Can this court ask any more convincing evidence of the fact that this is a case of "gravity and general importance," in the highest sense of that term, in as much as

"the public is likewise interested, and in some instances affected to a greater extent than either labor or capital on account of the disputes and law suits growing out of these matters. Therefore, it may be properly said that these questions have a bearing upon the welfare of a large percentage of our people, and this is especially true as respects the coal industry." We respectfully submit that, apart from the testimony thus given by both of the lower Courts as to the "gravity and general importance" of the questions involved in this case, the Court will find from the following argument that a far-reaching question of federal law, touching the relations of capital and labor, is involved in this record which has never been passed upon by this Court.

II.

FIRST—THE WRONG.

We will argue the merits of this case by considering:

Under "The Wrong"—

(1) The plaintiff's rights.

(2) The defendants' rights.

(3) Salient points which differentiate the rights which the defendants claim from the rights which they really lawfully have.

(1) The Plaintiff's Rights.

We will sub-divide this into two heads:

(1) a. Is plaintiff's business legitimate?

(1) b. What are plaintiff's rights in the conduct of its business?

(1) a. Is Plaintiff's Business Legitimate?

Plaintiff's business of mining coal under contract with its employees that they will not join the union, and with a reciprocal contract on the part of plaintiff that it will run a non-union mine, is alleged in the bill, proved in the case, and constitutes the entire fact on the subject. But the parties differ as to the law upon such fact.

(1) b. What are Plaintiff's Rights in the Conduct of Its Business?

The plaintiff is engaged in a lawful industrial pursuit, and is conducting its lawful business in a lawful manner. As incident to this it has the right to employ labor and to make contracts in respect thereto, and these contracts may be made upon such terms as may be agreed upon by the parties.

There is no law in West Virginia which prevents plaintiff from contracting with its employes that they shall not become members of the United Mine Workers of America. Neither is there any law in West Virginia which provides that the plaintiff may not run its mine non-union.

(2) The Defendants' Rights.

We will sub-divide this into two heads:

(2) a. Are the defendants engaged in a legitimate business?

(2) b. What rights have the defendants in the conduct of their business?

(2) a. Are the Defendant's Engaged in a Legitimate Business?

Section 2 of Article 1 of the Constitution of District No. 6, United Mine Workers of America, in defining the objects of the United Mine Workers, says: "One of the

objects of this organization is to unite **all** employes in and around the coal mines of Ohio and the Panhandle District of West Virginia."

And Section 3 of Article 1 of the Constitution of Sub-District 5 of District No. 6, United Mine Workers of America, says: "*All men* are eligible and *must be members* of the United Mine Workers of America who work in and around the mines." (*Italics* in this and in quotations following are ours.)

The proceedings of the National Convention of the United Mine Workers held at Indianapolis, January 15–22, 1907, show that the organization had a membership of 230,667 in 1906; that its income for the fiscal year ending November 30, 1906, was $1,081,408.32; its expenditures for the same period were $1,232,994.01, and that its balance on hand December 1, 1906, was $337,960.71.

The same proceedings of that Convention show that it is claimed for the United Mine Workers of America, that it is the largest labor organization in America.

From the proceedings of the Convention of Sub-District 5 of District 6, United Mine Workers of America, which was held at Wheeling, March 14–19, 1907, it appears that the paid up membership of District No. 6, United Mine Workers of America, was in 1906, 36,372, and that on March 1, 1907, Sub-District 5 of District 6, United Mine Workers of America, had 108 locals in good standing and a paid up membership of 12,500.

Indicative of the purpose of the Union are the following declarations of officials or delegates at the National Convention held at Indianapolis, January 15–22, 1907.

Speaking of organizing West Virginia and the unorganized sections of Pennsylvania, the defendant, Lewis, said: "We will organize them by a strike movement." Another delegate in his address at the same Convention,

at the same time, said: "I agree with President Green and Vice-President Lewis that you never can get those men organized except at the end of a general strike, but I warn you not to go into it until you are thoroughly prepared." Another delegate in addressing the Convention, at the same time, in the same discussion, while recommending and explaining organization, said: "If we are able at a colliery to force all the men to become members of the Union we do so. If we are too weak, we do not attempt it, but keep gradually working among the men until we are able to accomplish our end." The defendant, John Mitchell, in addressing the Convention as President, said: "I believe it is possible, indeed I believe it is probable, that in the not distant future we will be able to inaugurate a movement in West Virginia and the other unorganized fields that will involve them in a strike, and then we will expect you to furnish the sinews of war, as you have done in the past, to keep these men in idleness." And he added, "If one year hence it is my judgment that a suspension of mining throughout the United States would be best, I will favor that policy."

Consider these Convention declarations in the light of the obligation of membership which is "As the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so."

The United Mine Workers of America have been before the courts, State and Federal, many times, in one way or another. But the lawfulness of the entire organization, described on the membership card "*United Mine Workers of America—one and indissoluble,*" has not been so specifically attacked, nor have that Union's unlawful purposes, its unlawful by-laws and its unlawful acts been so specifically shown as in this case now at the bar of this Court.

The Union's contentions and practices have, to a limited extent, from time to time, during some years past, been the subject of public discussion and condemnation, judicial and otherwise. But the case of United States *v.* Weber et al., 114 Fed. 950, is the only case which has come to our notice in which the United Mine Workers, as an organization, have been held to be unlawful *because they are organized for an unlawful purpose*—that is to say, to control all mining operations; hence to become and to be a monopoly in the supplying of labor in the coal mining industry. And this purpose has not been and is not now confined to bituminous coal, but embraces anthracite and all other kinds. Neither should it be overlooked that coal is one of the necessaries of life. Thus, with the enormous power which this organization has and wields, and in the enforcement of its varied and constantly enlarging demands, it periodically takes the operators by the throat, and to coerce them, it takes the country by the throat as well. The anthracite strike of 1902 is a sample. The contention then was for "recognition" of the Union, and inasmuch as the cause of controversy in this case now at the bar of this Court has for an underlying motive the same purpose, we will ask the Court to take judicial notice of the Anthracite Commission's Report, "Bulletin of the Department of Labor. No. 46. May, 1903."

That this Court may take judicial notice of that Report, we cite and rely upon Brown et al. *v.* Piper (1875), 1 Otto 37, 23 L. ed. 200, **201, 202,** in which it was held—

> "Among the things of which judicial notice is taken, are:
>
> "The law of nations; the general customs and usages of merchants; the notary's seal; things which must happen according to the laws of nature; the coincidences of the days of the week with those of

> the month; the meaning of words in the vernacular language; the customary abbreviations of Christian names; the accession of the Chief Magistrate to office and his leaving it. In this country, such notice is taken of the appointment of members of the cabinet, the election and resignation of senators," etc. The case of Hoyt et al. *v.* Russell (1886), 117 U. S. 401, 29 L. ed. **914, 915,** holds: "It is undoubtedly true that judicial notice is not taken of purely private concerns, when they are not connected with or necessarily involved in a matter of a public nature; but it is otherwise when they are so connected or involved."

In Ames et al. *v.* Union Pacific Railway Company et al., 62 Fed., on page 13, Judge Caldwell took judicial notice of facts disclosed by the report of the "Commission of the United States Pacific Railway Company," 1887.

While the Commission held that the question of the recognition of the United Mine Workers of America was not within the scope of the jurisdiction conferred upon it by the submission, it is said in the Report on page 487:

> "The Commission feels, however, that it is incumbent upon it to give some expression to its views on the general question. From the correspondence which passed between the coal operators and the officers of the United Mine Workers prior to the strike, and which has been cited under the heading, 'History and causes of the strike,' from the voluminous testimony presented during the hearing before the Commission, and from the arguments of counsel and others, with which the public hearings closed, the Commission is led to the conviction that the question of the recognition of the union and of dealing with the mine workers through their union was considered by both operators and miners to be one of the most important involved in the controversy which culminated in the strike."

The Report then deals in a general way with the purposes of the United Mine Workers.

> "The order, as its name implies, is an organization to membership in which all workers who 'produce or handle coal or coke in or around the mines' are eligible. It claims a jurisdiction co-extensive with the coal producing industry in America. Its purposes, as stated in its Constitution (which is printed in full on pages 629 to 640) is to unite the mine workers and 'ameliorate' their condition by methods of conciliation, arbitration or strikes."

The Commission disapproved of the Constitution of the United Mine Workers and said (page 491):

> "The present constitution of the United Mine Workers of America does not present the most inviting inducements to the operators to enter into contractual relations with it."

And, with respect to the settlement of grievances, which might be passed upon arbitrarily, and be finally disposed of by the Union's side, regardless of the other side, or of real justice, and with respect to strikes, which by similar arbitrary action, regardless of the other side of the controversy, and of real justice, might be declared by the Union, to the great and unnecessary damage of the employer, the Commission held that the principle of Article X of the Union's Constitution was wrong, as its application violated reasonable rules for the adjustment of difficulties between employers and employes wherein the grievance should be considered by the parties immediately concerned, to-wit, by the employer and his employe; while if the matter involved happened to be of great scope and too large to be so settled and adjusted by immediate dealings between the employes and employer,

that such grievance should be then referred to a higher power in the shape of one body to be made up of two other bodies representing the entire mining region affected by the decision of the question, the two bodies to be equally divided in numbers, representative of the employes on the one hand, and of the employers on the other hand, with a proviso that, upon their failing to agree, the question to be decided should then be referred to an umpire, whose decision should be final and binding in the premises.

Article X contained four sections, and sections 1, 3 and 4 of Article X of the present Constitution are quoted in the bill. On comparison they are found to be the same in 1907 as the Commission found and condemned them in 1902. Meanwhile, however, the United Mine Workers had reached out for more power and had created out of themselves a new and higher body, the International Union, and the word "International" therefore displaces the word "National" in those sections as they now exist. But the United Mine Workers stuck to their iniquitous provisions, and did not mend their ways.

The Commission, in making its decision, did not say whether the United Mine Workers were a lawful or an unlawful organization. All the Commission had before it on the question of the purpose of the Union to control all mining operations was embraced in Section 2 of Article 1, Constitution U. M. W. of A. Appendix F. Report, page 630. "The objects of this Union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes." But that language being equivocal, the intended monopoly could only be gathered, if at all, from a reading and due consideration of the Constitution, in its entirety, interpreted in the light of the Union's acts.

Section 2 of Article 1 of the present Constitution is the same as it was in 1902, but the question whether the United Mine Workers seek to be and are a monopoly is no longer debatable. The following constitutional provisions are before this Court:

> "One of the objects of this organization is to unite **all** employes in and around the coal mines of Ohio and the Panhandle District of West Virginia." Sec. 2, Art. 1, Const. Dist. No. 6, U. M. W. of A.
>
> "The object of this organization is to unite *the* mine employes of Belmont, Jefferson, Tuscarawas, Harrison and Carroll counties in Ohio, and that part of Stark county, south of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio and Marshall counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike." Sec. 2, Art. 1, Const. Sub-Dist. 5 of Dist. 6, U. M. W. of A.
>
> **"All** men are eligible and **must be members** of the U. M. W. of A. who work in and around the mines." Sec. 3, Art. I, Const. Sub-Dist. 5 of Dist. 6, U. M. W. of A.

Transposed, this last constitutional provision thus says:

> **"All men who work in and around the mines are eligible and must be members of the U. M. W. of A."**

The Commission, while not saying whether the Union was a lawful or an unlawful organization, did say, however, on page 490:

> "The Union must not undertake to assume, or to interfere with, the management of the business of the employer."

Yet read these constitutional provisions:

> "When it becomes necessary for a District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated." Sec. 2, Art. VIII, Const. Dist. 6, U. M. W. of A.
>
> "Any member of our organization working in or around the mine, working on idle days, or extra time, in violation of our Constitution, or agreements, shall be fined $2.50 for each offense." Sec. 15, Art. IX, Const. Dist. No. 6, U. M. W. of A., Sec. 3, Art. IX, Const. Sub-Dist. 5 of Dist 6, U. M. W. of A.

Strong light is thrown on these provisions and on the general design of the Union by the declaration as to the objects of the United Mine Workers of America contained in the excerpt from the proceedings of their Eighteenth Annual Convention held at Indianapolis, Indiana, January 15 to 22, 1907, which appears in the bill, and reads as follows:

> "Organized labor contends that as industry cannot exist without labor, labor has the right to say under what conditions it shall be employed, thereby dictating the management of the productive end of the business."

In connection with the thus openly acknowledged intention of the United Mine Workers of America as a national organization to dictate the management of the productive end of the coal business in this entire country, the provisions of the constitutions above quoted are living elements of, and confirm that Union's existence as, a monopoly at common law.

If the record thus made does not show an intention on the part of the national organization to control all coal mining in this country and to put into effect a "closed shop" in that industry, we are unable to comprehend the force of the English language.

At the foundation of the right of labor unions to exist there is the old common law which allowed the formation of guilds. But even guilds were regulated by statute in the early history of England. This was because they abused their power. And it came to pass that "combinations of laborers not connected with guilds were early made illegal, and the duty to labor and the settlement of the price of labor were made matters of public concern." 14 Ency. Laws of England, 2d Ed., London and Edinburgh, March, 1909, page 191, "Trades Unions." Hence, while it is correct to say that labor unions have the right to exist under the common law in West Virginia, they may exist for lawful purposes only, and they must not design, neither may they do, anything unlawful. In other words, no labor union in this state has any privilege over any other body of men or over any person, natural or corporate. It is not every labor union that violates the law, either in its purposes or in its practices. And the contention in the case now at the bar of this Court is not one whereby the right of labor unions to exist is questioned or will be determined. The question is, Are not the United Mine Workers of America an unlawful organization *because they have not been confined within proper bounds?* Their sphere of action is national. They aim to be and are a monopoly. And this monopoly they exercise in connection with the mining of coal, and coal is a necessity. It is true that coal is not, *per se*, a necessity in the same sense that air is, but to people living in the United States, situated as the United States

are, in the North Temperate Zone, coal *is* a necessity. As much so as grain is. And it is not material whether coal is or is not a necessity in the Torrid Zone. Hence, the United Mine Workers of America have given a public interest to their occupation and to their organization. So true is this that for years the United Mine Workers of America as an organization and their aims and practices have been matters of grave public concern. As witness the anthracite strike of 1902, the appointment of a national commission by President Roosevelt and its report. The periodical adjustment of the national scale and the public's consequent unrest at each recurring period are matters of common knowledge and of common dread. And so long as this organization exists, and so long as its field of endeavor is national and exclusive of all other organizations for the mining of coal, and so long as the exercise of its unlawful power remains uncurtailed and unrebuked, just so long will the welfare of this country, the industry of its people and their comfort in life be and remain under a standing menace.

The case of Lohse Patent Door Co. *v.* Fuelle et al. (Supreme Court of Missouri, Nov. 25, 1908, rehearing denied Dec. 23, 1908), 114 S. W. Rep. 997, is an interesting case on a number of points, not the least of which is the one holding that at common law personal service—an occupation—could not be the subject of a monopoly. Baldly put, that statement would seem to hold that labor unions by combining and becoming national, or if not a combination of many into one, then one organization, national in character, would be lawful.

Judge Woodson says, 114 S. W. 1002, 1003: "According to the allegations of the petition and admissions of the demurrer, the United Brotherhood of Carpenters and Joiners of the city of St. Louis, and the various other associa-

tions with which it affiliates, are composed of carpenters, joiners and other persons who do carpenter work and other labor in the construction of houses and other buildings in the city of St. Louis and throughout the country. It is alleged and admitted that the object and purpose of these associations is to shorten the hours of work and to increase the pay they are to receive for their labor. While it might be conceded that labor organizations might be proper subjects for legislative control and regulation, yet the legislature has not in its wisdom seen proper to do so; and at common law personal service—an occupation—could not be the subject of a monopoly. In discussing that question in the case of State ex rel. v. Associated Press, 159 Mo. loc. cit. 456, 60 S. W. 91, 104, 51 L. R. A. 151, 81 Am. St. Rep. 368, this court used this language: 'But there is nothing here on which a monopoly can attach. The business is one of mere personal service; an occupation. Unless there is 'property' to be 'affected with a public interest,' there is no basis laid for the fact or the charge of a monopoly.' The authorities seem to be uniform in holding that individuals have a perfect legal right to form labor organizations for the protection and promotion of the interests of the laboring classes and deny the power to enjoin the members of such organizations from peaceably withdrawing from the service of the employer. Wabash R. Co. v. Hannahan (C. C.), 121 Fed. 563; National Protective Asso. v. Cummings, 170 N. Y. 315, 63 N. E. 369, 58 L. R. A. 135, 88 Am. St. Rep. 648; Bowen v. Matheson, 14 Allen (Mass.), 499; Gray v. Building Trades Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477; Thomas v. Cin., etc., Ry. Co. (C. C.), 62 Fed. 803; Ames v. U. P. Ry. Co. (C. C.), 62 Fed. 7; Atchison, T. & St. F. Ry. Co. v. Gee (C. C.), 140 Fed. 153; Arthur v. Oakes, 63 Fed. 310,

11 C. C. A. 209, 25 L. R. A. 414. Many more adjudications of the same nature exist and might be cited, but as there is no conflict between the modern decisions upon this question, it would be a useless waste of time and labor to cite more. These decisions are based upon the law which permits every one to enter into any kind of a contract which has for its object and purpose the protection and promotion of the interest of the parties thereto, as well as the betterment of their condition in life, and that right to so contract is not curtailed or abridged if, perchance, the contract indirectly or incidentally operates in restraint of trade. We must therefore hold that the United Brotherhood of Carpenters and Joiners and their allied associations whom the defendants represent, are not unlawful combinations made and entered into in restraint of trade, but are legal and highly laudable *when confined within proper bounds.*"

Professor Stimson, in his recent work on Federal and State Constitutions of the United States, 1908, says on page 30: "Coming last to the liberty of labor or trade, it is the more important to trace the appearance of the great principles falling under this head, for the reason that they have been largely lost sight of in American jurisprudence. The frequent enactment of acts against trusts, monopolies or contracts in restraint of trade, both state and federal, show that our legislatures, if not our Bench and Bar, must have substantially forgotten the body of the common law, to say nothing of the course of English constitutional history upon these matters.

"For the broader understanding of the liberty right involves as well as the liberty of life and person, the liberty to support life and family. That is, to exercise one's labor freely and without control, to acquire possessions, to earn wages and to exercise one's faculties in any

lawful way, without competition by the State or any organism of the State and without restraint or hindrance by the government or by individuals. The extent of this right is the matter most discussed today, and therefore it is far the most important one to be considered. Closely connected with it is the right to private property, at least in so far as such property is the result of a man's labor, and the right to freedom of contract for such labor or in the exercise of such trade both as to reward or profits and conditions. There is probably no constitutional principle more often invaded by modern statutes than is this."

On page 38 Professor Stimson says: "The principle against monopoly or restraint of trade, though not expressed in any constitutional document, is quite as old as many that are, and may fairly be considered as part of the law of the land."

And on page 18 he says: "The right of liberty in trade or industry involves the notion of protection from any monopoly or any privilege even if granted by the State, as well as from any combination of guilds or other workmen."

Reverting to the case of Lohse Patent Door Co. *v.* Fuelle et al., 114 S. W. 997, we ask attention to two points. One of them is, that to be lawful at common law a labor union must be "confined within proper bounds." This principle applied prevents the lawful existence of a national organization which has for its purpose the suppressing of all competition in any given trade. That doctrine is the same that was applied in the case of Berry *v.* Donovan, 188 Mass. 353, and it is the same doctrine that was applied in the case of Jacobs, as President of the Protective Coat Tailors' and Pressers' Union, *v.*

Cohen et al., 183 N. Y. 207. The other point to which we call attention is Judge Woodson's reference to the doctrine of the Supreme Court of the United States announced in the case of Munn et al. v. The People of the State of Illinois (1876), 4 Otto 113 (94 U. S.), 24 L. Ed. 77. Judge Woodson held in Lohse Patent Door Co. v. Fuelle et al., that Munn's case did not apply to the United Brotherhood of Carpenters and Joiners and its allied similar associations, composed of carpenters, joiners and other persons, who do carpenter work and other labor in the construction of houses and other buildings in the city of St. Louis and throughout the country. A house is a convenience, but coal is a necessity. And a moment's consideration of the facts of this case now at the bar of this Court will show that the doctrine in the Munn case does apply to the United Mine Workers of America, the defendants in this case.

Mr. Chief Justice Waite, in rendering the opinion of the Court in the Munn case, held that a public interest may attach where property is put to a public use, and that the employer is then held to regulation by law. And the same opinion recognized that an employment may be of such a character as to be likewise invested with a public interest. For example, suppose a combination of all the growers of grain in this country. Will any one question that such a combination would be unlawful if, as a result, no one was allowed to raise grain unless he belonged to that union? And yet the United Mine Workers of America aim to let no one work in the mining of coal unless he belongs to their Union, and to let no operator mine coal unless under their jurisdiction and control.

Applying this to the case at bar the Court will take judicial notice of the fact that coal is a necessity; that it exists in different localities throughout the United States,

and that from climatic conditions it is essential that coal be mined and be furnished, not only with regularity, but at reasonable prices, and be obtainable, freely and at all times, in the common markets throughout our entire land. The Court will also take judicial notice of the frequent national strikes which have been called and enforced by this national organization. It will take judicial notice of the widespread discomfort and distress which these strikes have brought about and which they must of necessity continue to bring about so long as that power of that Union is permitted to exist and to be exercised in that way. It will be admitted that it would not be obnoxious to the rule in the Munn case for men engaged in mining coal to unite and form a labor union in any given locality for proper purposes and to conduct their union in a proper way. But a combination of all such unions into a national one to aim and do as the United Mine Workers of America aim and do would be obnoxious to the doctrine in the Munn case.

If all the coal operators in this country were to combine and say that no one could mine coal unless he worked for their combination, and that no one could buy coal unless he paid their price, how long would such a thing be tolerated? Yet the United Mine Workers of America have not only openly organized themselves into a monopoly to control the entire coal mining industry of this country, but they have undertaken to establish the "closed shop" and to deny a man the right to work at that occupation unless he is a member of their Union, and to deny the right of an employer to operate a coal mine unless he runs it Union, and they have gone further and said to the coal consuming public, the mining of coal shall be suspended throughout the entire land until we shall have our way.

And it is their claim that not only have they the right to form such an organization, not only have they the right when and as they will to declare national strikes, which bring about national suffering, but that that right to exist and that right to bring about that suffering and to paralyze the industries of this country are rights guaranteed to them as citizens of the United States. Why? How?

(2) b. What Rights Have the Defendants in the Conduct of Their Business?

We will sub-divide this into two heads:

(2) b. 1. If the United Mine Workers are an unlawful body.

(2) b. 2. If the United Mine Workers are a lawful body.

(2) b. 1. If the United Mine Workers Are An Unlawful Body?

If the United Mine Workers are an unlawful organization in professed design or in fact, then no act done in carrying out an unlawful design or in doing an unlawful act can be held to be lawful.

(2) b. 2. If the United Mine Workers are a Lawful Body.

We will sub-divide this into two heads:

(2) b. 2 x. Defendants' permissive rights.

(2) b. 2 y. Plaintiff's affirmative rights which explain, limit, or modify defendants' rights.

(2) b. 2x. Defendants' Permissive Rights.

We premise discussion of this point by calling attention to the fact that the defendants are officers of a Labor Union, and that they claim the right to organize plaintiff's

non-union mine. Unlike organizations which exist for religious and social advancement, many Labor Unions, and amongst them the United Mine Workers of America, while professing laudable purposes, have in fact purposes which are unlawful. In carrying out the various purposes of the Union some of which are lawful and others of which are unlawful, the defendants, as officers of the Union, do acts, some of which are entirely proper and others of which are entirely wrong. Imbued with the idea that certain of their acts are right, they affect to believe all of their acts are right. They forget or ignore the fact that a lawful act under one set of circumstances may become an unlawful act under a different set of circumstances. In such case, the motive is the controlling factor and determines the lawfulness or the unlawfulness of the act done.

In the present case, the real point at issue is, may the defendants, as officers of the United Mine Workers of America, organize plaintiff's non-union mine, and for the purpose of getting in position to organize that mine, may they send organizers amongst plaintiff's men and induce them to become members of the Union where it appears that the men employed by plaintiff are employed with an express agreement that they shall not join the United Mine Workers of America while in plaintiff's employ, and where it further appears that these defendants, as officers of the Union, have knowledge of these contracts plaintiff's men have made with it, and have knowledge of the additional fact alleged in the bill that plaintiff has contracted with each of its employees that while so employed the plaintiff will continue to run its mine non-union.

The propagation of the doctrines of religious and social bodies is in the main along the line of public meetings, to which the individual may resort on his own

initiative and of his own free will. In some instances, personal appeal by personal visitation is made. Labor Unions, while, under ordinary circumstances, entitled to use both methods, resort chiefly to organizers. The United Mine Workers of America depend upon organizers. Hughes is one of their organizers, and it was over his efforts, as such organizer, to unionize plaintiff's non-union mine, that the controversy in this case arose.

It is unusual to find Labor Unions insisting, *in Court*, upon their right to organize non-union men in breach of contracts the non-union men have with their employer. Yet such a case is presented here. Generally, organization is effected in a different way. A boycott of the employer's output is instituted, and, by that means, the non-union employer is brought to his knees through failure of the consumer to handle his product. But to boycott a certain manufacturer of hats is one thing, and to boycott the product of a certain coal mine is another thing. In the case of the boycotted hat, success is comparatively easy. In the case of the boycotted coal mine, success is well-nigh impossible. The reason is obvious. Men are markets for hats; railroads and manufactories are markets for coal. So, inasmuch as boycotting, in the customary phase of its application, is not available to defendants as a ready means of unionizing plaintiff's non-union mine, they make the claim that they should be given the right to send organizers amongst plaintiff's men and induce a breach of the contracts the men have with plaintiff, and compel plaintiff to breach its contracts with such of its employees as the defendants and their organizers may, after effort, have been unable to induce to join the Union. We claim that such a course is wrong for two reasons. It involves an intentional breach of contracts existing between third persons, with whom

defendants have no business or contractual relations whatever. And it really means to boycott the plaintiff, although in another form, by getting all men to refuse to work for plaintiff.

Therefore, in discussing the permissive rights of these defendants, engaged in running the United Mine Workers of America, in their efforts to increase the membership of the Union, and, particularly, in their efforts, in this case, to increase the membership of the Union through organizers, who undertake to bring about breaches of contracts existing between the employees and plaintiff, on the one side, and between the plaintiff and its employees on the other side, the permissive rights will not be interpreted to include the application of such rights to legitimating induced or enforced breaches of contract. Neither will the permissive rights herein spoken of be held to include the application of such rights in aid of the accomplishment of any unlawful purpose. Subject to the foregoing, now let us see what are the permissive rights of these defendants.

In the case of In re Higgins (C. C., N. D. Texas, 1886), 27 Fed. 443, 445, Judge Pardee said: "*Labor organizations* are lawful and generally laudable associations, but they have no legal *status* or authority, and *stand before men and the law on no better footing than other social organizations.*"

The Texas & Pacific Railway Company was in the hands of receivers appointed by Judge Pardee. The receivers had agents. These agents had discharged as incompetent, and for absence without leave, a certain employee, and refused to reinstate him at the demand of a secret labor organization which claimed that this discharge was in violation of an agreement forced upon the managers of the road prior to the receivership. There was

no complaint made to the receivers, or to the Court, by any employe, of bad treatment or insufficient wages or other grievances; and yet orders were issued from the secret organization to all their employes to quit work, to strike, to cripple the operations of the road; and many of the employes did quit, and induced and forced others to quit, and hindered and delayed the operation of the railway, and damaged the property in possession of the Court many thousands of dollars. Judge Pardee said of the reason assigned for the strike, that, if true, the reason was impertinent and that such demands could not be tolerated. He said further that the alleged reason was a mere scheme and pretense, and that the real motive for the order to strike was to compel a recognition of a certain secret labor organization (which, by evidence, had been shown to be about as arbitrary and autocratic in dealing with labor as the famous Six Companies of China) as an existing power, so that its officers should be consulted in the operation and management of railroads in which they do not own any interest, and of which they do not even pretend to be employes.

Along the same line of thought, Judge Brown in Old Dominion Steam-Ship Co. *v.* McKenna (C. C., S. D. New York, 1887), 30 Fed. 48, **50**, said: "*Associations have no more right to inflict injury upon others than individuals have. All combinations and associations designed to coerce workmen to become members, or to interfere with,* obstruct, vex, or annoy *them* in working, *or in obtaining work, because they are not members, or in order to induce them to become members;* or designed to prevent employers from making a just discrimination in the rate of wages paid to the skillful and to the unskillful; to the diligent and to the lazy; to the efficient and to the inefficient; and all associations designed to interfere with the perfect

freedom of employers in the proper management and control of their lawful business, or to dictate in any particular the terms upon which their business shall be conducted, by means of threats of injury or loss, by interference with their property or traffic, or with their lawful employment of other persons, or designed to abridge any of these rights,—*are pro tanto illegal combinations or associations;* and all acts done in furtherance of such intentions by such means, and accompanied by damage, are actionable." He cited many authorities.

In the case of Thomas v. Cincinnati, New Orleans & Texas Pacific Railway Company, In re Phelan (C. C., S. D. Ohio, W. D. 1894), 62 Fed. 803, **817**, Judge Taft said: "Now, it may be conceded in the outset that the employes of the receiver had the right to organize into or to join a labor union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together, they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities of the single employee may compel him to accept any terms offered him. The accumulation of a fund for the support of those who feel that the wages offered are below market prices is one of the legitimate objects of such an organization. They have the right to appoint officers who shall advise them as to the course to be taken by them in their relations with their employer. They may unite with other unions. The officers they appoint, or any other person to whom they choose to listen, may advise them as to the proper course to be taken by them in regard to their employment, or, if they choose to repose such authority in any one, may order them on pain of

expulsion from their union, peaceably to leave the employ of their employer because any of the terms of their employment are unsatisfactory."

In that case, Phelan was before the Court for contempt as a result of a conspiracy between himself and Debs and others to tie up the Cincinnati, New Orleans & Texas Pacific Railway which was in the hands of a receiver appointed by Judge Taft. The conspiracy consisted of an effort of the American Railway Union to compel the Pullman Company to comply with certain demands of the Pullman Company's employes, and in aid thereof to compel the receiver to abandon the hauling of Pullman cars, the Union going so far as to urge all of the members of the American Railway Union throughout the United States to make similar demands of the different railways throughout the country, or else leave the service of their employer. Phelan urged the employes to quit the service of the receiver and the other railroads of Cincinnati, and to tie them all up, and to prevent other persons from taking their places, by persuasion if possible, by clubbing if necessary.

The Pullman Company's employes were not members of the American Railway Union, and when the Pullman Company closed its works, rather than grant an increase of wages which the employes had demanded, the American Railway Union, which met in general convention shortly thereafter, took up the cudgel on behalf of the employes of the Pullman Company. The motive actuating the American Railway Union may have been sympathy, or it may have been to exhibit and magnify the power of the American Railway Union itself. Suffice it to say, the controversy was not between the employes and the receiver of the Cincinnati, New Orleans & Texas Pacific Railway, except so far as these employes, after

being incited to do so, adopted the quarrel of the Pullman Railway Company's employes as their own.

In restraining Phelan and others from inducing the receiver's employes to quit work and tie up the Cincinnati, New Orleans & Texas Pacific Railway until the receiver would agree not to carry Pullman cars in their trains, Judge Taft held that the action of the American Railway Union was wrong for two reasons; first, the American Railway Union was interfering with the contractual relations existing between the receiver and the Pullman Company for the hauling of Pullman cars, to which contractual relations the American Railway Union was a stranger. Hence, the Railway Union was an intermeddler. And second, by its course of action, the American Railway Union was engaged in a boycott. It was seeking to drive the Pullman Company out of business, unless that Company would accede to the demands of its employes. The American Railway Union had no contractual or other relations with the Pullman Company. The employes of the Pullman Company and the Pullman Company made their own contracts governing their own mutual relations. And to such contracts, the Railway Union was likewise a stranger.

Judge Taft further held: "*A malicious or unlawful interference with the business of another by inducing his employes to leave his service is an actionable wrong and subjects the offender to liability for the loss sustained.*" 62 Fed. 816.

In the case of Wabash Railroad Company *v.* Hannahan and others (C. C., E. D. Missouri, E. D. 1903), 121 Fed. 563, **568, 569,** Judge Adams said:

> "An employee has an unquestionable right to place a price and impose conditions upon his labor at the outset of his employment, or, unless restrained

by contract obligations, upon the continuance of his labor at any time thereafter; and, if the terms and conditions are not complied with by the employer, he has a clear right either not to engage or having engaged in his service to cease from work. What one may do all may do.

"They may seek and obtain counsel and advice concerning their rights, duties, and obligations in relation to their employer, and persons interested in their welfare may advise, aid, and assist them in securing such terms and conditions of service as will best subserve their interests, and what they may lawfully do singly or together they may organize and combine to accomplish.

"In like manner, as capital is combined for legitimate purposes, so labor may combine for legitimate purposes, but this right of combination, and the resulting right to strike or quit their employment, is *a weapon for the defense and protection of employees, and not a weapon of attack.* They may, by peaceful and lawful combination and concert of action, be able to so control the supply of labor as to compel the employer to come to their terms, *but they are not at liberty to make use of this weapon to otherwise interfere with or injure the employer or co-employe.* The clear line of demarkation, recognized by all the authorities, is that the lawful and permissible strike must not be attended by violence to or destruction of property or by other coercive measures intended to prevent the employer from securing other employees or otherwise carrying on his business according to his own judgment."

In that case, the Wabash Railroad Company sought to enjoin Hannahan, grand master of the Brotherhood of Locomotive Firemen, W. G. Lee, vice grand master of the Brotherhood of Railroad Trainmen, and officers and members of the joint protective board of the first-mentioned and of the general grievance committee of the

second-named order. The plaintiff claimed that the defendants were trying to unionize the Wabash road. The defendants denied this, and said that as officers they were acting at the request and by the authority of a large majority of plaintiff's employes, who were members of the two Brotherhoods, and they further said they were in good faith making an effort to better the condition of the men's service and to secure a higher rate of wages therefor; and that any strike which they were about to sanction was intended only for the purpose of peaceably asserting the rights which they demanded. Upon the bill, answers and affidavits, Judge Adams found that plaintiff had not proved that the defendants were engaged in trying to unionize the Wabash road, and further found that the defendants were representing employes of the Wabash road and that these employes were members of the orders, which were represented by the defendants, and further found that at the time there was a very general demand for an increase of wages and change in rules and conditions of service by employes of the Wabash road, and that this demand had been brought to the attention of the railroad company. Under those circumstances, Judge Adams refused to enjoin the defendants from ordering a strike of the members of their Brotherhoods who were then working for the Wabash road.

In his opinion, above quoted, Judge Adams gives expression to—"What one may do all may do," and "what they may lawfully do singly or together they may organize and combine to accomplish." This doctrine is taken from the case of Arthur v. Oakes (C. C. A., Seventh Circuit), 11 C. C. A. 209, 63 Fed. 310. And while the use Judge Adams makes of that doctrine in the sentences quoted was entirely proper in view of the facts of the case he was deciding and to the extent of his decision, that doctrine

as expressed in that and similar language has unfortunately been taken by Labor Unions to mean a *carte blanche*.

In the case of United States *v.* Debs et al., Union Trust Company *v.* Atchison, Topeka & Sante Fe Railroad Company (C. C., N. D. Illinois, 1894), 64 Fed. 724, **763,** Judge Woods said:

> "In the recent case of Arthur *v.* Oakes (C. C. A., 7th Circuit), 63 Fed. 310, it was decided, with my full concurrence in the opinion, that a court of equity will not, 'under any circumstances, by injunction, prevent one individual from quitting the personal service of another;' *and in respect to the right of employes, singly or in concert, to quit work, and of others to advise them on the subject,* there is no present necessity for adding to what was said in that case, further than to observe that *neither expressly nor by implication does the opinion there delivered lend the remotest sanction to the proposition asserted by one of the counsel for the defendants, that in free America every man has a right to abandon his position, for a good or a bad reason, and that another, for good or bad reason, may advise or persuade him to do so. Manifestly that is not true.* If it were, a servant might quit his place, and another might advise him to quit, in order to make way for the entry of thieves or burglars into the employer's house,—a suggestion at which simple minds revolt, and for which the acutest can invent neither justification nor apology. The rule is familiar in criminal jurisprudence that any act, however innocent in itself, becomes wrongful or criminal when done in furtherance of an unlawful design. But whether or not, in a particular case, an injunction will be appropriate, and to what extent it shall go if granted, will depend on other considerations than the mere wrongfulness or illegality of the act or conduct proposed to be enjoined. The right of men to strike peaceably, and the right to advise a peaceable strike, which the law does not presume to be impossible, is not questioned. But if men enter

into a conspiracy to do an unlawful thing, and, in order to accomplish their purpose, advise workmen to go upon a strike, knowing that violence and wrong will be the probable outcome, neither in law nor in morals can they escape responsibility."

In the case of Delaware, Lackawanna & Western Railroad Company *v.* Switchmen's Union of North America and others (C. C., W. D. New York, 1907), 158 Fed. 541, **543**, the rights of workmen are defined by Judge Hazel in the following language:

"That workmen may strike or quit their employment *ad libitum* is well recognized by all the authorities, and that they may do so singly or in concert, even though it be in violation of their service contract, has also been held. In Hopkins *v.* Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99, the principle is thus stated: 'The courts have invariably upheld the right of individuals to form labor organizations for the protection of the interests of the laboring classes, and have denied the power to enjoin the members of such associations from withdrawing peaceably from any service, either singly or in a body, even where such withdrawal involves a breach of contract.' And in Arthur *v.* Oakes, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, an earlier case, Mr. Justice Harlan, sitting in the Circuit Court of Appeals for the Seventh Circuit, and writing the opinion of the Court, says: 'Those employes having taken service, first with the company, and afterwards with the receivers, under a general contract of employment, which did not limit the exercise of the right to quit the service, their peaceable co-operation as the result of friendly argument, persuasion, or conference among themselves, in asserting the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal and criminal, although they may have so acted in the firm belief and expectation that a simultaneous

quitting without notice would temporarily inconvenience the receivers and the public.' The Court broadly held that the employes in good faith and peaceably had the right to leave the service of their employer, but *without injuring or interfering with the free action of others.* It follows, therefore, whenever a conspiracy is alleged that it must be shown that the intention of the conspirators was to inflict wrong upon the complainant, and *if the defendants* herein acting together *tried to have the employes break their contract, or urged them to leave the employ of the complainant, the court has power to interfere.*"

In the case of United States ex rel. Guaranty Trust Company of New York *v.* Haggerty et al. (C. C., N. D. West Virginia, 1902), 116 Fed. 510, **515, 516, 517,** Judge Jackson said:

"I do not question the right of the employes of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the same time I do not recognize the right of an employer to coerce the employes to continue their work when they desire to quit."

And again he said:

"While I recognize the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employes who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creat-

> ing dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people."

And again he said:

> "Their mission here is to foment trouble, create dissatisfaction among the employes in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers."

And again he said:

> "The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

In that case the defendants, Haggerty and others, all non-residents of West Virginia, came into the State as organizers for the United Mine Workers of America, and undertook to organize the mines of the Clarksburg Fuel Company. Their method was to induce employes who were not dissatisfied with the terms of their employment to strike, and the Court enjoined such methods on the ground that these organizers were actuated by a desire to inflict injury and damage upon the employers.

In the case of United States v. Weber et al. (C. C., W. D. Virginia, 1902), 114 Fed. 950, **953,** Judge McDowell said:

> "The right of the employes of the receivers to voluntarily join a union that has only legal purposes in view cannot be denied. Moreover, the right to induce, by legal methods and fair moral suasion, the

> employes of the receivers to join such an organization is not denied. But if the object of the union is illegal, or if the methods employed by it, either to induce acquisitions to its ranks or to accomplish its ulterior purposes, are illegal, it appears to be well settled that the persons who combine in such efforts are conspirators."

In that case, Judge McDowell, in treating of the legality of the motive actuating the United Mine Workers of America, who were at the time trying to organize certain mines in Virginia, which were in the hands of receivers appointed by the Federal Court, said:

> "In the first place, it is hardly open to serious question that the ultimate purpose of the union is not legal. This purpose is to secure control of mining operations, including those under the management of the receivers of this Court. Confessedly, control is desired for this purpose: If the union miners in some other State make complaint of grievance,—the justness of the complaint to be judged solely by the union,—the union will be in a position to enforce compliance with their demands by ordering and carrying into effect a general strike.
>
> "Can this Court rightfully surrender control of the works under its charge to the United Mine Workers? On authority it is clear that it cannot. See In re Higgins (C. C.) 27 Fed. 445; In re Wabash R. Co. (C. C.) 24 Fed. 217; In re Doolittle (C. C.) 23 Fed. 544; Thomas v. Railroad Co. (C. C.) 62 Fed. 803. On reason, also, it is equally clear."

In the case of In re Wabash Railroad Company (C. C., W. D. Missouri, 1885), 24 Fed. 217, **220,** Judge Krekel said:

> "Courts do not interfere between employer and employes, except to declare what the rights of the

parties are, and to keep order. Men may work or cease working as they choose, provided they violate no contract. They may combine and peaceably seek to forward their interest in any manner, provided they do no violence to others' rights, or commit no violation of law."

In the case of Curran v. Galen, President of Brewery Workingmen's Local Assembly et al. (1897), 152 N. Y. 33, 37 L. R. A. 802, 46 N. E. 297, the Court said (37 L. R. A. 804) Per Curiam—

"It is proper and praiseworthy, and perhaps falls within that general view of human society which perceives an underlying law that men should unite to achieve that which each by himself cannot achieve, or can achieve less readily. But *the social principle which justifies such organizations is departed from when they are so extended in their operations as either to intend or to accomplish injury to others.* Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper or to restrict that freedom, and, through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their positions and of deprivation of employment, then that purpose seems clearly unlawful, and militates against the spirit of our government and the nature of our institutions. The effectuation of such a purpose would conflict with that principle of public policy which prohibits monopolies and exclusive privileges."

In that case, Curran, who was an engineer by trade, was employed from day to day by the Miller Brewing Company and was earning a good income, and had con-

stant employment. There was a voluntary association in the City of Rochester, where he lived, called the Brewery Workingmen's Local Assembly, 1,796. It was composed of workingmen employed in the brewery business in Rochester, and was a branch of a national organization known as the Knights of Labor. Curran was solicited to join the union, but declined. He was then threatened that unless he joined and paid his initiation fee and subjected himself to the rules and regulations of the union, the union would obtain Curran's discharge from the employment he then had, and would make it impossible for him to obtain employment in Rochester or elsewhere. He still refused; then he was discharged. The Miller Brewing Company belonged to the Ale Brewers' Association of Rochester, and that association had an agreement with the union that no employe should work for a longer period than four weeks without becoming a member of the union. The defense put up was, that Curran was retained in the employ of the Miller Brewing Company for more than four weeks after he was notified of the provisions of the agreement, which required him to become a member of the union, and that upon his continued refusal to join the union, the defendants had simply notified the Miller Brewing Company of its contract, and thereupon Curran had been discharged.

In the opinion of the Court, this language appears—

> "The candid mind should shrink from the results of the operation of the principle contended for here; for there would certainly be a compulsion or a fettering of the individual glaringly at variance with that freedom in the pursuit of happiness which is believed to be guaranteed to all by the provisions of the fundamental law of the State. *The sympathies or the fellow feeling which, as a social principle, underlies the association of workingmen for their common benefit,*

are not consistent with a purpose to oppress the individual who prefers by single effort to gain his livelihood. If organization of workingmen is in line with good government, it is because it is intended as a legitimate instrumentality to promote the common good of its members. If it militates against the general public interest, if its powers are directed towards the repression of individual freedom, upon what principle shall it be justified?"

In the case of Iron Molders' Union No. 125 of Milwaukee, Wisconsin, *et al. v.* Allis-Chalmers Company (C. C. A. Seventh Circuit, 1908), 166 Fed. 45, the correlative rights and the correlative obligations of employer and employes when engaged in a strike or lockout are in the language of Judge Grosscup clearly and compactly set forth. That case was a strike case. The Allis-Chalmers Company employed foundrymen and other persons who were members of the Iron Molders' Union No. 125 and of the other defendant unions. Certain demands, including increased wages, were made by the employes through these unions, acting through a conference committee. The Allis-Chalmers Company increased the wages to an amount exceeding the sums demanded, but refused the other demands. Thereupon the employes struck. The bill states that the object of the strike was to control the employment of the molders' apprentices, handy men, superintendents, and assistant superintendents, and to prevent any such mechanics from working at their trade without first becoming members of the union. The bill averred that those apprentices were learning the molders' trade and that some of them had a long time and others had a short time to work. Section 16 of the decree (166 Fed. 48) relates solely to apprentices, and by the bill these apprentices had unfulfilled time contracts. But the language of the Appellate Court (166

Fed. 49, 50) in including "others" with apprentices would seem to indicate that that Court intended to extend to the Allis-Chalmers Company the protection of the Court's prohibition against persuasion to all persons employed by it to serve for a definite time, whether in fact such persons were, or were not, apprentices. The Allis-Chalmers Company then undertook to get other persons to take the place of the strikers, and the defendants alleged that in so doing the Allis-Chalmers Company was endeavoring to coerce the defendants to return to work, and that it had given out that it would not employ any of the defendants so long as they were members of the union. In this contest, the defendants resorted to persuasion to induce the new men to quit work and to induce men not to go to work. They also resorted to persuasion to induce persons under contract for a specific length of time to quit work, and they resorted to picketing. Having been enjoined by the lower court from doing these amongst other things (150 Fed. 155, **161**) an appeal was taken.

The Circuit Court of Appeals held that there was in that case a genuine struggle of labor by the employes of the Allis-Chalmers Company to obtain better terms and conditions from their employer, and that in such a struggle the rights of the contending sides were not only equal but mutual. The Court accordingly held that inasmuch as the Company was allowed to persuade men to take the places of their striking employes, therefore the striking employes had the right to persuade these men to quit working or to persuade others not to take the places of the strikers. This was on the ground of equality of rights. But the Court held that the strikers were not entitled to use persuasion to induce the Company's apprentices and others to break their contracts to serve

for definite times. And with reference to the last mentioned holding, the Court said:

> "And the reason, we believe, is quite plain. Each party to such a contract has a property interest in it. If either breaks it, he does a wrong, for which the other is entitled to a remedy. And whoever knowingly makes himself a party to a wrongful and injurious act becomes equally liable."

So that the Court adhered to the general doctrine that even in the case of a strike the strikers are not justified in bringing about a breach of contracts existing between their employer and third persons.

And owing to the fact that that suit was brought to protect the property rights of the Allis-Chalmers Company and that these property rights were alleged to be simply employments at will without other stipulation or agreement, save in the case of the apprentices who had unfulfilled terms of service, and save also as to any other employes with whom the Company had contracts to serve for definite times, the Court drew a distinction between the Company's rights with regard to its men who were employed at will and the Company's rights with regard to its men who were employed to serve for definite times, and held that contracts of service at will were not property rights superior to the rights of employes of the Company on strike for legitimate purposes, who had also been employes at will, where there still existed between the striking employe and his employer the peculiar relationship created by the existence of a strike or lockout, a strike or lockout, as to the employes who have not finally and in good faith abandoned their employment, being held by the Court not to completely terminate the relationship between the parties. It will be noticed that

the Appellate Court does not say that the *only* kind of a contract which will be protected is one for a definite length of time. The holding is, that a contract for a definite length of time *will be protected*. It will be borne in mind that an employer and an employe may contract with each other on any terms, in any way, and on any subject matter they please, so long as not contrary to law. And inasmuch as the making of the contract would create a property right in which each party has an interest, strikers would be precluded from bringing about a breach of such contracts. *A fortiori* would such contracts be protected against intermeddlers. It will not be forgotten that the Appellate Court, in that case, was dealing with a genuine labor struggle for lawful purposes, and that it was defining the rights of quasi employes. The defendants in that case were not simply intermeddlers. So for the purpose of defining the rights of strikers in such a case in the use of persuasion, the Appellate Court held that the incorporeal value of a going business, based upon the right to the continuing services of those who accepted employment at will until such services were terminated by the free act of one or the other party to the employment, does not constitute property for the purpose of injunctive relief. But it is nowhere suggested that *as against an intermeddler* an employer does not have a property right sufficient for injunctive relief, where he bases his right upon the *incorporeal value of a going business* and the further right to the continuing services of those who accept employment at will until such services are terminated by the free act of one or the other party to the employment. *A fortiori* where the value of the going business is further based on a successful struggle against a labor union, where the labor union interferes with the business of the employer by inducing its employes to join the union

and break contracts, which forbid them joining, and *where the Union is trying to resume its sway over the recalcitrant employer.*

Judge Grosscup recognized that there was some liability of misconstruction of the Court's opinion, and while concurring said:

> "The foregoing opinion so compactly and clearly sets forth the correlative rights and the correlative obligations of employer and employes when engaged in a strike or lockout, that it is with hesitation that I add this word: and I only add it that nothing that is contained in the opinion, may be construed to relate to the correlative rights and the correlative obligations of employer and employes in any relationship other than their somewhat anomalous relationship pending a strike or lockout.
>
> "A strike is cessation of work by employes in an effort to get for the employes more desirable terms. A lockout is a cessation of the furnishing of work to employes in an effort to get for the employer more desirable terms. Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties. The employes who remain to take part in the strike or weather the lockout do so that they may be ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree. Manifestly, then, pending a strike or lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employe that is neither that of the general relation of employer and employe, nor again that of employer looking among strangers for employes, or employes seeking from strangers employment. And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate

what we say from what might arise in cases where, neither strike nor lockout pending, persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employes not to take employment with given employers, upon which questions we do not, as I understand it, express any opinion."

Judge Grosscup's warning that the opinion of the Court in Iron Molders' Union v. Allis-Chalmers Company, 166 Fed. 45, is not to be construed to relate to the correlative rights and the correlative obligations of employer and employes in any relationship other than their somewhat anomalous relationship pending a strike or lockout, has manifest reference to the work of an intermeddler. And in this connection we want to call attention to Judge Grosscup's language In re Charge to Grand Jury (D. C., N. D. Illinois, 1894), 62 Fed. 828, **831, 832, 833:**

"I recognize, however, the right of labor to organize. Each man in America is a freeman, and, so long as he does not interfere with the rights of others, has the right to do with that which is his what he pleases. In the highest sense, a man's arm is his own, and, aside from contract relations, no one but he can direct when it shall be raised to work, or shall be dropped to rest. The individual option to work or to quit is the imperishable right of a freeman. But the raising and dropping of the arm is the result of a will that resides in the brain, and, much as we may desire that such wills should remain entirely independent, there is no mandate of law which prevents their association with others, and response to a higher will. The individual may feel himself, alone, unequal to cope with the conditions that confront him, or unable to comprehend the myriad of considerations that ought to control his conduct. He is entitled to the highest wage that the strategy of work or cessation

of work may bring, and the limitations upon his intelligence and opportunities may be such that he does not choose to stand upon his own perception of strategic or other conditions. His right to choose a leader, one who observes, thinks, and wills for him,—a brain skilled to observe his interest,—is no greater pretension than that which is recognized in every other department of industry. So far, and within reasonable limits, associations of this character are not only not unlawful, but are, in my judgment, beneficial, *when they do not restrain individual liberty*, and are under enlightened and conscientious leadership.

"*But they are subject to the same laws as other associations.* The leaders to whom are given the vast power of judging and acting for the members are simply, in that respect, their trustees. Their conduct must be judged, like that of other trustees, by the extent of their lawful authority, and the good faith with which they have executed it. *No man, in his individual right, can lawfully demand and insist upon conduct by others which will lead to an injury to a third person's lawful rights.* The railroads carrying the mails and interstate commerce have a right to the service of each of their employes until each lawfully chooses to quit; and any concerted action upon the part of others to demand or insist, under any effective penalty or threat, upon their quitting, to the injury of the mail service or the prompt transportation of interstate commerce, is a conspiracy, unless such demand or insistence is in pursuance of a lawful authority conferred upon them by the employes themselves, and is made in good faith in the execution of such authority. The demand and insistence under effective penalty or threat, and injury to the transportation of the mails or interstate commerce being proven, the burden falls upon those making the demand or insistence to show lawful authority and good faith in its execution.

"Let me illustrate: Twelve carpenters are engaged in building a house. Aside from contract regulations,

they each can quit at pleasure. A thirteenth and fourteenth man, strangers to them, by concerted threats of holding them up to public odium or private malice, induce them to quit, and leave the house unfinished. The latter in no sense represent the former or their wishes, but are simply interlopers for mischief, and are guilty of 'conspiracy against the employers of the carpenters. But if, upon a trial for such, it results that, instead of being strangers, they are the trustees, agents or leaders of the twelve, with full power to determine for them whether their wage is such that they ought to continue or quit, and that they have in good faith determined that question, they are not then, so far as the law goes, conspirators. But if it should further appear that the supposed authority was used, not in the interests of the twelve, but to further a personal ambition or malice of the two, it would no longer justify their conduct. Doing a thing under cloak of authority is not doing it with authority. The injury of the two to the employer, in such an instance, would only be aggravated by their treachery to the associated twelve, and both the employer and employes should, with equal insistence, ask for the visitation of the law.'

That *a distinction is to be and is made between* the mutual *rights* of employer and employe *where a strike or lockout exists*, on the one hand, *and where neither strike nor lockout exists*, on the other hand, is evidenced not only by the language of Judge Grosscup in the case of Iron Molders' Union No. 125 *et al. v.* Allis-Chalmers Company, 166 Fed. 52, 53, and from his language in his Charge to the Grand Jury, hereinbefore referred to (62 Fed. 831, 832, 833), but *in Illinois by legislative enactment* it was sought to divide employers arbitrarily into two classes, *one class* where a strike or lockout exists, and *another class where no* strike or lockout exists. Section 8 of the Act that was then in question before the Supreme Court of Illinois read—"In no case shall the superintendent of any free employment office created by this act furnish, or cause to be furnished, workmen

> or other employes to any applicant for help whose employes are at that time on strike, or locked out; nor shall any list of names and addresses of applicants for employment be shown to any employer whose employes are on strike or locked out; nor shall such list be exposed where it can be copied or used by an employer whose employes are on strike or locked out."

And in deciding the Act invalid, the Court said that that section was a provision

> "in aid of strikes and strikers, whether right or wrong, and regardless of the justice or the propriety of the strike or lockout." See Mathews *v.* People (1903), 202 Ill. 389, 63 L. R. A. 73, **76, 78, 79.**

Without undertaking to assign the reason for the difference as was done by the Court and by Judge Grosscup in deciding the case of Iron Molders' Union No. 125 *et al* *v.* Allis-Chalmers Company, 166 Fed. 45, Judge Goff in deciding the case of Mackall *v.* Ratchford *et al.* (C. C., D. West Virginia, 1897), 82 Fed. 41, **42,** said with respect to the right of persuasion:

> "The *strikers* had the right to quit work themselves, and *they* had the right to induce *other miners*, by peaceable means, by the persuasive force of public or private argument exerted in a lawful way, to also *quit work* and *join them.*"

In the case of Union Pacific Railway Company *v.* Ruef *et al.* (C. C., D. Nebraska, 1902), 120 Fed. 102, **114.** Judge McPherson said:

> "Defendants have the right to argue or discuss with the new employes the question whether the new employes should work for the company. They have the right to persuade them if they can. But

in presenting the matter they have no right to use force or violence. They have no right to terrorize or intimidate the new employes. The new employes have the right to come and go as they please, without fear or molestation, and without being compelled to discuss this or any other question, and without being guarded or picketed; and *persistent* and *continued* and *objectionable persuasion* by numbers *is* of itself *intimidating* and *not allowable*."

And it is to be remembered that persistent, continued and objectionable persuasion by one or by many as the United Mine Workers think best is what is sought to be legalized by these defendants.

In the same case, speaking of the right of freedom of contract between employer and employe, Judge McPherson held:

> "The law upholds and will protect the right of freedom of contract between employer and employe; the right of every person or corporation to hire and discharge men at pleasure, subject to liability for damages for breach of contract, and the right of every man to work or to quit work at his pleasure, subject to the same liability, making no distinction between union and non-union workmen."

In the same case (120 Fed. 113) Judge McPherson said:

> "The fifth amendment to the Constitution of the United States provides that 'no person shall be deprived of life, liberty or property without due process of law;' thereby meaning that neither congress nor any other governmental agency shall ever deprive any person of either liberty or property excepting by due process of law. And the fourteenth amendment to the Constitution of the United States provides that 'no state shall deprive any person of life, liberty or property without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.' And the word 'person' means also a corporation, as many times decided by the United States Supreme Court.

"And that one's business is his or its property is likewise elementary, and is conceded by all. And that liberty means the right to do as he pleases, when he interferes with the rights of no other person, and *the right to make contracts with all persons upon all subjects-matter, save and excepting with reference to immoral and unlawful matters, is also conceded by all who know anything of the propositions.* And as to what the rights of property mean, and of what liberty of contract consists, of all that has been written upon these all-important and most vital questions there is no paper of greater ability, evidencing more learning, than the very recent opinion of the supreme court of Wisconsin in the case of State *v.* Kreutzberg, 90 N. W., 1098."

In Goldfield Consolidated Mines Company *v.* Goldfield Miners' Union No. 220, *et al.* (C. C., D. Nevada, 1908), 159 Fed., 500, **514,** Judge Farrington said:

"*It is a constitutional right of an employer to refuse to have business relations with any person or with any labor organization,* and it is immaterial what his reasons are, whether good or bad, well or ill founded, or entirely trivial and whimsical."

On page 515 he further said:

"The right of master and servant to enter into contracts, to agree upon the terms and conditions under which the one will employ and the other will labor, is property."

And again on the same page he said:

"The right of an employer to refuse to employ any particular individual, or any class of individuals, is

neither greater nor less than the right of a man to refuse to work for any particular individual, or class of individuals. The reason for the refusal can in no wise control, enlarge, or diminish the legal right of refusal, the right to employ, or the right to refuse to be employed."

And he quotes approvingly 2 Cooley on Torts, p. 587, as follows:

"It is a part of every man's civil right that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. *It is also his right to have business relations with any one with whom he can make contracts.*"

And on the subject of persuasion, Judge Farrington said (page 519):

"Each party has the right to enter into lawful competition for the support of the non-union miners, and to endeavor by peaceful argument or persuasion to secure their co-operation, *provided*, the persuasion is of such a character as to leave the person solicited feeling free to do as he pleases, *and he is not persuaded to do that which in him would be unlawful.* This is so, because workmen, when free from contract obligations, have a legal right, singly, collectively, or as a union, to quit work; that is, to strike, and, having this right, they have the further right to use such lawful means to make the strike effective as are not inconsistent with the rights of others. Karges Furniture Co. *v.* Amalgamated Woodworkers' Union, 165 Ind., 421; 75 N. E., 877; 2 L. R. A. (N. S.), 788; 18 Am. & Eng. Ency. L. (2d Ed.), 88. The mining company has the right to employ non-union men to take the places vacated by those who quit work.

> The latter have no legal interest or concern in the contract between the company and its new employes. The places which they vacated to strike are no longer theirs, and never again will be theirs unless they are re-employed. It is difficult to see, when a man has voluntarily given up a job, how he can maintain that he has a shadow of claim or right to the vacated place. Union Pac. R. Co. v. Ruef (C. C.), 120 Fed., 102, 128."

We call attention to Judge Farrington's language that where the relationship of employer and employe has been finally terminated, the striker has nothing to do with the contract the employer may make with his new employe. The Allis-Chalmers Company case (166 Fed., 45) deals with the rights of strikers, and the right of the strikers to use persuasion is permitted by Judge Grosscup owing to the anomalous relationship still existing between the employer and the employe, resultant upon a pending strike. Judge Grosscup himself, however, recognizes that the striker's right to persuade ceases when the striker finally terminates his relationship with his employer.

In Adams v. Brenan, *et al.* (1895), 157 Ill., 194; 42 L. R. A., 718, the Supreme Court of Illinois held:

> "A provision that none but union labor shall be employed cannot be lawfully made in a contract by a public corporation, such as a board of education, as it constitutes a discrimination between different classes of citizens, and is of such a nature as to restrict competition and to increase the cost of the work."

Per contra: Only non union labor could not be so employed.

And Judge Cartwright, in delivering the opinion of the Court in that case, said:

> "No question concerning the merits of labor or trades unions is in any way involved in this case. The right of organization for mutual benefit in all

> lawful ways is not denied. The question is whether the board of education has a right to enter into a combination with such an organization for the expenditure of the taxpayers' money for the benefit of members of the organization, and to exclude any portion of the citizens following lawful trades and occupations from the right to labor. It has no such right."

In the case of Jacobs, as President of the Protective Coat Tailors' & Pressers' Union, *v.* Cohen *et al.* (1905), 183 N. Y. 207, 76 N. E. 5, 2 L. R. A. (N. S.) 292, the New York Court of Appeals held that a contract by a manufacturer to employ as laborers none but members of a particular labor union is not void as against public policy.

Per contra: A like contract to employ only non-union men is lawful.

But the labor union itself would be unlawful if as a combination it extends so far as to inflict injury upon others, or to oppress and crush them by excluding them from all employment, unless gained through joining the labor organization or trades union. Id. 2. L. R. A. (N. S.) 294. And if such a labor union, rendered unlawful for such reasons, were to become subject to the Anti-Trust Law owing to its interference with interstate commerce engaged in by employers with whom the union might be strong enough to compel a contract for the employment of necessary labor whereby to enable the employer to embark in business, or if already in business, then to enable him to continue therein, any such contract to employ only members of that particular union would be unlawful and could not be enforced under the authority of the case of Continental Wall Paper Company *v.* Louis Voight & Sons Company, decided by the Supreme Court

of the United States, February 1, 1909, 212 U. S., 227, 53 L. Ed., 486, 29 S. C., 280.

In the case of State of Missouri *v.* Julow (1895), 129 Mo., 163, 31 S. W. 781, 29 L. R. A. 257, the Supreme Court of Missouri decided that a right to insist that employees shall withdraw from or refrain from joining any trade union or labor union as a condition of employment or continued employment, *is within the constitutional rights of an employer.*

In the case of Gillepsie *v.* People of the State of Illinois (1900), 188 Ill. 176, 52 L. R. A. 283, the Supreme Court held a statute void which made it unlawful to prevent or attempt to prevent, an employee from joining any lawful labor organization, or to discharge an employe because of his connection with such an organization, and providing a penalty therefor, since the right to terminate a contract, subject to liability to respond in a civil action for an unwarranted termination, is within the protection of the provisions of the State and Federal Constitutions, which guarantee that no person shall be deprived of life, liberty or property without due process of law. The Court held that there was an unconstitutional discrimination in favor of union workmen.

In the case of State *v.* Kreutzberg (1902), 114 Wis. 530, 90 N. W. 1098, 58 L. R. A. 748, the Supreme Court of Wisconsin held that a statute forbidding, under penalty, an employer from discharging an employe because he is a member of a labor organization, violates the constitutional guaranty of liberty.

Speaking of the constitutional rights of life, liberty and property, Judge Dodge, delivering the opinion of the Court, said (58 L. R. A. 753, 754):

> "Free will in making private contracts and even in greater degree in refusing to make them, is one of

the most important and sacred of the individual rights intended to be protected. That the present act curtails it directly, seriously, and prejudicially, cannot be doubted. The success in life of the employer depends on the efficiency, fidelity, and loyalty of his employes. Without enlarging upon or debating the relative advantages or disadvantages of the labor union, either to its members or to the community at large, *it is axiomatic that an employer cannot have undivided fidelity, loyalty and devotion to his interests from an employe who has given to an association right to control his conduct.* He may by its decisions be required to limit the amount of his daily product. He may be restrained from teaching his art to others. He may be forbidden to work in association with other men whose service the employer desires. He may not be at liberty to work with such machines or upon such materials or products as the employer deems essential to his success. In all these respects he may be disabled from the full degree of usefulness attributable to the same abilities in another who had not yielded up to an association any right to restrain his freedom of will and exertion in his employer's behalf according to the latter's wishes. Such considerations an employer has a right to deem valid reasons for preferring not to jeopardize his success by employing members of organizations. A man who has by agreement or otherwise shackled any of his faculties—even his freedom of will—may well be considered less useful or less desirable by some employers than if free and untrammeled. Whether the workman can find in his membership in such organizations advantages and compensations to offset his lessened desirability in the industrial market is a question each must decide for himself. His right to freedom in so doing is of the same grade and sacredness as that of the employer to consent or refuse to employ him according to the decision he makes. We must not forget that *our government is founded on the idea of equality of all individuals before the law.* Such restraints as may be placed on one

may be placed on another. If the liberty of the employer to contract or refuse to contract may be denied, so may that of the employe. In answering the question now before us, we may not forget the possibility of being called on to answer whether the legislature may make a criminal of the employe who quits, for example, because his employer joins a blacklisting association; because non-union men or members of some other union are employed, or non-union or forbidden machines or materials are used; because of an obnoxious foreman; because excessive hours of work are required; because compelled to trade at employer's store or board at his boarding house; or because of any other fact or conduct now considered entirely adequate reason for refusing or leaving a particular service. It must not be forgotten, if, as counsel for the state argues, the laborer is too weak to meet the employer on equal terms in the field of contract, that he will be far more subject to the latter's control and oppression in the field of politics, and that laws of the above character will surely come, if within the proper province of the legislature, unless, as we have faith to believe, *the character and the individuality of the wage earners of the country are sufficient to maintain their independence—both contractual and political—in a field of equal rights under the law, and of full liberty to each to sell and buy labor to and from whom he will.*"

In the case of Coffeyville Vitrified Brick & Tile Company *v.* Perry (1904), 69 Kan. 297, 76 Pac. 848, 66 L. R. A. 185, 187, 188, the Supreme Court of Kansas held that a statute which makes it unlawful to discharge an employe because he belongs to a lawful labor organization, and which provides for the recovery of damages for such discharge, is void. The right to terminate a contract is within the protection of the State and Federal Constitutions, which guarantee to every citizen the protection of life, liberty, and property.

The Coffeyville Vitrified Brick & Tile Company was a corporation engaged in manufacturing brick. It discharged Perry, one of its employes, and he brought suit under the statute. He claimed he had been discharged because he was a member of a labor organization. In holding the statute unconstitutional, Judge Greene, who delivered the opinion of the Court, said:

> "The right to follow any lawful vocation, and to make contracts, is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will; he may not only select his employer, but his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the employer and the employe are equal. Any act of the legislature that would undertake to impose on an employer the obligation of keeping one in his service whom, for any reason, he does not desire, would be a denial of his constitutional right to make and terminate contracts and to acquire and hold property. Equally so would be an act the provisions of which were intended to require one to remain in the service of another whom he did not desire to serve."

Judge Green also said:

> "The business conducted by the defendant was its property, and in the exercise of this ownership it is protected by the Constitution. It could abandon or discontinue its operation at pleasure. It had

> the right, beyond the possibility of legislative interference, to make any contract with reference thereto not in violation of law. In the operation of its property it may employ such persons as are desirable, and discharge without reason those who are undesirable. It is at liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restrictions can be imposed upon the lawful exercise of these rights."

In the case of People of the State of New York *v.* Marcus (1906), 185 N. Y. 257, 77 N. E. 1073, 7 L. R. A. (N. S.) 282, the New York Court of Appeals decided that a statute forbidding an employer to exact an agreement from an employe not to join a labor union infringes his constitutional rights of liberty.

Per contra: To exact an agreement not to join a union is lawful.

And a *fortiori*, to join a particular union which is hostile to the employer.

In the case of Delz *v.* Winfree (1891), 80 Texas 400, 26 Am. St. Rep. 755, the Supreme Court of Texas held:

> "The absolute right of a person to refuse to have business relations with any person whomsoever, whether the refusal is based upon reason or is the result of whim, caprice, prejudice, or malice, must be limited to the individual action of the party who asserts the right. *It is not equally true that one person may from such motives influence another person to do the same thing.*"

In the case of State *v.* Glidden (1887), 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23, "An information alleged that the defendants conspired to threaten and use means (the boycott) to intimidate the Carrington Publishing Company, to compel it, against its will, to abstain from

doing an act (to keep in its employ workmen of its own choice) which it had a legal right to do, and to do an act (employ the defendants and such persons as they should name) which it had a legal right to abstain from doing: held, that, looking at the transaction as it appeared on the face of the information, the defendants' purpose was to deprive the publishing company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendants; the motive was to gain an advantage unjustly and at the expense of others, and therefore the act was legally corrupt; and as a means of accomplishing the purpose, the parties intended to harm the publishing company, and therefore it was malicious."

In the case of O'Brien *v.* People (1905), 216 Ill. 354, 75 N. E. 108, 3 A. & E. Ann. Cas. 966, 108 Am. St. Rep. 219, 220, 221, the Supreme Court of Illinois held that:

> "*No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business*, and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his business through certain agencies, or by a particular class of employes is not only unlawful and actionable, but is also an interference with the exercise of the highest civil right."

And it was also held in that case that "An attempt to coerce a person to sign an agreement to conduct his business by employing only members of a labor union, under a threat of ordering a strike, is unlawful, and such an agreement is voidable for duress, and is violative of the legal rights of both the employer and the non-union employe." And "The right to enter into contracts for labor, or to labor, is both a liberty, and a property right."

Now a labor union may force itself upon a non-union employer in several ways. It may resort to the primary boycott, or to the secondary boycott. And either the primary or the secondary boycott may be of the non-union product. If, of a coal operator, the primary boycott of the product is attempted, it would be of little avail as a coercive measure because the individual consumer of coal is a small factor. For like reason, a secondary boycott of the coal would be ineffective. But the primary boycott through the coal operator's labor supply is entirely possible if all men can be gotten to join the Union. Much more so may the secondary boycott be made effective through the coal operator's labor supply, for in such case, while the Union's membership and power may not be at high tide throughout the entire country, or in its greatest field of its endeavor, it might be all powerful in the particular locality where the recalcitrant operator is located. Therefore, the United Mine Workers of America seek to have, and to require, all men working in or around *every* mine to join their Union, for a monopoly of supply makes the primary as well as the secondary boycott possible, inasmuch as the scale must then be signed with the Union. So, inducing non-union men to join the Union illustrates that situation in the creation of monopolies where the doing of an act, otherwise lawful, becomes unlawful because done to promote an unlawful end. Note the significance of the following provisions:

> "One of the objects of this organization is to unite *all* employees in and around the coal mines of Ohio and the Panhandle District of West Virginia."—Section 2 of Article I, Constitution of District No. 6, United Mine Workers of America.
>
> "*All* men are eligible and *must be members* of the United Mine Workers of America who work in and around the mines."—Section 3 of Article I, Constitu-

tion of Sub-District 5 of District 6, United Mine Workers of America.

"As the mine workers of the entire country are competitors in the labor world, *I promise to cease work at any time I am called upon by the organization to do so.*"—Obligation of Membership, United Mine Workers of America.

But to effectuate the secondary boycott through plaintiff's labor supply, the United Mine Workers must get, not only **all** men to join the Union, but *with all men must be included plaintiff's employes.* In getting plaintiff's employes to join the Union, the defendants *must interfere* with the contractual relations existing between plaintiff and its employes, which forbid the men joining that Union. Hence, a double wrong is done in the present effort of the United Mine Workers to force themselves into contractual relations with plaintiff, which does not want, and has repeatedly refused to have, anything whatever to do with them.

In the case of Martell *v.* White, *et al.* (1904), 185 Mass. 255, 69 N. E. 1085, 64 L. R. A. 260, **262,** the Supreme Judicial Court of Massachusetts held that an action will lie on behalf of a quarry owner against members of a voluntary association of dealers in stone of which he is not a member who enforce a by-law of the association imposing a fine upon members who deal with those who are not members, so that members who desire to deal with non-members are coerced from doing so, to the ruination of the business of the quarry owner.

In deciding this case, Judge Hammond, who delivered the opinion of the Court, said

"It is elemental that the unlawfulness of a conspiracy may be found either in the end sought, or the means to be used. If either is unlawful, within

the meaning of the term as applied to the subject, then the conspiracy is unlawful. It becomes necessary, therefore, to examine into the nature of the conspiracy in this case, both as to the object sought and the means used."

"The case presents one phase of a general subject which gravely concerns the interests of the business world, and, indeed, those of all organized society, and which in recent years has demanded and received great consideration in the Courts and elsewhere. Much remains to be done to clear the atmosphere, but some things, at least, appear to have been settled; and certainly at this stage of the judicial inquiry *it cannot be necessary to enter upon a course of reasoning or to cite authorities in support of the proposition that, while a person must submit to competition, he has the right to be protected from malicious interference with his business.*"

In another place, Judge Hammond said:

"The justification must be as broad as the act, and must cover, not only the motive and the purpose, or, in other words, the object sought, but also the means used.

"The defendants contend that, both as to object and means, they are justified by the law applicable to business competition. In considering this defense it is to be remembered, as was said by Bowen, L. J., in Mogul S. S. Co. *v.* McGregor, L. R. 23 Q. B. Div. 598, 611, that there is presented 'an apparent conflict or antinomy between two rights that are equally regarded by the law,—the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of the defendants to carry on their business as seems best to them, provided they commit no wrong to others.' Here, as in most cases where there is a conflict between two important principles, either of which is sound, and to be sustained within proper bounds, but each of which must finally yield,

to some extent, to the other, it frequently is not possible by a general formula to mark out the dividing line with reference to every conceivable case, and it is not wise to attempt it. The best and only practicable course is to consider the cases as they arise, and, bearing in mind the grounds upon which the soundness of each principle is supposed to rest, by a process of elimination and comparison to establish points through which, at least, the line must run, and beyond which the party charged with trespass shall not be allowed to go."

The case of Swift & Company, *et al. v.* United States (1905), 196 U. S. 375, 49 L. ed. 518, **524,** 25 S. C. 276, illustrates the use of expedients lawful in themselves, which become unlawful by reason of the thing to be accomplished. Swift & Company *et al.*, controlled about six-tenths of the whole trade and commerce in fresh meats among the states, territories, and District of Columbia, and, but for the acts charged would have been in free competition with one another. In order to restrain competition among themselves as to the purchase of live stock, defendants required their respective purchasing agents at the stock yards to refrain from bidding against each other, except perfunctorily and without good faith. By this means they compelled the owners of stock to sell at less prices than they would have received if the bidding had been really competitive. And to induce stock owners in other states to make large shipments to the stock yards, they, the defendants, combined to bid up, through their agents, the prices of live stock for a few days at a time, so that the market reports would show prices much higher than the state of the trade would warrant. Following such a maneuver, the stock owners would send in their stock and then the defendants would apply the other rule and the buyers would bid only perfunctorily and without

good faith, and the stock would then be bought in at much less prices than it would otherwise have brought had the bidding really been competitive.

The act of the bidding whether high or low was within the right of each defendant, but the wrongfulness consisted in the use to which that right was put. It was contended that such a scheme was within the law against unlawful restraints of trade and monopolies, and Mr. Justice Holmes, delivering the opinion of the Court, said:

> "The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aiken *v.* Wisconsin, 195 U. S. 194, 206, ante, 154, 25 Sup. Ct. Rep. 3. The statute gives this proceeding against combinations in restraint of commerce among the states and against attempts to monopolize the same. Intent is almost essential to such a combination, and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent,—for instance, the monopoly,—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. Com. *v.* Peaslee, 177 Mass. 267, 272, 59 N. E. 55. But when that intent and the consequent dangerous probability exist, *this statute*, like many others, and *like the common law* in some cases, *directs itself against that dangerous probability as well as against the completed result.*"

(2) b. 2 y. PLAINTIFF'S AFFIRMATIVE RIGHTS WHICH EXPLAIN, LIMIT, OR MODIFY DEFENDANTS' RIGHTS.

Inducing or procuring another to break his contract is an actionable wrong unless there be sufficient justification for the interference.

On this point, we call the Court's attention to the following cases:

Lumley v. Gye (1853). 2 E. & B. 216. 1 E. R. C. 706, Subscription Edition May, 1905.
Simpson's Cases on Torts, 1908, p. 329.

Lumley was the lessee and manager of the Queen's Theater in London, and he contracted with Johanna Wagner to perform in his theater for a certain time, with a condition, amongst others, that she should not sing nor use her talents elsewhere during the term without plaintiff's consent in writing; yet the defendant knowing of this, and while the agreement was in force and before the expiration of the term enticed and procured Wagner to refuse to perform; by means of which enticement and procurement, Wagner wrongfully refused to perform and did not perform during the term.

The above constitutes the substance of the first two counts of the declaration. The third count differs from the first two, in that it sets out that Wagner was really performing in the theater for reward to her, and that the defendant had maliciously procured her to depart out of plaintiff's employment, whereby she did depart out of the employment and service of plaintiff, whereby damage was suffered by the plaintiff.

Each count in the declaration alleged special damage. There was a demurrer and joinder. The Court in Lumley v. Gye laid down this rule:

> "Where there is a contract between two persons for exclusive personal service to be rendered by the

one to the other, an action lies against a third person (not a party to the contract, who intentionally induces the former party to break his contract so as to cause, as the natural consequence of the breach, loss to the other."

An effort was made in Lumley v. Gye to show that the proposition laid down by the Court would not apply, because it was claimed that the relation of master and servant in the strict sense did not exist between plaintiff and Wagner, and that the law as to enticing servants was contrary to the general rule and principle of law, and anomalous, and probably had its origin from the state of society when serfdom existed, and was founded upon, or upon the equity of, the Statute of Laborers.

The Court rejected that contention, and announced the rule above stated.

Bowen v. Hall (1891). 6 Q. B. D. 333. (s. c. 50 L. J. Q. B. 305). 1 E. R. C. 717, Id. ed.

Bowen carried on the business of brickmaker, near Stourbridge, England. He made a contract with one of the defendants, Pearson by name, under which Pearson agreed and undertook, for the consideration of certain prices named in the contract, to find all labor for the whole manufacture in a workman-like manner, of best quality white-glazed bricks and baths (with exception of hooping the baths and preparing the clay mass) in such quantities as Bowen might require, and when Bowen might require, and to deliver anywhere they might be required on plaintiff's premises, the quality to be equal to sample supplied, and the prices to be subject to the standard prices of the trade for the manufacture of the same.

The contract contains a somewhat extended scale, covering the different articles of manufacture.

Pearson agreed not to engage himself to any one else for a term of five years, and Bowen, on his part, agreed not to engage any one else for the same work for a term of five years.

It will be noticed that the contract for five years on the part of Pearson and Bowen was negative in each instance.

Pearson did not agree to work for Bowen for five years. He only agreed not to work for any one else for a term of five years. Bowen did not agree to employ Pearson for five years. He only agreed that he would not engage any one else for the same work for a term of five years. The contract bore date June 18, 1877, and in May, 1878, the defendants, Hall and Fletcher, Fletcher being Hall's manager, wrongfully induced Pearson, contrary to his agreement with plaintiff, to depart from the exclusive service of plaintiff, and to manufacture on account of the defendant Hall glazed bricks and baths such as he had contracted to manufacture for the plaintiff.

Plaintiff sued Hall and Fletcher for damages, and claimed an injunction to restrain them from employing Pearson, and also claimed an injunction to restrain Pearson from engaging himself to Hall and Fletcher until the expiration of his contract of service with plaintiff.

It was held that the doctrine announced in Lumley *v.* Gye, *supra*, applied, and that an action would lie against the defendants, Hall and Fletcher, for wrongfully enticing away and keeping the other defendant, Pearson, from plaintiff's employment, and for wrongfully receiving and harboring him after notice of his being the servant of the plaintiff, and as against the said defendant Pearson for unlawfully and against the will of the plaintiff departing from the service of the plaintiff.

The Court was of the opinion that the act of the defendants was done with knowledge of the contract between the plaintiff and Pearson; was done in order to obtain an advantage for one of the defendants at the expense of the plaintiff; was done from a wrong motive, and would, therefore, justify a finding that it was done in that sense maliciously.

Temperton *v.* Russell. 1. Q. B. (1893) 715.

The defendants were members of a joint committee of three trade unions connected with the building trade in Hull. A firm of builders there having refused to obey certain rules laid down by the unions with regard to building operations, the unions sought to compel them to do so, by preventing the supply of building materials to them. In pursuance of this object, they requested the plaintiff, a master mason and builder in Hull, who supplied building materials to the firm, to cease to supply them with such materials, but the plaintiff refused to do so. Thereupon, with the object of injuring the plaintiff in his business, in order to compel him to comply with such request, the defendants induced persons who, to the knowledge of the defendants, had entered into contracts with the plaintiff for the supply of materials, to break their contracts, and not to enter into further contracts with the plaintiff, by threatening that the workmen would be withdrawn from their employ. The plaintiff sustained damage in consequence of such breaches of contract, and of the refusal of such persons to enter into contracts with him: *Held*, that an action was maintainable by the plaintiff against the defendants for maliciously procuring such breaches of contract, and also for maliciously conspiring together to injure him by preventing persons from entering into contracts with him.

The right of action for maliciously procuring a breach of contract is not confined to contracts in the nature of contracts of personal service.

Quinn v. Leathem, (1901). 70 L. J. P. C. 76, 97. (s. c. 1901, A. C. 495.) 27 E. R. C. 66, Id. ed., 1908 Supplement.
Simpson's Cases on Torts, 1908, 362.

The action in Quinn v. Leathem was originally brought in the High Court in Ireland by Leathem, the respondent, as plaintiff, against Quinn and four other persons, to recover damages for a wrongful interference with the plaintiff's business of a butcher at Lisburn, a few miles from Belfast. For upward of twenty years before July, 1895, Leathem had carried on business in Lisburn, having as one of his constant customers, Andrew Munce, who kept a butcher's shop at Belfast, to whom he supplied weekly £20 or £30 worth of the best meat; and he had in his employ as assistants several men at weekly wages.

The Belfast Journeymen Butchers' and Assistants' Association was formed in 1893. Leathem was not a member, nor were any of his assistants. The members of the union adopted a rule that they would not work with non-union men, and would not cut up meat that came from a place where non-union hands were employed. Prior to 1895, there had been no controversy with Leathem, but in July, 1895, Leathem was invited to attend a meeting of the union which was held at Lisburn. The defendants were there.

Leathem was notified that he must run his shop union, and must quit employing non-union labor, and that if he did not do so, the men employed by Munce, to whom Leathem had been selling meat, would be called out.

In addition to this, the Union persuaded some of Leathem's men to join the Union and quit working for

Leathem. This was done in order to try to inconvenience Leathem and compel him to unionize his place of business.

Leathem brought suit, and on appeal the following was held:

> "A conspiracy to injure, if there be damage, gives rise to civil liability; and an oppressive combination differs widely from an invasion of civil rights by a single person. It is a violation of right to interfere with contractual relations recognized by law if there be no justification for the interference. This principle cannot be confined to inducements to break contracts of service. If such wrongful interference with a man's liberty of action is intended to injure and, in fact, damages a third person, such third person has a remedy by an action.
>
> "Annoyance and coercion by many may be actionable where like conduct on the part of one person would not be so.
>
> "The appellant, an officer of a trade union, in combination with other members of the Union—first, induced a servant of the respondent to break his contract with the respondent; secondly, induced a customer of the respondent, by threats of calling out the customer's men, to withdraw his custom, and thirdly, induced the respondent's servants to leave his service: *Held*, that the appellant had been guilty of an actionable conspiracy for which he was liable in damages, and that, as there was no 'trade dispute' within the meaning of the Conspiracy and Protection of Property Act, 1875, s. 3, the appellant was not entitled to the benefit of that section."

The Court in Quinn *v.* Leathem approved Lumley *v.* Gye, *supra*, and Temperton *v.* Russell, *supra*.

South Wales Miners' Federation *v.* Glamorgan Coal Company (1905). A. C. 239. 2 A. & E. Ann. Cas. 436.

Simpson's Cases on Torts, 1908, 342.

The Glamorgan Coal Company and seventy-three other plaintiffs, owners of collieries in South Wales, brought this action against the South Wales Miners' Federation for inducing workmen in the collieries to break their contracts of service with the plaintiffs, and alternatively for wrongfully and maliciously conspiring to do so. By the terms of employment, the wages were paid upon a sliding-scale agreement, rising and falling with the price of coal. In November, 1900, the Federation fearing that the price of coal would be reduced and wages, therefore, lowered, resolved to order a "stop-day" on November 9, 1900, and informed the workmen. The order was obeyed by over 100,000 men, who took a holiday and thereby broke their contracts of service. At a conference held on November 12, 1900, between delegates of the men and the council, a resolution was passed authorizing the council to declare a general holiday at any time they might think it necessary for the protection of wages and for the industry generally. In October and November, 1901, the council ordered four stop-days for the same reason as before, and the men took a holiday on each of those days in breach of their contracts. The lower Court found that the action of the Federation was dictated by an honest desire to forward the interest of the workmen, and was not in any sense prompted by a wish to injure the masters, between whom and the men there was no quarrel or ill-will, and that there was justification or excuse for what the defendants did, and judgment was given for the defendants.

In the House of Lords, the Earl of Halsbury, Lord Chancellor, said:

> "I cannot think that in this case there is anything to be determined except the question of fact. I say so because the questions of law discussed are so well settled by authority, and by authority in this House.

"To combine to procure a number of persons to break contracts is manifestly unlawful. This is found as a fact to have been done here, and is also found to have caused serious damage to the persons who were entitled to have these contracts performed."

And the following was held:

"To interfere with contractual relations recognized by law, as by inducing and procuring another to break his contract, is an actionable wrong unless there be sufficient justification for the interference.

"Thus, the officers and executive council of a federation of miners are liable in damages for procuring the members of the federation to stop work on certain days in breach of their contracts of employment and without notice to their employers, it being no defense that the wrong thus committed was done without malice or ill-will towards the employers, and for the sole purpose of keeping up the price of coal and the wages of the miners."

Angle *v.* Chicago, St. Paul, Minneapolis and Omaha R. Co., (1894). 151 U. S. 1. 38 L. ed. 55. 14 S. C. 240.

Angle, plaintiff's intestate, was a railroad contractor, and had contracted to do certain work in constructing the line of the Chicago, Portage and Superior Railway Company, which had certain land granted to it, said to be worth about $4,000,000. The Chicago, St. P., M. & O. R. Co. wanted to stop the construction of the Chicago, Portage and Superior Railway Company and to acquire the land which had been granted. While Angle was prosecuting his work in building the line, and had 1,600 men employed, and the completion of the line on or before May 5, 1882, was an assured fact, unless Angle was interfered with, the defendant company conspired with other

parties to wrest the land grant from the Chicago, Portage and Superior Railway Company, and to that end prevent the completion of the contract by Angle and the construction of the road. The Chicago, St. P., M. & O. R. Co. got control of the stock of the Chicago, Portage and Superior Railway Company, and then notified the engineers and Angle that the company had been sold out, and advised them to protect themselves, because the company could not pay or protect them. As a result the several engineering corps were broken up, the engineers left the work, all the tools, material and other personal property belonging to the contractor and to the company were attached at suit of the merchant creditors, and the 1,600 laborers dispersed and went elsewhere for work.

Following that, the Chicago, St. P., M. & O. R. Co., and those it conspired with succeeded in getting the Legislature of Wisconsin to pass an act forfeiting and revoking the land grant to the Chicago, Portage and Superior Railway Company and bestow it on the Chicago, St. P., M. & O. R. Co.

After the contract with Angle was thus broken, he commenced an action at law against the Chicago, Portage and Superior Railway Company. He died while the suit was pending, and suit was revived in the name of his administratrix. The plaintiff recovered judgment in that suit for more than $200,000.00, an execution was issued and returned nulla bona, and thereupon the bill in this case was filed to reach the land grant in the hands of the Chicago, St. P., M. & O. R. Co.

This Court held:

> "If one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrong-doer."

And further held that the defendant company had wrongfully interfered and brought about a breach of the contract which Angle had with the Chicago, Portage and Superior Railway Company, and that the land which the Portage Company first had, and which had been secured by the Omaha Company was liable for the judgment which had been obtained against the Chicago, Portage and Superior Railway Company.

The Court in announcing the above doctrine based its conclusion in part upon the decisions in the cases of Lumley *v.* Gye, supra, Bowen *v.* Hall, supra, and Walker *v.* Cronin, 107 Mass. 555, in which latter case a manufacturer was held entitled to maintain an action against a third party, who, with the unlawful purpose of preventing him from carrying on his business, wilfully induced many of his employes to leave his employment, whereby the manufacturer lost their services, and the profits and advantages which he would have derived therefrom.

> Bitterman *et al. v.* Louisville & Nashville Railroad Company, (1907). 207 U. S. 205. 52 L. ed. 171. 28 S. C. 91.

Bitterman was engaged in the business of scalping railroad tickets. The Louisville & Nashville Railroad Company issued non-transferable excursion tickets at reduced rates. Bitterman, with knowledge of their non-transferability, bought up tickets and resold them. The purchaser, when required to identify himself, personated the original purchaser, and the Railroad Company was deprived of the additional revenue it would have obtained had the second purchaser purchased a full rate ticket, as he doubtless would have done had it not been for Bitterman's scalping business.

The railroad had given notice of its intention to issue a certain excursion reduced rate ticket, and in order to

stop Bitterman from scalping those tickets it applied to the Circuit Court of the United States for the Eastern District of Louisiana for an injunction.

The Supreme Court of the United States held on appeal that, carrying on the business of purchasing and selling non-transferable reduced-rate excursion railroad tickets for profit, to the injury of the Railroad Company issuing such tickets, is an actionable wrong, although actual malice in the sense of personal ill will may not exist.

And Mr. Justice White, in deciding the case, referred to and approved the doctrine announced in the case of Angle *v.* Chicago, St. P., M. & O. R. Co., *supra*, that an actionable wrong is committed by one "who maliciously interferes in a contract between two parties, and induces one of them to break that contract, to the injury of the other."

Mr. Justice White said:

> "We deem it unnecessary to restate the grounds upon which the ruling in the Angle case was rested, or to trace the evolution of the principle in that case announced, because of the consideration given to the subject in the Angle case, and the full reference to the authorities which was made in the opinion in that case."

West Virginia Transportation Company *v.* Standard Oil Company (1900). 50 W. Va. 611. 40 S. E. 491. 56 L. R. A. 804. 88 Am. St. Rep. 895.

The West Virginia Transportation Company was engaged in transporting petroleum oil by means of pipe lines and tank cars from Volcano and vicinity to Parkersburg, and in storing oil, and had expended $300,000.00 in acquiring lands, rights of way, etc., and had built up a large business. The Standard Oil Company determined to force the West Virginia Transportation Company out

of business, and thereupon conspired with the West Virginia Oil Company to prevent the West Virginia Transportation Company from continuing its business, and from transporting oil through its pipe lines by means of its tank cars and from storing oil. The West Virginia Oil Company was organized to purchase and operate what was known as the property of the West Virginia Oil and Land Company, a territory which was served by plaintiff's pipe lines, and from which it had transported oil for compensation for several years. The Standard Oil Company acquired stock in the West Virginia Oil Company and dictated its management. The Standard Oil Company caused the construction of the Eureka Pipe Line to serve the same territory. As a result the business of the plaintiff was ruined. In holding the Standard Oil Company liable for the damage, the Court held:

> "If one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable."
>
> Thacker Coal & Coke Company *v.* Burke, *et als.*, (1906). 59 W. Va. 253. 53 S. E. 161. 5 L. R. A. (N. S.) 1091. 8 A. & E. Ann. Cas. 885.

The Thacker Coal & Coke Company engaged in mining coal in West Virginia, brought suit in the Circuit Court of Mingo County against Burke and others, representing the United Mine Workers of America, for enticing the company's servants from the company's service. The Thacker Coal & Coke Company was running non-union, and the purpose of the defendants was to require the company to run its mine union. In the lower Court the declaration upon demurrer was dismissed, and the com-

pany sued out a writ of error. The Supreme Court reversed the lower Court, and held:

> "(1) One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor; (2) If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person to the injury of that third person, it is actionable: (3) Persons who conspire to induce others to break a valid contract between other persons are liable to action therefor."

Beekman *v.* Marsters (1907). 195 Mass. 205. 80 N. E. 817. 11 L. R. A. (N. S.) 201.
Simpson's Cases on Torts, 1908, 334.

The plaintiff made a contract with the Jamestown Hotel Corporation which had a hotel known as the "Inside Inn," and was the only hotel inside of the Exposition grounds. The plaintiff was the proprietor of a tourist agency at Boston. By the contract between the plaintiff and the Hotel Corporation, plaintiff agreed to represent the Hotel Corporation throughout the New England States, to establish sub-agencies in that territory, and to use every possible endeavor to book persons for the Inside Inn. The plaintiff was made the exclusive agent in the territory mentioned and was to receive twenty-five cents for each person sent by him to the hotel. The plaintiff advertised the hotel and gave descriptions of the Jamestown Exposition and of the Inside Inn, and followed that with a statement that he was the exclusive representative of the Inn.

The defendant was a ticket and tourist agent at Boston. He wished to obtain the same rights to represent the Inside Inn in the same territory that the plaintiff had obtained. As a result of his representations to the Hotel Company,

that company gave the defendant the right to represent it just the same as the plaintiff was entitled to do, and in the same territory in which it had granted to plaintiff the exclusive privilege. As a result, plaintiff suffered loss. Plaintiff brought suit against the defendant, alleging that he had unlawfully interfered and brought about a breach of plaintiff's contract with the Hotel Company. An injunction was prayed for and granted.

The Supreme Court of Massachusetts held that the plaintiff was entitled to an injunction against the defendant, restraining the defendant from directly or indirectly acting as agent of the hotel corporation within the New England States, and from preventing, or seeking to prevent, directly or indirectly, the plaintiff from acting as exclusive agent of the hotel corporation for that territory.

The Court announced the following doctrines:

> "The right of competition does not justify one in inducing a hotel company to break its contract to make another its exclusive agent, and divide the agency with the one offering the inducement" and "Equity will enjoin interference with one's rights under a contract, where it is shown that damages will not afford an adequate remedy."

Labor Unions are not exempt, for the reason that they are Labor Unions, from the application of the law against tortious interference with the contractual relation of others.

On this point, we ask the Court's attention to the following cases:

> Read *v.* Friendly Society of Operative Stone Masons of England, Ireland, and Wales, (1902). 2 K. B. 88.

Read, the plaintiff, (who was the son of a mason, a member of the defendant society), being a man of twenty-

five years of age, and desirous of improving his capacity to earn wages, entered into an agreement with Wigg & Wright, by whom he had been previously employed as laborer, whereby he covenanted to serve them for three years at the wages of 15 s. a week, which were ordinary laborers' wages; and they in return covenanted to teach and instruct him in the trade or business of stone and marble masons. Wigg & Wright and their employes were members of the defendant society. The defendant society had a rule that boys entering the trade shall not work more than three months without being legally bound apprentice, and in no case to be more than sixteen years of age, except masons' sons and stepsons, and that employers could have one apprentice to every four masons on an average. Read entered the service of Wigg & Wright, according to his agreement and was working for them at the rate of wages specified, when the union objected to Read being apprenticed, and claimed that he was over sixteen years of age, and that the language of their rule with regard to masons' sons did not apply to Read. The union demanded Read's discharge. The union protested against Wigg & Wright introducing individuals not in the trade, and empowered their members working for the firm of Wigg & Wright to take prompt action in the matter. It was admitted that prompt action meant that the defendants would authorize their members to give two hours' notice to quit Wigg & Wright's service. As a result, the plaintiff was not taught his trade owing to the action taken by the defendants. The defense made was that the defendants acted for the best interests of their society, and that they were not actuated by any improper motives, but had honestly endeavored to enforce their construction of the rule referred to. The lower court gave judgment for the defendants, and the plaintiff appealed.

In reversing the lower court and holding the defendants liable for causing Wigg & Wright to break their contract with the plaintiff, the Court said:

> "I think the plaintiff has a cause of action against the defendants, unless the Court is satisfied that, when they interfered with the contractual rights of plaintiff, the defendants had a sufficient justification for their interference—to use Lord Macnaghten's words. This sufficient justification they may have had, and they may prove it; but the facts found by the county court judge and relied on by him as enough do not amount to one; for it is not a justification that 'they acted bona fide in the best interests of the society of masons,' *i. e.*, in their own interests. Nor is it enough that 'they were not actuated by improper motives.' I think their sufficient justification for interference with plaintiff's right must be an equal or superior right in themselves, and that no one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of his own rights, or without malice, or bona fide, or in the best interests of himself, nor even that he acted as an altruist, seeking only the good of another and careless of his own advantage."

And the syllabus of that case reads, as follows:

> "The justification which will be sufficient to exonerate a person from liability for his interference with the contractual rights of another must be an equal or superior right in himself, and it will not be sufficient for him to show that he acted bona fide or without malice, or in the best interests of himself or others, or on a wrong understanding of his own rights."

In support of the same proposition *see*—

South Wales Miners' Federation *v.* Glamorgan Coal Company, *supra*. Louisville & Nashville Rail-

road Company *v.* Bitterman *et al.*, (1906). 75 C. C. A. 192, **203.** 144 Fed. 34, **45.**

In deciding this case the Circuit Court of Appeals quoted from Angle *v.* Chicago, St. P., M. & O. R. Co., *supra*, and cited approvingly, Flaccus *v.* Smith, post. The decision of the Circuit Court of Appeals in this case was affirmed by the Supreme Court of the United States. 207 U. S. 205, *supra*.

The case of Flaccus *v.* Smith, *et. al.* (1901), 199 Pa. 128, is analogous to the case at bar.

Flaccus was the proprietor of glass works at Tarentum, Pennsylvania. He ran his works non-union, and his employes consisted of men and apprentices, all of whom had agreed with their employer not to connect themselves with the Union, which in that case was otherwise known as the American Flint Glass Workers Union, affiliated with the American Federation of Labor.

The defendants in the case, W. J. Smith and others, were members of the American Flint Glass Workers' Union, and they tried to unionize the plaintiff's glass works at Tarentum by persuading the plaintiff's employes to join their Union. Flaccus, the plaintiff, brought his suit in the Court of Common Pleas, No. 2, for Allegheny County, to enjoin the defendants from interfering with his apprentices, and upon the Court, upon final hearing, enjoining the defendants from doing the acts complained of and from persuading the apprentices to join the Union, the defendants appealed.

In the report of the case, as decided by the Supreme Court of Pennsylvania, Judge Brown delivering the opinion of the Court said (54 L. R. A. 642):

> "The Court below found that Skelley, one of the appellants, had gatherings of the apprentices of the

appellee at his room in a hotel and persuaded them to join the Union referred to; that he knew the character of the appellee's works as an independent factory, in which members of the Union were not employed and that his apprentices were bound in their indentures not to join or become subject to the rules or regulations of any such organization as he represented; that he knew these facts at the time he swore in these apprentices as members of the Union; that the apprentices who joined the Union violated the covenant of their indenture and subjected themselves to the orders of the Union, which made obedience to it paramount to obedience to their employer; that the object of Skelley was to break down the appellee's factory as a non-union factory, either by preventing the operation of his works or compelling him to join the Union; that the apprentices who joined the Union, enticed and persuaded so to do by Skelley, violated an express covenant of their indenture, which was one of great importance to the appellee, and Skelley so knew at the time he so enticed them; that Skelley's conduct and actions were very injurious to the appellee and his business, and, if repeated and persisted in, would in all probability utterly ruin his business; that Skelley's codefendants, by their counsel, openly and boldly justified him in all he did, contending that, as an officer or agent of the Union, he had a perfect right to interfere with plaintiff's apprentices, persuade them to join the Union, and secretly swear them in as members; that, if the Union had that right, either Skelley or some other agent could go to Tarentum at any time and interfere with the appellee's apprentices and business until it would be destroyed."

In deciding this case Judge Brown said:

"This is not a controversy between the employer and his employes, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking

to induce the apprentices of the employer to violate the terms of their indentures with him. No question is here raised by the employer as to what his employes may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the Court below. Having reviewed all the evidence, we are not perspaded that any of the Court's findings of fact ought to be disturbed, and, with them before us, the only question to be determined is whether the injunction should go out."

And on the same page (54 L. R. A. 642) in affirming the action of the lower Court, Judge Brown for the Supreme Court of Pennsylvania said:

"The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The Court found that the interference was injurious to him, and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity. The test of equity jurisdiction is the absence of a plain and adequate remedy at law to the injured party, depending upon the character of the case as disclosed in the pleadings. If equity alone can furnish relief, the injunction must be issued."

Counsel for the defendants criticized in the lower court the case of Flaccus v. Smith, said it was not applicable because it was a case of enticement of apprentices, who, for all that appeared from the report, might have been bound out to service for a period of years, the term of apprenticeship not having expired; and further criticized the case on the ground that, by the enticement, Flaccus, the plaintiff, was deprived of the further services of his apprentices, and that, in this case, which is now at the bar of this Court, the plaintiff would, by the terms of its contracts with its employes, be, of its own volition, terminating those contracts upon plaintiff's employes joining the Union.

The entire record of the case of Flaccus v. Smith is in the prothonotary's office at Pittsburg, 790, Oct. Term, 1899, Court Common Pleas No. 2, Allegheny County, Pa. That record shows that the period of apprenticeship in each case was four years. Some had expired; some had not. Some of the apprentices were still under age; some were over the age of twenty-one years, but still working as apprentices. The bill was framed solely upon the ground that the defendants interfered with the contract relation created by the indentures of apprenticeship, each of which contained a clause which forbade the apprentice during his apprenticeship from joining any labor union or other organization which would interfere with the proper performance of his duties as apprentice while he remained an apprentice. The apprenticeship indentures did not mention the American Flint Glass Workers Union by name, and the question whether or not a breach of the indenture of apprenticeship was brought about by the apprentice joining the American Flint Glass Workers Union was a question of fact which the Court decided in favor of Flaccus.

When the apprentices joined the Union they were given their choice by Flaccus, either to renounce the Union or to quit work. Some renounced the Union, and others quit work and adhered to the Union. And it was claimed by the defendants that the plaintiff, Flaccus, discharged the apprentices, and, therefore had no cause of complaint against the defendants who had simply persuaded the apprentices to join the Union. The plaintiff's counsel in that case replied to that argument by saying, if Flaccus permitted the apprentices who had joined the Union to continue at work, his factory would soon be unionized, and that was just what the defendants were trying to accomplish and just what Flaccus was trying to prevent.

So, in the case now at the bar of this Court, plaintiff's employes have each made an express contract not to join the United Mine Workers of America, and there is no question of fact in this case, as there was in the Flaccus case, as to whether joining that Union would be detrimental to the interests of the employer, and, therefore, violative of the contract. The language of plaintiff's contracts with its employes is specific. **Each employe has agreed not to join the United Mine Workers of America.**

Plaintiff's case is a stronger case than the Flaccus case. And to establish that, in addition to the reference above made to the difference in the contracts in the two cases, a stronger case is presented for plaintiff by consideration of the fact that in the Flaccus case the persons enticed were merely apprentices, while in plaintiff's case the persons enticed are employes.

Dean Bigelow says:

> "It was formerly matter of some doubt whether an action could be maintained for interrupting, with notice, the gratuitous relation of master and servant.

> It was sometimes supposed that inasmuch as the master could not require the service, he had no right to it which could be infringed. But this view does not now obtain. Though a person may not be able to require a gratuity he has a right to it when it is given and as it is being received, and no one may lawfully interrupt his actual enjoyment of it. Hence, if a person be actually engaged in giving his services to another without reward, any one who with notice interrupts the service becomes liable for any damage sustained." Bigelow on Torts, Eighth ed. 259, 260.

Apprentices are but one remove from gratuitous servants. The *Standard Dictionary's* definition of "apprentice" as a noun is "A person, usually a minor, who serves another in order to learn a trade, art or profession, especially when bound by indentures for a term of years." The *Century Dictionary* defines the same word as meaning "One who is bound by indenture to serve some particular individual or company for a specified time, in order to learn some art, trade, profession, manufacture, etc., in which his master or masters become bound to instruct him." The definition of the same word given by *Webster's Dictionary* is "One who is bound by indentures or by legal agreement to serve a mechanic, or other person, for a certain time, with a view to learn the art, or trade, in which his master is bound to instruct him."

The *Standard Dictionary's* definition of "employe" is "A person who is employed; one who works for wages or a salary; one who is engaged in the service of or is employed by another." The *Century Dictionary* defines the same word as meaning "One who works for an employer; a person working for salary or wages: applied to any one so working, but usually only to clerks, workmen, laborers, etc., and but rarely to the higher officers of a corporation, or government, or to domestic servants; as the employes

of a railroad company." *Webster's Dictionary* defines the same word as meaning "One employed by another; a clerk or workman in the service of an employer."

"Employer" is defined by the *Standard Dictionary* as "One who employes; one who uses or engages the services of other persons for pay." "Employer" is defined by the *Century Dictionary* as "One who employs; a user; a person engaging or keeping others in service." And *Webster's Dictionary* defines the same word as "One who employs another; as, an employer of workmen."

The difference between an employe and an apprentice is, therefore, very marked. In apprenticeships, the master has a beginner to instruct, and receives during the period of apprenticeship or period of instruction and as his compensatory offset the benefit of the labor of the person so instructed. The value of an apprentice's labor does not equal that of an employe who has risen above the period of learning a trade and has become expert and is employed as an expert. Likewise, to the apprentice himself, the value of the instruction is not of the importance that to the employe are that employe's wages. There is a certain element of gratuity in the relationship of master and apprentice on the part of both master and apprentice. Hence, the case now at the bar of this Court between plaintiff and its employes is a stronger case than the Flaccus case, wherein only apprentices had been persuaded to break their contract. But as Dean Bigelow says:

> "Though a person may not be able to require a gratuity he has a right to it when it is given and as it is being received, and no one may lawfully interrupt his actual enjoyment of it."

Therefore a more meritorious case than that in the case of a gratuity solely, is presented in the case of an interrup-

tion in the relationship existing between master and apprentice. *A fortiori* in the case of interference between employer and employe. All three of those cases, however, come within the reason of the same rule, that is, interrupting the relation of master and servant, such interruption going to the termination of the relationship or going to the breach of some of the conditions attaching to that relationship.

In the Flaccus case, the finding of the Court was that the defendants had enticed some of Flaccus' apprentices to join their Union, while the apprenticeship still existed, and that, therefore, these apprentices had in joining the Union recognized a new master in the Union, which had no financial interest in and had no connection with Flaccus' business, and to all of which Flaccus objected. It appeared that some oath was administered to each apprentice when he joined the Union, but the language of the oath is not shown.

In this case, now at the bar of this Court, plaintiff's employes are expert in their business, their services are rendered to the satisfaction of the plaintiff, and the pay given them by plaintiff is satisfactory to them. They have each expressly contracted with plaintiff not to join the United Mine Workers of America, and if the efforts of these defendants were to be allowed and the men induced to join the Union, the contracts which plaintiff's employes have with plaintiff would be broken, and thereby these employes would each have taken on a new master in the Union, that Union having no financial interest in and no concern with plaintiff's business. Upon joining that Union each of plaintiff's employes would be taking this obligation: "I do sincerely promise * * * to bear true allegiance to * * * the United Mine Workers of America." Allegiance is defined to be the tie or obliga-

tion of a subject to his sovereign. *Century Dictionary.* And in recognition of that new master's authority, each of plaintiff's employes would, by the further provision of the obligation of membership say, "I promise to cease work at any time I am called upon by the organization to do so."

The *raison d' etre* of the law applied in the Flaccus case is that every person must mind his own business, and must not intermeddle in the affairs of others.

In support of the same proposition *see*—

Thacker Coal & Coke Company *v.* Burke *et als.*, *supra.*

It is not necessary that the contract of employment fix a definite term of service.

On this point, we ask the Court's attention to the following cases:

Thacker Coal & Coke Company *v.* Burke *et als.*, *supra*, in which the Court said:

> "If the law gives action for enticement of a servant, it is not conceivable that a third person can maliciously entice away a lot of employes simply because there was no contract fixing term of service. The relation of master and servant exists. In such case there is a contract recognized by law, an implied contract by which the employe can recover for his service. By entering such service the employe agrees, contracts, to work. It is no difference that he can quit when he pleases."

Walker *v.* Cronin (1871). 107 Mass. 555.

The plaintiffs were engaged in the manufacture of boots and shoes in the town of Milford, Mass. They had men working for them, and while so employed the defendant and his associates knowing this, and that plaintiffs could

not run their business without men, but for purposes of their own, induced and persuaded plaintiffs' men to abandon and leave plaintiffs' employment without plaintiffs' consent and against plaintiffs' will, whereby plaintiffs suffered damage. Plaintiffs sued for the tort. The declaration on demurrer was dismissed in the Court of first resort. On appeal the Supreme Court of Massachusetts held that the plaintiffs had a right of action, and that the declaration set that forth sufficiently, when it was alleged, and by the demurrer admitted to be true that the defendant and his associates had induced and persuaded plaintiffs' employes to leave and abandon plaintiffs' employment, and that (1) the acts were intentional and wilful, (2) calculated to cause damage to plaintiffs in their lawful business, (3) done with the unlawful purpose to cause such damage and loss without right or justifiable cause on the part of the defendant (which constitutes malice), and (4) actual damage and loss resulting.

The point was made in Walker *v.* Cronin that the men were not under contract for any specific length of time. The Court overruled that point.

Frank *et al. v.* Herold *et al.*, (1902). 63 N. J. Eq. 443. 52 Atl. 152.

The plaintiffs operated silk mills in Patterson, New Jersey. There were upward of eighty defendants, who were charged with conspiring together and acting separately to prevent plaintiffs' operatives from continuing to work for them and to prevent other persons from entering the employment of the plaintiffs. A restraining order had been granted which prevented the defendants from the use of persuasion and peaceable means to get plaintiffs' employes to quit working for plaintiffs, and to prevent persons who had agreed to work for plaintiffs from doing

so. A motion was made to modify the restraining order, and reliance was had upon a statute of New Jersey, reading as follows:

> "It shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise, to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons or corporation."

In refusing to modify the restraining order, the Court said with reference to the statute:

> "In my judgment, the true construction of the act of 1883 is simply that it renders innocent, as against the public, an act, which, previous to its passage, was a misdemeanor, and punishable by indictment. It does not take away, or in any wise affect, any private rights which may arise out of acts which are legalized by that legislation. It is palpable that the legislature was dealing with a criminal act, and the language of the statute must be construed accordingly. It cannot be construed as rendering an act lawful as against an individual which otherwise would be unlawful."

The Court in deciding that case held:

> "To make out the relation of master and servant, it is not necessary that there be any written, or even verbal, contract between the parties to work for any particular length of time, but the relation exists where one person is willing to work for another from day to day, and that other desires the labor and makes his business arrangements accordingly."

Chipley v. Atkinson, (1887). 23 Fla. 206. 11 Am. St. Rep. 367. 1 So. 934.

Atkinson, the plaintiff, was in the employment of Kehoe & Walker, who were partners in the manufacture and sale of brick. Atkinson had been employed as general superintendent of their business. Chipley caused the discharge of the plaintiff, and was then sued by Atkinson.

Chipley defended on the ground that Atkinson did not have a contract with Kehoe & Walker for a definite length of time. The Court held:

> "An action will also lie where the period for which the employment is to continue is not certain, if damage result from the discharge."

And after citing cases, the Court said:

> "From the authorities referred to in the preceding paragraphs, and upon principle, it is apparent that neither the fact that the term of service interrupted is not for a fixed period, nor the fact that there is not a right of action against the person who is induced or influenced to terminate the service, or to refuse to perform his agreement, is of itself a bar to an action against the third person maliciously and wantonly procuring the termination of or a refusal to perform the agreement. It is the legal right of the party to such agreement to terminate it or refuse to perform it, and in doing so he violates no right of the other party to it, but, so long as the former is willing and ready to perform, it is not the legal right, but is a wrong, on the part of a third party to maliciously and wantonly procure the former to terminate or refuse to perform it."

Plaintiff's rights are not affected by the fact that the conspiracy was not consummated and that plaintiff's employes did not join the Union and did not quit working for plaintiff.

For this we rely upon the case of

State v. Buchanan (1821). 5 Har. & J., (Md.), 317, **352, 355.**

"There is nothing in the objection that to punish a conspiracy where the end is not accomplished would be to punish a mere unexecuted intention. It is not the bare intention that the law punishes, but the **act of conspiring,** which is made a substantive offense by the nature of the object intended to be effected." In the same case, it is held: "An indictment will lie at common law for a conspiracy to do an act neither illegal nor immoral in an individual, but to effect a purpose, which has a tendency to prejudice the public."

Likewise, an indictment will lie at common law "For a malicious conspiracy to impoverish or ruin a third person in his trade, or profession."

On the proposition that the defendants in trying to unionize plaintiff's mine without plaintiff's consent and against plaintiff's will, even if done only by the use of argument, reason and persuasion, violate plaintiff's rights under the Constitution of West Virginia, we rely upon—

Bill of Rights, §1. Art. III, Constitution of West Virginia.

"All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

Bill of Rights, §10, Art. III, Constitution of West Virginia.

"No person shall be deprived of life, liberty, or property without due process of law, or the judgment of his peers."

State v. Goodwill (1889), 33 W. Va. 179, 10 S. E. 285, **287**, 6 L. R. A. 621, 25 Am. St. Rep. 863.

"A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this, is the right to labor or employ labor; make contracts in respect thereto, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue, and give evidence; and to inherit, purchase, lease, sell, and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression."

And again—"The vocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the Constitution. People v. Otis, 90 N. Y. 48. The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all contracts."

A similar view of a similar constitutional provision is found in Young's Case v. Virginia (1903), 101 Va. 853, 45 S. E. 327.

In that case it is held:

> "The word 'liberty,' as used in the Constitution of the United States, and of the several States, is deemed to embrace the right of a citizen to be free in the employment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purpose above mentioned."

In the case of State *v.* Stewart (1887), 59 Vt. 273, 59 Am. Rep. 710, 9 Atl. 559, the Court on page 289 (59 Vermont) says:

> "The principle upon which the cases, English and American, proceed, is, that every man has the right to employ his talents, industry and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property. If men, by overt acts of violence destroy either they are guilty of crime. The anathemas of a secret organization of men combined for the purpose of controlling the industry of others by a species of intimidation that works upon the mind rather than the body, are quite as dangerous, and generally altogether more effective, than acts of actual violence. And while such conspiracies may give to the individual directly affected by them a private right of action for damages, they at the same time lay a basis for an indictment on the ground that the State itself is directly concerned in the promotion of all legitimate industries, and the development of all its resources, and owes the duty of protection to its citi-

> zens engaged in the exercise of their callings. The good order, peace and general prosperity of the State are directly involved in the question."

Upon parallel provisions of the Constitution of the United States, Mr. Justice Field, concurring with the opinion of the Court, which was delivered by Mr. Justice Miller, in Butchers' Union, etc., Co. v. Crescent City, etc., Co., (1884), 111 U. S. 746; 28 L. ed. 585, **591**; 4 S. C. 652, said:

> "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: 'We hold these truths to be self-evident,' that is so plain that their truth is recognized upon their mere statement, 'that all men are endowed;' not by edicts of Emperors or decrees of Parliament or Acts of Congress, but 'by their Creator, with certain inalienable rights' that is, rights which cannot be bartered away or given away or taken away except in punishment of crime; 'and that among these are life, liberty and the pursuit of happiness, and to secure these,' not grant them but secure them, 'governments are instituted among men, deriving their just powers from the consent of the governed.'
>
> "Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.

> "The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

In the same case, Mr. Justice Bradley, concurring, with whom concurred Mr. Justice Harlan and Mr. Justice Woods, (111 U. S. 762; 28 L. ed. 589) said:

> "The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the Constitution. It is what no Legislature has a right to do."

In Allgeyer *et al. v.* State of Louisiana, (1897), 165U.S. 578, **589;** 41 L. ed. 832, **835;** 17 S. C. 427, Mr. Justice Peckham delivering the opinion of the Court said of the meaning of the word "liberty"—

> "The term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties;

> to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

In Lochner v. People of the State of New York (1905), 198 U. S. 45, **56;** 49 L. ed. 937, **940, 941;** 25 S. C. 539, Mr. Justice Peckham delivering the opinion of the Court said:

> "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution."

And again said:

> "Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor."

Plaintiff has a right to contract against members of the United Mine Workers. Laws prohibiting discrimination against Labor Unions have uniformly been held to be unconstitutional in the United States.

In support of this, we rely upon—

> Goldfield Consolidated Mines Company v. Goldfield Miners' Union, No. 220. (C. C. D. Nev. 1908.) 159 Fed. 500.

On page 515, Judge Farrington says:

> "The right of master and servant to enter into contracts, to agree upon the terms and conditions under which the one will employ and the other will

> labor, is property. The master has the right to fix the terms and conditions upon which he is willing to give employment; the servant has the right to fix the terms and conditions upon which he will labor, and any statute which curtails and limits that right deprives the party affected of his property, and, in the same measure, of his liberty. Both parties are free to enter into, or refuse to enter into, the contract. Before the law, there is the same freedom to employ as to work, to buy as to sell, to choose one's employe as to choose one's employer."

In that case the plaintiff required its employes to agree not to become members of the Goldfield Miners' Union, and the defendants relied upon the Statute of Nevada, making it unlawful for any person, firm or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employe of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization, or shall promise or agree to become or continue a member of a labor organization.

In holding this Statute unconstitutional, the Court said:

> "Statutes similar to the Nevada act in question have existed in other States, but in every jurisdiction where their validity has been called in question, they have been held invalid, under the constitutional provision that no one shall be deprived of life, liberty, or property without due process of law."

See the cases quoted by the Court on page 516.

> Adair *v.* United States (1908). 208 U. S. 161, 52 L. ed. 436. 28 Sup. Ct. 277.

In Adair v. United States, the Supreme Court held unconstitutional the Federal Statute which made it a criminal offense for any common carrier engaged in interstate business to discriminate against any employe because of his membership in a labor organization.

§ 4131, West Virginia Code Annotated, 1907 Supplement, reads as follows:

> "Nor shall any person or persons, or combination of persons, by force, threats, menaces, or intimidation of any kind, prevent or attempt to prevent from working in or about any mine, any person or persons who have the lawful right to work in or about the same, and who desire so to work; but this provision shall not be so construed as to prevent any two or more persons from associating together under the name of Knights of Labor, or any other name they may desire, for any lawful purpose, or for using moral suasion or lawful argument to induce any one not to work in and about any mine; any person or persons who shall violate the provisions of this section shall, upon conviction, be fined not less than fifty nor more than five hundred dollars, or be imprisoned in the county jail not less than ten days nor more than ninety days, in the discretion of the court."

This section has been invoked by the defendants in support of the rights they claim in this court. But in the case of Thacker Coal & Coke Company v. Burke et als., supra, it was held that this section is a criminal act, and that it does not authorize any individual or number of individuals to maliciously entice servants to desert the service in which they are engaged, nor prevent them from engaging in such services under contract; nor does it restrict the master's right to sue another for damages resulting from the malicious enticement of the servant.

The Court very pertinently suggests—"Could the Legislature authorize any person to violate a contract."

It will be noticed that the holding of the Supreme Court of West Virginia in this case is along the lines of that of the Supreme Court of New Jersey upon a similar statute. Frank *v.* Herold, supra.

State *v.* Goodwill, *supra*. 10 S. E. 286.

> "The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void."

Upon parallel provisions of the Constitution of the United States, the Supreme Court in holding unconstitutional, in the case of Lochner *v.* New York, *supra*, a statute of that State, which limited the hours of work in bakeries to sixty hours a week and ten hours a day, (198 U. S. 64; 49 L. ed. 944, 945) said:

> "It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found and the plaintiff in error convicted, has no such direct relation to, and no such substantial effect upon the health of the employe, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employes, (all being men, *sui juris*), in a private business, not dangerous in any degree to morals, or in any real and substantial degree to the health of the em-

ployes. Under such circumstances the freedom of master and employe to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution."

And as to what is a monopoly at common law.

See Pocahontas Coke Company *v.* Powhatan Coal and Coke Company, (1906). 60 W. Va. 508. 56 S. E. 264, **269, 270, 271.** 10 L. R. A. (N. S.) 268. 9 A. & E. Ann. Cas. 667, **672, 673, 674.**

"Monopolies are condemned at common law, as being in restraint of trade and against public policy. The Case of Monopolies, 11 Coke 84; Mitchel *v.* Reynolds, 1 P. Wms. 181."

And it is held that where all the sources of supply are put in the hands of one company so that no other source of supply is available, such a monopoly is absolute. It is that sort of a monopoly that the United Mine Workers of America aim to be—

"One of the objects of this organization is to unite *all* employes in and around the coal mines of Ohio and the Panhandle district of West Virginia."

"*All men* are eligible and *must be members* of the United Mine Workers of America who work in and around the mines."

And speaking of the contract which was involved in the case under consideration in Pocahontas Coke Company *v.* Powhatan Coal and Coke Company, the Court said:

"A contract which is charged to be in restraint of trade is not to be tested by what has been done under it, but by what may be done under it; not by its performance, but by its power of performance when fully exercised."

The United Mine Workers are therefore to be judged not only by what they have done, but by what they will do if they get the chance. They have the power. Their Constitutions, and their declared purposes as shown by their proceedings in their conventions referred to in the bill, illumine the design of their organization, and confirm the conclusion that they are a monopoly at common law, and as such are engaged in an unlawful business.

On the proposition that it is unlawful to attempt to force all laborers to combine in unions, and that such an attempt is against the policy of the common law because aiming at monopoly.

> *See* Berry *v.* Donovan, (1905). 188 Mass. 353. 74 N. E. 603. 5 L. R. A. (N. S.) 899. 3 A. & E. Ann. Cas. 738.
>
> "The attempt to force all laborers to combine in unions is against the policy of the law because aiming at monopoly."

That a Labor Union is not a competitor of the employer.

> *See* Geo. Jonas Glass Company *v.* Glass Bottle Blowers' Association of the United States and Canada *et al.* (1907). N. J. Eq. 66 Atl. 953.
>
> "A labor organization seeking to compel a manufacturer to unionize his plant is not such a competitor in the labor market as to justify it in enticing employes to leave the service of their master, or to induce persons seeking employment with him from so doing, when the enticer does not employ labor. The competition which the law upholds must be honest competition, and not a malicious attempt to injure another."

The union itself recognizes that its members are competitors one with another. The obligation of membership

recognizes that fact in these words: "As the mine workers of the entire country are *competitors* in the labor world, I promise to cease work at any time I am called upon by the organization to do so."

It does not appear that the union anywhere recognizes the employer of labor as a competitor of the union, but for the purpose of argument let it be assumed that an employer is a competitor of the union to the extent that the union seeks to have *all* mine workers become members of its union and that a non-union employer seeks to have men work for it and not become members of the union. In that view of the case, what is the law in view of plaintiff's contractual relations with its employes?

In Beekman *v.* Marsters, *supra*, Judge Loring, in delivering the opinion of the Supreme Court of Massachusetts, says:

> "No case has been cited which holds that a right to compete justifies a defendant in intentionally inducing a third person to take away from the plaintiff his contractual rights. Not only has no case been cited in which that has been held, but no case has been cited in which that contention has been put forward."

That the purpose of strengthening itself in future contests with employers of labor is no justification to the defendants for interfering in the contractual relations existing between plaintiff and plaintiff's employees.

See Berry *v.* Donovan, *supra*.

> "The purpose of strengthening itself in future contests with the employer will not justify a labor union in interfering with the contracts of non-union workmen for the purpose of compelling them to join the union," and

"The gain which a labor union may expect to derive from inducing others to join it is not an improvement to be obtained directly in the conditions under which the men are working, but only added strength for such contests with employers as may arise in the future. An object of this kind is too remote to be considered a benefit in business, such as to justify the infliction of intentional injury upon a third person for the purpose of obtaining it. If such an object were treated as legitimate, and allowed to be pursued to its complete accomplishment, every employe would be forced into membership in a union, and the unions, by a combination of those in different trades and occupations, would have complete and absolute control of all the industries of the country. Employers would be forced to yield to all their demands or give up business. The attainment of such an object in the struggle with employers would not be competition, but monopoly. A monopoly controlling anything which the world must have is fatal to prosperity and progress. In matters of this kind the law does not tolerate monopolies."

West Virginia Transportation Company *v.* Standard Oil Company, *supra.*

"Where the act is not done under the right of competition, or under cover of friendly, neighborly counsel, but wantonly or maliciously, with intent to injure another, it is actionable, if loss ensue. Nor is it material in the latter case that there was no binding contract between the business man and his customers. He cannot interfere even for his own benefit, if there is a contract."

Thacker Coal & Coke Company *v.* Burke *et als.*, *supra.*

"We do not deny the principle that a man may do an act damaging another, even maliciously, when he has legal excuse or justification therefor; but we

> say that when his action, with knowledge on his part of a contract, causes, by intention, a breach of that contract, he is liable to damages, even though he acts for the promotion of his own interest."

On the proposition that the defendants may not lawfully at common law combine and conspire to unionize plaintiff's mine without plaintiff's consent and against plaintiff's will, even though their acts are limited to the use of argument, reason and persuasion, where the unionizing has for its object the advancement of the union's power, or where the unionizing is brought about by interfering with the contractual relations existing between plaintiff and plaintiff's employees.

> See Purvis et al. v. Local No. 500, United Brotherhood of Carpenters & Joiners et al. (1906). 214 Pa. 348. 63 Atl. 585. 12 L. R. A. (N. S.) 642. 6 A. & E. Ann. Cas. 275.

In this case it was said:

> "The right of a workman to freely use his hands, and to use them for just whom he pleases, upon just such terms as he pleases, is his property; and so in no less degree is a man's business in which he has invested his capital. The right of each—employer and employe—is an absolute one, inherent and indefeasible, of which neither can be deprived, not even by the legislature itself. The protection of it, though as old as the common law, has been reguaranteed in our Bill of Rights. 'All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.' "

This language quoted from Pennsylvania's Bill of Rights is analogous to the provisions of the Bill of Rights in West Virginia.

Arthur *v.* Oakes.
(Circuit Court of Appeals, Seventh Circuit, October 1, 1894). 11 C. C. A. 209. 63 Fed. 310.

In Arthur *v.* Oakes, it was held:

"A combination or conspiracy to procure an employe or body of employes to quit service in violation of the contract of service would be unlawful, and in a proper case might be enjoined, if the injury threatened would be irremediable at law."

And again, "An intent upon the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent, and under circumstances that give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal."

Hopkins et al. *v.* Oxley Stave Company.
(Circuit Court of Appeals, Eighth Circuit, November 8, 1897). 28 C. C. A. 99. 83 Fed. 912.

In Hopkins *et al. v.* Oxley Stave Company, it was held:

"First, that the combination in question was an unlawful conspiracy to deprive the plaintiff of its right to manage its business as it thought best, such as would entitle the manufacturer to recover from the parties concerned in the conspiracy whatever damages it had sustained thereby; second, that in such a case the test of the right to sue in equity

was whether the damages occasioned by the conspiracy would be irreparable, or whether a proceeding in equity was necessary to prevent a multitude of suits. in other words, whether the remedy at law was for any reason inadequate; third, that in the case in hand the plaintiff was entitled to sue in equity, and that an injunction to prevent the execution of the conspiracy was properly awarded."

That injunctive relief is proper in plaintiff's case.

See Arthur v. Oakes, *supra*.

Hopkins *et al.* v. Oxley Stave Company, *supra*.

That the injunction should cover, not only the acts complained of in plaintiff's bill, but should be broad enough to restrain the commission of acts identical in character with those which are set out as the primary cause of complaint in plaintiff's bill, and that this injunction should, as it is now framed to do, prevent defendants for all time from doing acts by persuasion or otherwise, which have for their purpose the unionizing of plaintiff's mine without plaintiff's consent and against plaintiff's will.

See Bitterman *et al. v.* Louisville & Nashville Railroad Company, *supra*.

It is the policy of the law to prevent recurrence of wrongs which have been adjudged to be illegal. Not to do so would be to invite a multiplicity of suits.

(3) Salient Points which Differentiate the Rights which the Defendants Claim from the Rights which they really lawfully have.

We will sub-divide this by considering—

(3) a. Certain facts in this case, which show the motive of defendants, and, therefore, should be considered by this Court.

(3) b. Plaintiff's rights and defendants' rights under those facts.

(3) c. Are the acts of the defendants heretofore committed, which have injured plaintiff, and are the acts, which they design to do, and which will likewise injure plaintiff, justified?

(3) a. Certain Facts in this Case, which Show the Motive of Defendants, and, Therefore, Should Be Considered by this Court.

We have called attention to the fact that when first opened up plaintiff's mine was operated non-union; that under pressure from these defendants plaintiff permitted its mine to be unionized in the spring of 1903; that the mine was operated union from the spring of 1903 to June 12, 1906; that during the time the mine was operated non-union in the years 1902 and 1903 plaintiff had no labor trouble; that during the time it was operated union from March, 1903, to June 12, 1906, plaintiff lost one hundred and sixty days on account of labor troubles, and we supplement that by adding that plaintiff has had no strike or labor trouble since starting to run non-union June 12, 1906; the only interruption was the interference with plaintiff's business, brought about by these defendants, which would have resulted in a shut down of plaintiff's mine had it not been for the temporary restraining order of October 24, 1907, granted *ex parte* and later on for the temporary injunction granted on hearing May 26, 1908, and now for the permanent injunction awarded January 18, 1913.

So far as any contractual or other business relationship between the plaintiff and the Union is concerned, the parting of the ways was reached when the national strike was declared April 1, 1906. Plaintiff had no dispute

with its employes at that time, nor had it any with the defendants. The national strike of April 1, 1906, was ordered for the purpose of compelling mine operators to sign a new scale. Plaintiff was willing to sign that scale and continue its operations, and owing to its business necessities at that time to complete contracts then on hand for the delivery of coal, plaintiff proposed to its employes, and likewise proposed to these defendants, then, as now, officers of the United Mine Workers of America, that plaintiff would pay whatever wages the new scale when signed might provide for. And plaintiff proposed to pay *ad interim* to its employes, who were then members of the United Mine Workers of America, the scale of wages then in force, and to continue to pay that until the new scale might be agreed upon between the Union and operators in other parts of the country, who, with the United Mine Workers of America, as an organization, had under consideration the preparation of, and an agreement upon, a new scale. Plaintiff at the same time offered to date the wages of its employes back to April 1, 1906, and to pay to its men any excess, provided the new scale happened to be higher than the old scale. If the new scale when signed proved to be lower than the expiring scale, the men employed would have been ahead by that arrangement. The employes, therefore, had everything to gain, and nothing to lose, by continuing in plaintiff's service.

Plaintiff's employes were willing to make this arrangement, and did make that arrangement, and in carrying it out, worked until April 16, 1906, when acting under the orders of these defendants, who were then their superior officers in the Union, plaintiff's employes went out on the national strike, which had been ordered April 1, 1906, but which up to April 16, 1906, plaintiff's employes had not obeyed.

The reason assigned by defendants, then, as now, officers of the United Mine Workers of America, for not permitting plaintiff's employes to continue at work for plaintiff, was that **the new scale had not been signed by certain coal operators in other sections of the country, and that to compel them to sign, it was necessary that all coal operations be suspended.** Plaintiff was not a member of any operators' association with which the United Mine Workers of America, as a body, were treating in the matter of the new scale, and under the action taken by these defendants, then, as now representing the United Mine Workers of America, plaintiff was compelled to suffer loss in order that these defendants might whip into line certain **other** coal operators with whom the United Mine Workers, represented then as now by these defendants, had a grievance.

The inception of the present controversy between the plaintiff and these defendants, therefore, springs from the unlawful act of these defendants in making the plaintiff an unwilling and an unnecessary victim of the effort of these defendants to compel **others** to do what plaintiff had offered and was willing to do.

At the time plaintiff's employes were driven to obedience by their officers, and while plaintiff's employes were still working for plaintiff, plaintiff notified these defendants, then, as now, acting as officers of the United Mine Workers of America, that, if they, these officers, brought out plaintiff's employes on strike, under the circumstances as they then existed, and in view of plaintiff's offer to pay the scale, plaintiff would deal with the United Mine Workers of America no more, and that the men would not be re-employed through the Union. It was expressly stated to these defendants that they would be taking from plaintiff's employes, who

were then members of the Union, what they would never be able to give back to them, namely, re-employment with plaintiff through the Union.

But the defendants persisted and plaintiff's employes ceased work.

The infliction of wrong by one person upon another in order to coerce a third person into doing what that third person does not want to do is a grave offense.

Upon this question of the unnecessary infliction of wrong, the case of Waterhouse v. Comer (C. C., W. D. Georgia S. D. 1893), 55 Fed. 149, is in point. The Brotherhood of Locomotive Engineers as an organization had certain rules. Rule No. 12 read: "That hereafter when an issue has been sustained by the grand chief and carried into effect by the Brotherhood of Locomotive Engineers, it shall be recognized as a violation of the obligations if a member of the Brotherhood of Locomotive Engineers who may be employed on a railroad run in connection with or adjacent to said road (to) handle the property belonging to said railroad or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue, until the grievances or issues of difference of any nature or kind have been amicably settled."

In construing this rule, it was admitted that the following represented the probable result in a given case (55 Fed. 155): "If, in the pursuance of the business of a common carrier, with which the receiver is charged, it should become necessary to convey over the lines of the Central Railroad a car belonging to a railroad company on which there was a strike of the engineers, that it would be the duty of the brotherhood men in the employ of the receiver to refuse to haul the train con-

taining such car, and, if the officers of the road insisted that the car should proceed, loyalty to the brotherhood required that the engineer should at once resign his station, and abandon his duty. He might, * * * if he thought proper, carry the train to the terminal point."

In condemning this rule, Judge Speer said (55 Fed. 156):

> "There can be not a doubt that this rule of the brotherhood is in direct and positive violation of the laws of the land, and no court, state or federal, could hesitate for a moment so to declare it."

And before Judge Speer permitted the receiver in that case to continue dealing with the Brotherhood of Locomotive Engineers, he required that, as to the receiver, and as to the road, then under the charge of the Court, Rule 12 should be abrogated.

This same Rule 12 was passed upon by Judge Taft in the case of Toledo, Ann Arbor & North Michigan Railway Company *v.* Pennsylvania Company *et al.* (C. C., N. D. Ohio, W. D. 1893), 54 Fed. 730. On page 738 (54 Fed.) Judge Taft says:

> "It may be noted, in passing, that the enforcement of rule 12 presents a much stronger case of illegality than the ordinary boycott."

After plaintiff's men quit work April 16, 1906, plaintiff's mine was idle until June 12, 1906. Its contracts remained unfu'filled, and it was put to great loss in providing coal with which to coal the engines of the B. & O. R. R., and to retain that trade.

On June 12, 1906, owing to their dissatisfaction about the payment of benefits, plaintiff's men went to work for plaintiff non-union, and they have worked for plaintiff

non-union and plaintiff has run non-union ever since. These defendants then found to their chagrin that **their ill-advised action** in compelling plaintiff's employes to quit work and in compelling plaintiff's mine to remain idle had cost the Union, not only the membership of the men in plaintiff's employ, but through plaintiff's adherence to its previously announced determination, never to contract with or recognize the defendants again, had **lost them their "check off,"** which in the two years preceding the strike of April 1, 1906, had brought into the Union's coffers nearly ten thousand dollars.

They then conceived the plan of inveigling plaintiff into their meshes again, by coming to plaintiff's management and proposing that plaintiff recognize the Union, and go through the empty form of suppositionally discharging its men, and instanter re-employing them again; such re-employment, however, to be made through the medium of a contract, to be signed between plaintiff on the one hand, and these defendants, then, as now, officers of and representing the United Mine Workers of America, on the other hand.

When this sort of an arrangement was refused by plaintiff's management, these defendants asked that it be put up to plaintiff's Board of Directors. This was done by the management, and plaintiff's Board of Directors refused to have anything whatever to do with these defendants and with the United Mine Workers of America. This conclusion and resolve were promptly made known to these defendants.

Following that the defendants tried to unionize plaintiff's men, in the manner, at the times and through professional organizers, all as set forth at large in the bill.

Their purpose was to reassert their sway over plaintiff's men and plaintiff's mine; and it is now their purpose,

under the guise of reason, argument and persuasion, to reassert their control over plaintiff's men, make them all join the Union, each of them *nolens volens* and bring plaintiff again under their yoke, an unwilling and a protesting victim of their inordinate greed, of their unlawful practices and intolerant rule.

And the law says their motive is to be read into their efforts.

The case of Swift & Company *v.* United States, *supra*, was one which involved the Anti-Trust Law which was enacted by Congress to protect trade and commerce against unlawful restraints and monopolies; but so far as the use we now want to make of that case is concerned, there is no difference between the principle announced in that case and the principle applicable to a proceeding against a monopoly at common law. It will be recalled that plaintiff's bill places the jurisdiction of the Circuit Court over plaintiff's case, solely upon diversity of citizenship. But the rule which forbids plaintiff in such a case from relying upon federal law as the basis of its right to relief does not forbid the use of federal authorities where the propositions decided under federal law are applicable to similar prosecutions if had at common law.

Syllabus 1 of the case of Swift & Company *v.* United States, *supra*, reads as follows:

> "A general allegation of intent may color and apply to all the specific charges of a bill which seeks relief against alleged violations of the act of July 2, 1890, (26 Stat. at L. 209, chap. 647 U. S. Comp. Stat. 1901, p. 3200), to protect trade and commerce against unlawful restraints and monopolies."

In plaintiff's case now at the bar of this Court, **the bill has been framed so as to allege successive elements of a single connected scheme, and the collective**

effect of all of these facts is there set forth. It is further then alleged in the bill that the effort of these defendants and of the United Mine Workers of America, over which the present controversy between the plaintiff and the defendants exists, is "to compel all miners and mine workers to join the Union, establish a monopoly and force employers of that kind of labor, and especially to force your orator, to yield to the Union's demands, or else to give up its business."

In deciding the case of Swift & Company v. United States, above referred to, Mr. Justice Holmes said (196 U. S. 396):

> "Intent is almost essential to such a combination, and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent,—for instance, the monopoly,—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen."

The case of Aikens v. Wisconsin (1904), 195 U. S. 194, 49 L. ed. 154, 25 S. C. 3, is instructive and to the point.

In that case there were two other cases of similar character, and they were all heard together, being on writs of error to the Supreme Court of Wisconsin, brought to set aside convictions and sentences of the plaintiffs in error, the defendants below, upon informations filed by the district attorney, which informations had been brought under the Wisconsin statutes, which impose imprisonment or fine on "any two or more persons who shall combine * * * for the purpose of wilfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever," etc.

Mr. Justice Holmes in delivering the opinion of the Court said:

> "The plaintiffs in error were severally charged with unlawfully combining together with the intent of wilfully and maliciously injuring The Journal Company, a corporation, and certain persons named, stockholders and officers of the company, in their trade and business. It was alleged that the company was publisher of a newspaper in Milwaukee, and had notified an increase of about 25 per cent in its charges for advertising, and that thereupon the plaintiffs in error, who were managers of other newspapers in the same place, in pursuance of their combination, and with the intent of wilfully, maliciously, and unlawfully injuring The Journal Company and the others named, agreed as follows: If any person should agree to pay the increased rate to The Journal Company, then he should not be permitted to advertise in any of the other three newspapers except at a corresponding increase of rate; but if he should refuse to pay The Journal Company the increased rate, then he should be allowed to advertise in any of the other three papers at the rate previously charged. It was alleged that this conspiracy was carried out, and that much damage to the business of The Journal Company ensued."

The defendants admitted the combination, the intent to injure The Journal Company and the resulting damage, but alleged that the combination was entered into in trade competition, and that the parties had the right to make it under the 14th Amendment to the Constitution of the United States.

In affirming the judgment of the Supreme Court of Wisconsin, in each of those three cases, the Supreme

Court of the United States in an opinion delivered by Mr. Justice Holmes said (195 U. S. 205, 206):

> "It would be impossible to hold that the liberty to combine to inflict such mischief, even upon such intangibles as business or reputation, was among the rights which the 14th Amendment was intended to preserve." And again: "*Where the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously, cannot be denied because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.*"

The case of the United States *ex rel.* Guaranty Trust Company of New York *v.* Haggerty *et al.*, 116 Fed. 510, is pertinent. In that case, the United Mine Workers were endeavoring to organize non-union mines of the Clarksburg Fuel Company, and having been restrained in that work, the defendants pleaded that freedom of speech was being denied to them. That same idea is advanced by counsel for the defendants in the case at bar. Judge Jackson disposed of that point when raised in the Haggerty case in language which, we think, will appeal to the Court in this case. Judge Jackson said (116 Fed. 517):

> "It is idle for this class of people to attempt to shield themselves, from not only a just criticism of their principles, but from their violations of law and order, by citing and relying upon the principles contained in our immortal Declaration of Independence, inspired by the pen of Thomas Jefferson, and also the

> first article to the amendment of the constitution of the United States protecting 'freedom of speech.' The rightful exercise of freedom of speech is not denied, but the abuse of it. Its unrestricted license has always been open to the animadversion and condemnation of the law."

And again on the point that the Court in the case at bar should consider the motive of the defendants, and whether the acts which they claim the right to do, would, if allowed, bring about a dangerous probability that the defendants will finally effect their unlawful purpose, Judge Jackson's language in the Haggerty case (116 Fed. 516, 517) is likewise in point:

> "It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines," &c.

In the case of Moran v. Dunphy (1901), 177 Mass. 485, 59 N. E. 125, 52 L. R. A. 115, Mr. Justice Holmes, of this Court, but then Chief Justice of the Massachusetts Supreme Judicial Court, rendering the opinion of the Court, said (52 L. R. A. 116, 117):

> "We apprehend that there no longer is any difficulty in recognizing that a right to be protected from malicious interference may be incident to a right arising out of a contract, although a contract, so far as performance is concerned, imposes a duty only on the promisor. Again, in the case of a contract of employment, even when the employment is at will, the fact that the employer is free from liability

for discharging the plaintiff does not carry with it immunity to the defendant who has controlled the employer's action to the plaintiff's harm. The notion that the employer's immunity must be a non-conductor, so far as any remoter liability was concerned, troubled some of the judges in Allen *v.* Flood (1898), A. C. 1, but is disposed of for this commonwealth by the cases cited. See also May *v.* Wood, 172 Mass. 11, 14, 15, 51 N. E. 191. So again, it may be taken to be settled by Plant *v.* Woods, 176 Mass. 492, 501, 502, 51 L. R. A. 339, 57 N. E. 1011, that motives may determine the question of liability; that while intentional interference of the kind supposed may be privileged if for certain purposes, yet, if due only to malevolence, it must be answered for. On that point the judges were of one mind. See 176 Mass. 504, 51 L. R. A. 344, 57 N. E. 1011. Finally, we see no sound distinction between persuading by malevolent advice and accomplishing the same result by falsehood or putting in fear. In all cases the employer is controlled through motives created by the defendant for the unprivileged purpose. It appears to us not to matter which motive is relied upon. If accomplishing the end by one of them is a wrong to the plaintiff, accomplishing it by either of the others must be equally a wrong."

And right here, we want to emphasize the point of view of Chief Justice Holmes that persuading by malevolent advice is equivalent to force or fraud. 6 Current Law 1708. We want further to call the attention of the Court to the fact that this case of Moran *v.* Dunphy is cited favorably and relied upon by the Supreme Court of Appeals of West Virginia in the case of Thacker Coal & Coke Company *v.* Burke *et als.*

With the foregoing, and for the present, we dispose of—

(3) a. Certain facts in this case, which show the motive of defendants, and, therefore, should be considered by the Court.

And we will, therefore, next take up—

(3) b. PLAINTIFF'S RIGHTS AND DEFENDANTS' RIGHTS UNDER THOSE FACTS.

The plaintiff's rights, briefly stated, are to be let alone in the conduct of its lawful business, conducted by it in a lawful way.

The rights of the defendants are, with equal brevity, to be found in the injunction that they shall mind their own business, and shall let plaintiff alone.

(3) c. ARE THE ACTS OF THE DEFENDANTS HERETOFORE COMMITTED, WHICH HAVE INJURED PLAINTIFF, AND ARE THE ACTS, WHICH THEY DESIGN TO DO, AND WHICH WILL LIKEWISE INJURE PLAINTIFF, JUSTIFIED?

In addition to what we have already said on that subject, we ask attention to another feature—namely: **What is the foundation of defendants' liability?**

Dr. Bigelow, in his work on the Law of Torts, discusses this question, and says: (page 264) "No one would deny, that the defendant owes to the plaintiff in such a case the duty to use no *wrongful means* to procure the breach."

And then says: "Analogy is clearly in favor of treating persuasion to break a contract as too dangerous to the public welfare to be permitted."

While concluding his discussion he says: "Why should there not be a legal duty not to persuade a man to break his contract as well as not to persuade a man to violate his duty to the State, or any other binding duty? Has the supposed distinction anything more to rest upon than the confused notion that a right in personam is inconsistent with a right in rem? But whatever may be said on analogy or on other lines, the question has been

settled by the better authorities, in the struggle of the last few years, on broad lines of liability."

In the reign of Edward III. of England, and as a result of the plague, known as the "Black Death," there was a scarcity of laborers, and what is known as the "Statute of Laborers" was enacted. That statute simply added to the law certain provisions in regard to harboring servants, which were at the time not of the common law. The statute was afterwards repealed. In some of the reported decisions upon labor controversies, it has been suggested that the employer has no property right in his labor, however contracted for, and, therefore, that no action can be maintained for interference with that right, and that the courts are powerless to protect an employer. And that argument is based upon the mistaken idea that whatever rights an employer has were created by the Statute of Laborers, and that those rights ceased when that statute was repealed. It is now recognized by the best text writers, and by the courts of England, the home of the common law, and by the courts of last resort in most of the States, and by the Supreme Court of the United States, as well as by lower Federal Courts that this idea is a mistake, and that it is a wrong at common law with notice to interfere in the contractual relations of others.

The relationship existing between plaintiff and plaintiff's employees is that of master and servant. Yet we do not base plaintiff's rights alone upon the ground that the defendants are interfering with the relationship of master and servant. We base plaintiff's rights also upon the broader ground that the defendants are interfering with the contractual relations existing between plaintiff's employes and plaintiff on the one hand, and with the reciprocal contractual relations existing between the plaintiff and its employes on the other hand.

The consideration of the case on the broader ground of interference with plaintiff's contractual relations necessarily includes the question of defendants' rights to interfere in the contractual relations of master and servant. Bigelow on Torts, Eighth Edition, 257.

Defendants' liability depends upon defendants' duty. It is their duty not to intermeddle in the affairs of third persons with whose business they have no lawful concern. And in gauging the seriousness of their offence it is important to remember that the United Mine Workers, represented by these defendants, are actuated by malice in fact as well as by malice in law. Malice in fact is shown by the bill, exhibits and supporting affidavits and by the evidence introduced upon the trial. Malice in law is admitted by their contention.

In urging that malice in fact and that malice in law are properly to be considered by this Court, we follow the general rule in force in the United States Courts and in the Supreme Court of West Virginia—

Angle *v.* Chicago, St. P., M. & O. R. Co. (1894). 151 U. S. 1. 38 L. ed. 55. 14 S. C. 240.

Bitterman *et al. v.* Louisville & Nashville R. R. Co. (1907). 207 U. S. 205. 52 L. ed. 171. 28 S. C. 91.

Thacker Coal & Coke Company *v.* Burke (1906). 59 W. Va. 253. 53 S. E. 161. 5 L. R. A. (N. S.) 1901. 8 A. & E. Ann. Cas. 885.

West Virginia Transportation Company *v.* Standard Oil Company (1900). 50 W. Va. 611. 40 S. E. 591. 56 L. R. A. 804. 88 Am. St. Rep. 895.

The correctness of the rule of considering malice as the determining factor is controverted in a recent work—Cooke on the Law of Combinations, Monopolies and Labor Unions, Second Edition, 1909, 14, and **the doctrine**

is advanced that civil liability for injury depends solely on the nature of the relation of the party doing the injury and not at all on the presence or absence of malice or malicious intent. And the author says (p. 15) "The persistence of the doctrine giving effect to malice or malicious intent as a test of liability, is undoubtedly due to the absence of a comprehension of what is the true test, which is, we submit, whether the act was the natural incident or outgrowth of some lawful relation."

If malice and malicious intent are not to be considered and if defendants' liability depends upon whether the acts done were the natural incident or outgrowth of some lawful relation, and if the right to induce plaintiff's employees to join the Union is to be justified, because the acts of inducing by reason, argument and persuasion, unaccompanied by force, fraud, intimidation, violence or coercion, are the natural incidents or outgrowth of some lawful relation—**what is that relation?**

The plaintiff has no relation, contractual or otherwise, with the defendants. The defendants have no relation, contractual or otherwise, with plaintiff's employes. As to plaintiff and as to plaintiff's employes, the defendants are outsiders and mere intermeddlers. There is no consent on the part of the plaintiff. There is no consent on the part of plaintiff's employes. The proceedings of the defendants, both as to the plaintiff and as to plaintiff's employes, are *in invitum*.

Plaintiff and plaintiff's employes have entered into a bilateral contract, under the provisions of which neither plaintiff nor plaintiff's employes are to have anything to do with defendants or with the Union which they represent. The consideration of the promise is mutual. It is coincident with the employment as to each man

employed. In Wald's Pollock on Contracts, Third Edition, Williston, page 201, it is said: "The most characteristic rule in our law of consideration, and the most important for the business of life, is that mutual promises are sufficient consideration for one another." And on page 202, the author says: "The promises must be exchanged for one another at the same time, and each of them must be binding on the face of it, that is, must not be unenforceable for any intrinsic reason."

The weight of authority is that there is an equality of right in the matter of employing Union or non-union men; likewise an equality of right in employes to determine for themselves whether to work Union or non-union. And it would seem that there could be little conflict in determining the rights of all parties, if, in determining the right of Labor Unions to have all men join the Union, the common law doctrine as to monopoly were applied.

It will not do to say that the general relation of defendants as members of society justifies their effort to get plaintiff's employees to join their Union as a natural incident or outgrowth of ordinary neighborly or social intercourse. There is no case which sustains any such doctrine. The case of Boysen v. Thorn, 98 Calif. 578, 33 Pac. 492, 21 L. R. A. 233, (1893), expressly distinguished between the doctrine applied in that case and the doctrine of cases involving liability for breaches of contract between master and servant. The point made was that in breaching contracts between master and servant or between employer and employee, the wrong consisted not merely in procuring one party to a contract to break his contract, but in taking away from or depriving the master or the employer of the subject of the contract, or that which the master or employer contracted for, namely, the ser-

vices of the servant or of the employe. In the case at the bar of this Court, **if defendants are permitted to persuade plaintiff's employes to join their Union, then plaintiff is deprived of the services of its men as fast as it can employ them.** There is no justification for any such series of acts. Defendants are not the emancipators of mankind, neither are they their brothers' keepers.

Defendants to sustain themselves must have some special relation either to the employer or to the employe. They have none to either.

If it be contended that solidarity of interest, that is, the interest of all coal miners, union and non-union, justifies them, the objection obtains that if all coal miners belonged to one union there would be a monopoly of labor in that industry. There would be unreasonable restraint and no operator could operate his mine unless he operated union. The law will not sanction such a result nor acts that with a reasonable degree of probability will bring about that result.

Solidarity of interest will not furnish any justification to the defendants as far as plaintiff is concerned, because plaintiff has no relationship of any kind whatever with defendants or with the Union represented by them.

Solidarity of interest will not furnish any justification to the defendants so far as plaintiff's employes are concerned, because plaintiff's employes have no relationship of any kind whatever with defendants or with the Union represented by them.

In point of fact, there is not even a community of interest, let alone a solidarity of interest, between the defendants and plaintiff's employes. Hence, defendants have no possible justification for the acts done nor for the acts which they now seek authority to do.

While adhering to the view that there is nothing inherently or necessarily illegal in inducing one person to refuse to deal or continue to deal with another, Cooke in his work on Law of Combinations, Monopolies and Labor Unions, page 141, adds: "On principle it would seem clear that the same doctrine should cover and apply to the case of inducing one person to refuse to continue to deal with another, as employe with employer; in other words, to quit his employment. But the accepted doctrine is otherwise and we find the prevailing rule to be that 'any person who knowingly entices away the servant of another, and thereby induces him to violate his contract with his master, or who thereby deprives the master of the services of one then actually in his service, whether under a contract to serve or not, is liable to the master for his actual loss therefrom.' "

To induce plaintiff's employes to join the Union is to induce them to place themselves in a position where they cannot perform their contract. Hence to induce them to join the Union is to induce them to quit plaintiff's employment.

In passing upon the question of justification a consideration of local law and the character of defendants' business, and the character of plaintiff's business, and of the obligation of plaintiff's employees is useful, pertinent, and proper.

The case of United States *v.* Moore *et al.* (C. C., N. D. Alabama, S. D. 1904), 129 Fed. 630, is in point. Charles Moore and five others were indicted on several counts, alleging substantially that they had conspired to intimidate one B. L. Greer, a citizen of the United States, to prevent the free exercise and enjoyment by him of a right or privilege secured to him by the Constitution and the laws of the United States, to-wit: "the right and

privilege of establishing, organizing, and perfecting a local union of the United Mine Workers of America at Empire, in the county of Walker and State of Alabama," and that, in pursuance of the conspiracy, and to effect its object, the defendants unlawfully assaulted and beat said Greer, and that they assaulted him with intent to murder him by shooting at him with a pistol, &c., "for having, and because of his having exercised the right and privilege," above referred to.

In sustaining a demurrer to the indictment, Judge Jones held:

> "1. The right of a citizen to organize miners, artisans, laborers, or persons in any pursuit, as well as the right of individuals in such callings to unite for their own improvement or advancement, or for any other lawful purpose, is a fundamental right of a citizen in all free governments; but it is not a right, privilege, or immunity granted or secured to citizens of the United States, by its Constitution or laws, and is left solely to the protection of the states.
>
> "2. The fourteenth amendment of the Federal Constitution, which prohibits a state from depriving any person of his life, liberty, or property without due process of law, adds nothing to the rights of any citizen against another, but merely furnishes additional guaranties against any encroachment by the states upon the fundamental rights which belong to every citizen as a member of society.
>
> "3. Federal courts have no jurisdiction to punish a conspiracy to oppress and intimidate a citizen of the United States to prevent him from exercising the right to establish a miner's union in a state, in the furtherance of which defendants were alleged to have assaulted such citizen, with intent to murder him by shooting at him with a pistol; such offense being entirely within the jurisdiction of the state courts."

It is clear from this decision that the defendants have no rights under the Federal Constitution. And they have none under the federal Trades Union Act, because they have not availed themselves of that act so as to make themselves even *prima facie* a lawful organization under federal law.

So far as the West Virginia law is concerned, the United Mine Workers of America have no standing either. Sec. 413a1 recognizes as lawful the existence of labor unions, but the provisions of the law are of a restrictive order. And as we have said before the Supreme Court of Appeals of West Virginia has in the case of Thacker Coal & Coke Company *v.* Burke (1906), 59 W. Va. 253, held that section 413, as hereinbefore noted, does not authorize any individual, or number of individuals, to maliciously entice servants to desert service in which they are engaged, or to prevent them from engaging in such service under a contract for such service.

Section 413, Code W. Va., has been repealed, amended and re-enacted, but the present law as quoted in section 413a1 contains the language of section 413, which was passed upon by the Court in that case. Of that language the Court in that case said:

> "It does not pretend to create rights between individuals. It prohibits certain acts and the proviso simply curtails the scope of the enactment by saying that the enacting clause shall not be construed to impair any right already existing, if existing, to join the organizations therein specified or use moral suasion. It is only a curb upon the enactment. It does not affirmatively grant, create or originate those rights. It does not make them lawful, if before unlawful. And could the legislature authorize any person to violate a contract?"

In connection with the suggestion of the Court in that case, "Could the legislature authorize any person to violate a contract?" we would like, in addition to what we have said on that subject, to call the Court's attention to the antinomy which would be created by sustaining the claim of right these defendants make. It is a well established proposition of law that Courts of Equity will not enforce a contract for personal services. But while that is so, Courts of Equity **do** restrain the breach of a contract. Plaintiff's employes have contracted with plaintiff that while employed they will not join the Union. Plaintiff has contracted with its employes that while they and each of them are employed, it will run non-union. These negative provisions are not for personal services *per se* but are negative covenants which bind the contracting parties while the relationship of employer and employe exists. They are within the doctrine of Lumley *v.* Wagner, 21 L. J. Ch. 898, 903, 6 E. R. C. 652, Subscription ed. 1905; Singer Sewing Machine Company *v.* Union Buttonhole & Embroidery Company et al., 22 Fed. Cas. 220, **222, 223,** Case No. 12,904; Pomeroy's Equity Jurisprudence, Vol. 5, § 270 and note 2; Id. §§ 288, 289 and notes.

Under that law the plaintiff, if it undertook to run union in violation of its contracts with its employes, could be enjoined by them. So could plaintiff's employes be enjoined from violating their contracts. Hence, if the Court were to allow the proposed acts of these defendants it would *ex necessitate rei* decide that the acts of the defendants would be lawful, and that the result of the persuasion, supposing it to be successful and the men to join the Union, **would as to these very employes also be lawful.** Putting it another way, the Court would be saying to plaintiff's employes on behalf of the defen-

dants—you **may** join the Union—and on behalf of the plaintiff it would be saying to the same employes—**you must not break your contract** while working for the plaintiff; therefore, **you must not** join the Union.

We have shown by United States *v.* Moore *et al.*, 129 Fed. 630, that the United Mine Workers of America are not by the Constitution of the United States given any right to establish, organize and perfect local unions. We have also shown by Code sec. 413 and Code sec. 413a1 and by the case of Thacker Coal & Coke Company *v.* Burke, 59 W. Va. 253, that West Virginia law does not confer any such right. And it only remains to show the length to which Courts will go, and be within the law, in restraining others from doing what they ought not to do, where the acts to be done are an interference with the rights of third persons, with whose rights the persons enjoined have nothing whatever to do. Bigelow on Torts, Eighth ed., p. 264, says:

> "The well-established case of the right of action of a husband or wife against a third person for persuading the other party to the marriage contract to break the same by abandoning the other * * * is still not without its force as a precedent."

And along that line we want to cite the case of Ex parte Warfield (1889) 40 Texas Cr. Rep. 413 76 Am. St. Rep. 724 725 726. Judge Henderson rendering the opinion said:

> "This is an original application for a writ of habeas corpus, which grew out of contempt proceedings in the Forty-fourth judicial district court of Dallas county. It appears that Will R. Morris, as plaintiff, brought a suit against J. B. Warfield, as defendant, before Judge Richard Morgan, in the Forty-fourth judicial district court of Texas, for one hundred

thousand dollars. The petition alleges a number of acts on the part of J. B. Warfield, the defendant in that suit, interfering with marital relations existing between Will R. Morris and his wife, Vivia Morris, said acts causing a partial alienation of the affections of his said wife; and further suggesting that the course of conduct of said Warfield toward the wife of said Morris, if permitted to continue unrestrained, would likely culminate in the total alienation of the affections of his said wife, and the destruction of the marital relations existing between them. And said Morris asked for a writ of injunction restraining said Warfield from visiting or associating with plaintiff's wife, or going to or near her at a certain house, No. 129 Marion street, or any other house or place in the city of Dallas or state of Texas where his said wife might be, and that he be restrained from writing or speaking to her, or in any manner, either directly or indirectly, communicating with her, by word, letter, writing, sign, or symbol, and also asking that his agents and employees be restrained from the like, etc.; and that said Warfield and his agents and servants be restrained from interfering with plaintiff in his peaceful efforts to seek, talk, write, or communicate with his said wife, etc. The writ was granted on the 23d of February, 1899, and was served on Warfield on the following day, the 24th of February. On the 9th of March following, plaintiff sued out an attachment against said Warfield, alleging that he had violated said writ of injunction, and made a motion for rule against him for contempt for a violation thereof. Subsequently Warfield was brought before the court, and the matter of said contempt was tried before the Hon. Richard Morgan. A number of legal questions were raised, and the issue of fact was submitted before said judge as to whether or not said injunction had been violated. It was shown, in fact it was conceded by said Warfield, that on two occasions after the issuance and service of the said writ of injunction,

he had met and talked with the wife of Morris. He claimed, however, that these meetings were casual, and that he indulged in no conversation with her violative of the spirit of said injunction, or calculated to make a breach of the marital relations existing between Morris and his wife. It is further shown that he went to the house, 129 Marion street, where the wife of plaintiff, Morris, was, but claimed that he had the right to go there, that being his boarding house, etc. The court, Judge Morgan presiding, adjudged Warfield in contempt of court, and assessed a fine against him of one hundred dollars and three days' imprisonment in the county jail. From which judgment Warfield, the defendant in said proceedings and the applicant here, sued out a writ of habeas corpus; and he claims now, as he did before the lower court, that the court, in granting the said writ of injunction, had no power or authority to enjoin him from speaking to, or talking with, Mrs. Morris, or from visiting the house, 129 Marion street; that the exercise of said power was beyond the jurisdiction of a court of equity, and was not merely irregular, but void, and imposed upon him no duty to obey the same. And he now insists that the use of said power by the court was violative of the Constitution and the fundamental law of the land, in that it was an effort on the part of the court to restrain the freedom of speech and of locomotion, and the rights of the defendant in the pursuit of happiness. Furthermore, it is contended that, although the matters complained about might be regarded as a violation of the letter of the injunction, it was not a violation of its spirit, and the court had no power to coin a criminal offense out of the acts of the applicant, and to punish him as for a contempt."

Judge Henderson held that the applicant was not entitled to be relieved, and ordered that he be remanded to the custody of the sheriff of Dallas county and undergo

the sentence imposed upon him by the judge of the lower court.

Ex parte Warfield was cited with approval in the case of United States v. Milwaukee Refrigerator Transit Company et al. (C. C., E. D. Wisconsin, 1906) 145 Fed. 1010, heard before Grosscup, Baker, Seaman and Kohlsaat, Circuit Judges, Judge Baker rendering the opinion.

In connection with the defendants' justification, we now ask the Court's attention to two propositions advanced by the defendants:

First. That the injunction granted imperils the existence of Labor Unions, and that no case of like kind can be found in any decision of any English, nor of any American court.

Second. That public policy recognizes the benefit of Labor Unions and, incidental to their existence and necessary to their growth, the right of organizers to organize.

On the first proposition, namely: that the injunction granted imperils the existence of Labor Unions, and that no case of like kind can be found in any decision of any English, nor of any American Court, we would say that the lack of a precedent does not put a limitation on plaintiff's rights.

We might answer the objection in another way by saying that there could not have been any decision denying such rights as are now claimed by the defendants, unless the propositions the defendants now contend for had been made the basis of an appeal to some Court. Not only is there no case which gives to defendants the rights they now ask, but there is no case in which even such a contention has been raised.

As a matter of fact the injunction does not prevent men joining Labor Unions. It prevents Labor Unions

organizing non-union mines where the non-union mines are working under contract between employer and employe that the employe shall not join the Union, and where there is a reciprocal contract on the part of the employer that the mine will be run non-union.

If the doctrines laid down in plaintiff's case are availed of by employers generally and contractual rights created, and those rights enforced by the courts, a *limitation* will be put upon the growth, practices, and power of labor unions. But that result could not be detrimental to the prosperity of the country. It would lessen the number of "strikes," sympathetic and otherwise, and would promote industrial peace, because it would emphasize and restore to prominence the right of the employer to employ whom he pleased and of the employe to work for whom he pleased. And this right has been defined to be included within the term "liberty."

While no case has been found on all fours with plaintiff's case, the cases we have cited in support thereof will, on examination, be found to be inter-related by the points decided and by the reasons assigned in support thereof.

Of the cases cited by us—

Lumley *v.* Gye is cited approvingly by the Court in—

Bowen *v.* Hall.
Temperton *v.* Russell.
Quinn *v.* Leathem.
South Wales Miners' Federation *v.* Glamorgan Coal Company.
Angle *v.* Chicago, St. P., M. & O. R. Co.
Beekman *v.* Marsters.
Read *v.* Friendly Society of Operative Stone Masons of England, Ireland and Wales.
Chipley *v.* Atkinson.



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West Virginia Transportation Company *v.* Standard Oil Company.
Thacker Coal & Coke Company *v.* Burke *et als.*
Beekman *v.* Marsters.
Hopkins *et al. v.* Oxley Stave Company.
Chipley *v.* Atkinson.

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Thacker Coal & Coke Company *v.* Burke *et als.*
Read *v.* Friendly Society of Operative Stone Masons of England, Ireland and Wales.
Berry *v.* Donovan.

South Wales Miners' Federation *v.* Glamorgan Coal Company is cited approvingly by the Court in—

Beekman *v.* Marsters.

Angle *v.* Chicago, St. P., M. & O. R. Co. is cited approvingly by the Court in—

Louisville & Nashville Railroad Company *v.* Bitterman.
Bitterman *v.* Louisville & Nashville Railroad Company.
Thacker Coal & Coke Company *v.* Burke *et als.*
Beekman *v.* Marsters.

West Virginia Transportation Company *v.* Standard Oil Company is cited approvingly by the Court in—

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Read *v.* Friendly Society of Operative Stone Masons of England, Ireland and Wales is cited approvingly by the Court in—

South Wales Miners' Federation *v.* Glamorgan Coal Company.
Berry *v.* Donovan.
Beekman *v.* Marsters.

Flaccus *v.* Smith *et als.* is cited approvingly by the Court in—

Louisville & Nashville Railroad Company *v.* Bitterman, 75 C. C. A. 203, and

Louisville & Nashville Railroad Company *v.* Bitterman was affirmed by the Supreme Court of the United States in—

Bitterman *v.* Louisville & Nashville Railroad Company, 207 U. S. 205.

Flaccus *v.* Smith *et als.* is also cited approvingly by the Court in—

West Virginia Transportation Company *v.* Standard Oil Company.

State *v.* Goodwill is cited approvingly by the Court in—

Adair *v.* United States.
West Virginia Transportation Company *v.* Standard Oil Company.
Goldfield Consolidated Mines Co. *v.* Goldfield Miners' Union No. 220.

Walker *v.* Cronin is cited approvingly by the Court in—

Angle *v.* Chicago, St. P., M. & O. R. Co.
West Virginia Transportation Company *v.* Standard Oil Company.
Thacker Coal & Coke Company *v.* Burke *et als.*
Beekman *v.* Marsters.
Chipley *v.* Atkinson.
Berry *v.* Donovan.
Arthur *v.* Oakes.
Hopkins *et al. v.* Oxley Stave Company.

Frank *et al. v.* Herold *et al.* is cited approvingly by the Court in—

Thacker Coal & Coke Company *v.* Burke *et als.*

Chipley *v.* Atkinson is cited approvingly by the Court in—

West Virginia Transportation Company *v.* Standard Oil Company.
Thacker Coal & Coke Company *v.* Burke *et als.*

State *v.* Buchanan is cited approvingly by the Court in—

Arthur *v.* Oakes.

State *v.* Stewart is cited approvingly by the Court in—

Purvis *et al. v.* Local No. 500, United Brotherhood of Carpenters & Joiners *et al.*
Arthur *v.* Oakes.
Hopkins *et al. v.* Oxley Stave Company.

Berry *v.* Donovan is cited approvingly by the Court in—

Beekman *v.* Marsters.
Geo. Jonas Glass Company *v.* Glass Bottle Blowers' Association of United States and Canada *et al.*

Arthur *v.* Oakes is cited approvingly by the Court in—

Adair *v.* United States.
Hopkins et al. *v.* Oxley Stave Company.

On the second proposition, namely: that public policy recognizes the benefit of Labor Unions and incidental to their existence and necessary to their growth the right of organizers to organize, we would say that the injunction does not limit the right of the Union, nor the right of the organizer, to induce men to join a Labor Union, provided the men sought to be persuaded are not under contract not to join the Union.

Beach on Monopolies and Industrial Trusts. § 14, page 38, says: "On all sides it is accepted that public policy has a standing in a court of equity, and that whatever is clearly in contravention of its claim is illegal and void. Undoubtedly the application of this rule is attended with grave difficulties, and it should be administered only with great deliberation, and in the exercise of a thoroughly judicial temper. The indefiniteness and uncertainty of the idea on which the rule is based, and which is the ground of the difficulty of its application, renders it especially liable to abuse."

The Supreme Court of the United States has this to say on that subject: "This Court can know nothing of public policy except from the constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or impolitic; considerations of that sort must, in general, be addressed to the Legislature. Questions of policy determined there are concluded here."

License Tax Cases (1867). 5 Wall. 462, **469.** 18 Law. ed. 497, **500.**

And in the case of the Baltimore & Ohio Southwestern Railway Company v. Voight (1900), 176 U. S. 498, **505**; 44 L. ed. 560, **565**; 20 S. C. 385, Mr. Justice Shiras, in delivering the opinion of the Supreme Court, said:

> "It must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare. It was well said by Sir George Jessel, M. R., in Printing & N. Registering Co. v. Sampson, L. R. 19 Eq. 465: 'It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider,—that you are not lightly to interfere with this freedom of contract."

In this case of Baltimore & Ohio Southwestern Railway Company v. Voight, the question was, whether an express company's agent, who rode in an express car, and who had made a specific agreement waiving all right of damages against the railroad company, in case of accident, could avoid his contract, on the ground that it was against public policy to allow the making of any such contract.

With such a holding against one of the parties to a contract, how much stronger is a case where the parties

to the contract are both satisfied, and where the only trouble which arises is that brought about by intermeddlers. Intermeddling is not an approved, nor a recognized, right under any law, nor under any decision of any court that we have been able to discover.

In the case of Crump *v.* Commonwealth (1888), 84 Va. 927; 6 S. E. 620, **628,** Fauntleroy, Judge, rendering the opinion of the Court, said:

> "Every man has the right to work for whom he pleases; and for any price he can obtain; and he has the right to deal with and associate with whom he chooses, or to let severely alone, arbitrarily and contemptuously, if he will, anybody and everybody upon earth."

Affecting defendants' justification and related to the foundation of their liability, we ask attention to one other thought: their conspiracy against plaintiff's right to run its own business in its own way, and within the law.

By the claim defendants make they ask the Court to legalize "boycotting."

"Boycotting" is defined to be an organized effort to exclude a person from business relations with others, and thereby force him, from fear of resulting injury, to submit to dictation in the management of his affairs. See Casey *v.* Cincinnati Typographical Union No. 3, *et als.* (C. C. S. D. Ohio W. D. January 31, 1891), 45 Fed. 135, **143.** Boycotting may involve only persuasion, or it may involve intimidation and other acts which tend to violence. The defendants repudiate fraud, force, violence, intimidation and coercion; but they plead for the right to use argument, reason and persuasion. The defendants ask the right to persuade all men not to work for plaintiff. This

species of boycotting is simply an unlawful means to an unlawful end, because their Constitutions say: "One of the objects of this organization is to unite **all** employes in and around the coal mines of Ohio and the Panhandle District of West Virginia." "*All men* are eligible and *must be members* of the United Mine Workers of America who work in and around the mines." And their obligation of membership says: "As the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so." If this right be conceded and if the result be accomplished, plaintiff would not be able to employ labor, unless it ran union. Failing to run union, and without labor, it would have to go out of business. So that the proposition, thus involved in defendants' claim of right to do the acts enjoined, amounts to their asking the Court for authority to put plaintiff out of business. And upon what ground? Because plaintiff refuses to unionize.

This subject of "boycotting" has been before the courts of the country many times. Most lately and prominently in the Supreme Court of the United States in the case of Loewe *et al. v.* Lawlor, *et al.* (1908), 208 U. S. 274; 28 S. C. 301; 52 L. ed. 488, and in the case of Buck's Stove & Range Company *v.* American Federation of Labor.

In 1887, in the case of State *v.* Glidden and others, 55 Conn. 46, 8 Atl. 890, **894, 895,** the Supreme Court of Errors of Connecticut, said of boycotting—"It is a dangerous instrumentality to use; and if those instigating and resorting to it do not of their own accord take notice of its peril, and voluntarily abandon its use, as we sincerely hope they will, the courts at no distant day will be called upon to recognize its dangerous tendency, and treat it accordingly."

In the case of State v. Glidden and others the Carrington Publishing Company had in their employ a number of printers known as "non-union" men, or "rats." The Typographical Union, the Knights of Labor, the Trades Council, and other affiliated organizations waited upon the company, and demanded that their office be made a "union" office within twenty-four hours. Upon refusal the company was boycotted. Criminal prosecution for conspiracy was instituted against Glidden and others. Plea, not guilty. Verdict, guilty. The defendants appealed.

In discussing the case, the Court said:

> "Now, if we look at this transaction as it appears on the face of this information, we shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motive was a selfish one,—to gain an advantage unjustly, and at the expense of others,—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore it was malicious. It seems strange that in this day and this free country—a country in which law interferes so little with the liberty of the individual—that it should be necessary to announce from the bench that every man may carry on his business as he pleases, may do what he will with his own so long as he does nothing unlawful, and acts with due regard to the rights of others; and that the occasion for such an announcement should be, not an attempt by government to interfere with the rights of the citizen, nor by the rich and powerful to oppress the poor, but an attempt by a large body of working men to control, by means little if any better than force, the action of employers. The defendants and their asso-

ciates said to the Carrington Publishing Company: 'You shall discharge the men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business, we have no capital invested therein, we are in nowise responsible for its losses or failures, we are not directly benefited by its success, and we do not participate in its profits; yet we have a right to control its management, and compel you to submit to our dictation.' The bare assertion of such a right is startling. The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be directed by intelligence or ignorance,—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be confined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc. will be demanded and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body of irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it. All history proves that abuses and excesses are inevitable. The exercise of irresponsible power by men, like the taste of human blood by tigers, creates an unappeasable appetite for more. Business men have a general understanding of their rights under the law, and have some degree of confidence that the government, through its courts, will be able to protect those rights. This confidence is the corner-stone of all business; but if their rights

are such only as a secret and irresponsible organization is willing to concede to them, and will receive only such protection as such an organization is willing to give, where is that confidence which is essential to the prosperity of the country?

"Again, if the alleged right is conceded to the defendants, a similar right must be conceded to the promoters of the Carrington Publishing Company, and those with whom they may associate. Otherwise all men are not equal before the law. It logically follows that they, in turn, may control the business matters of the defendants, may determine what trade or occupation they may follow, whether to work in this establishment or in that, or in none at all. Obviously, such conflicting claims, in the absence of law, can lead to but one result, and that will be determined by brute force. It would be an instance of the survival, not necessarily of the fittest, but of the strongest. That would be subversive, not only of all business, but also of law, and of the government itself. The end would be anarchy, pure and simple.

"Once more. Suppose the government should assert the right in the same manner to regulate and control the business affairs of the Carrington Publishing Company and other business enterprises, how long would the people submit to it? And yet the exercise of such a power by government would be far more tolerable than its exercise would be by secret organizations, however wise and intelligent such organizations may be; for government is established by the people and for the people, and is responsible to all the people. If it abuses its power, the people have the remedy in their own hands; but if a secret organization, in the management of which the people at large have no voice, abuses its power, and is not amenable to law, where is the remedy?"

SECOND.—THE REMEDY.

For the wrongs done to plaintiff the defendants are answerable.

First. Criminally by indictment for conspiracy at common law.

Second. Civilly by action at law for damages.

Third. By injunction to restrain them from doing acts similar to those heretofore done, and from further oppressing plaintiff in its pursuit of its lawful business conducted in a lawful way.

First Remedy.

INDICTMENT FOR CONSPIRACY AT COMMON LAW.

On this we ask attention to the case of —

Regina *v.* Rowlands *et als.* Queen's Bench (1851). 17 Ad. & El. 671.

Syl. in full.

"On an indictment charging defendants with conspiring to force workmen hired and employed by P. in his business of a japanner to depart from their said employment.

By unlawfully 'molesting' the said workmen.
By unlawfully 'using threats' to the said workmen.
By unlawfully 'intimidating' the said workmen.
By unlawfully 'molesting' P.
By unlawfully 'obstructing' P., so carrying on his said business, and the workmen so hired, etc.

Held, that these counts were sufficiently full and certain, and that the means by which the conspiracy was to be carried on were well stated in the words of Stat. 6 G. 4 c. 129 § 3.

Other counts charged a conspiracy to force P. to make an alteration in the mode of conducting his business.

By 'molesting' P.

By 'obstructing' P. by inducing and persuading workmen hired and employed by him in his business to leave their said hiring and employment.

Held good counts.

Another count (framed with reference to Stat. G. 4 c. 34 § 3) charged that divers, to-wit, etc. persons, being artificers, had contracted with P. to serve him as workmen and artificers in his said trade and business for certain times agreed upon, and had entered into such service: and that defendants conspired by divers subtle means and devices to induce and persuade such artificers, so having contracted, etc., and so having entered, etc., unlawfully to absent themselves from the said service without the consent of P. before the terms of the respective contracts were completed.

Another count stated that H. (an individual workman) had in like manner contracted with P., and entered etc., and that defendants conspired, by divers subtle means and devices and illegal acts and practices, and by intoxicating the said H., to induce and persuade H., etc., (as in the preceding count).

Held good counts.

Other counts charged: That defendants, intending to oppress P. in his said trade, conspired by divers subtle means and devices, and by intoxicating and thereby rendering senseless the workmen of P. in his said trade, to convey to a distance and carry away the said workmen, and thereby prevent them from continuing to work for P. in his said trade.

And that defendants conspired, by divers subtle, etc., and by illegal acts and practices, and by molesting and

rendering intoxicated the workmen employed by P., and inducing them to depart from the said employment and break their contracts with P., to force and compel P. to alter and thereby increase the amount of wages which he paid to his workmen.

Held good counts.

Other counts alleged:

That defendants conspired unlawfully to intimidate, prejudice, and oppress P. in his trade and occupation as a japanner, and to prevent his workmen from continuing to work for him in his said trade.

That defendants conspired by divers subtle means and devices and wicked acts and practices to injure and oppress P. in his trade, business, etc. of etc., and to induce his workmen to depart from their hiring and employment with P. before the period of their agreement with him was completed. And

That defendants conspired unlawfully to intimidate, prejudice and oppress P. in his trade and occupation of etc., and to entice and seduce away the workmen of P. from the employment of P., and thereby to injure and oppress him in his said trade.

Semble, that these were bad counts, as being too vague."

This indictment, on conviction of defendants, was removed from the lower court to the Queen's Bench by certiorari.

After carefully and exhaustively reviewing the facts and the law the Queen's Bench held as shown in the Syl. and sentenced the defendants to three months' imprisonment.

In a note on pages 686 and 687 (17 Ad. & El.) to this report of this case is the following—

"(b) One ground of the motion for new trial was that Erle, J., in summing up, had directed the jury as follows:

The law is clear that workmen have a right to combine for their own protection, and to obtain such wages as they choose to agree to demand. I say nothing at present as to the legality of other persons, not workmen, combining with them to assist in that purpose. As far as I know, there is no objection, in point of law, to it: and it is not necessary to go into that matter: but I consider the law to be clear so far, only, as while the purpose of the combination is to obtain a benefit for the parties who combine; a benefit which by law they can claim. I make that remark because a combination for the purpose of injuring another is a combination of a different nature, directed personally against the party to be injured: and the law allowing them to combine for the purpose of obtaining a lawful benefit to themselves gives no sanction to combinations which have for their immediate purpose the hurt of another.

The rights of workmen are conceded: but the exercise of free will and freedom of action, within the limits of the law, is also secured equally to the masters. The intention of the law is at present to allow either of them to follow the dictates of their own will, with respect to their own actions, and their own property; and either, I believe, has a right to study to promote his own advantage, or to combine with others to promote their mutual advantage.

His Lordship then said that, in this case, upon undisputed evidence, there had been a combination to force Messrs. Perry to agree to a uniform book of prices: That, upon the facts before the jury, they would have to give their opinion upon three classes of counts, charging conspiracies: (1) to prevent workmen from working for the prosecutors, by intimidating the workmen: (2) to force the assent of the prosecutors to certain alterations, by intimidating the prosecutors: (3) to induce workmen to leave

the prosecutors' employment, contrary to their contract: and he stated that if the jury thought these counts sustained by the evidence, they should convict them."

He then added:

> "But, supposing any of the defendants are acquitted as to all those classes, and you should still be of opinion that a combination existed for the purpose of obstructing Messrs. Perry in carrying on their business, and forcing them to consent to this book of prices, and, in pursuance of that concert, they persuaded the free men and gave money to the free men to leave the employ of Messrs. Perry, the purpose being to obstruct them in their manufacture and to injure them in their business, and so force their consent, with no other result to the parties combining than gratifying ill will, I am of opinion that that would also be a violation of the law, and warrant a conviction upon the counts directed against that form of offence."

It was contended, on behalf of the defendants, that this language of the learned Judge led the jury to suppose that, although the combination were for a legitimate object, yet, if the means to be used would have the effect of obstructing the prosecutors in carrying on their business, it was an indictable conspiracy; whereas, if the object of the workmen was to enforce their own rights, they were justified in combining to do so, though the effect were an obstruction of the prosecutors' business. But the learned Judge stated that his words had no such meaning; and the Court saw no objection to the summing up.

This case was an indictment according to the language of the Statute, but the offence (conspiracy) being a common law offence the Court held that it was sufficient to follow the language of the Act of Parliament.

This holding came upon the suggestion that some of the counts did not disclose the nature of the molestation or intimidation by which the conspiracy was to take effect (686). The Court said on this point:

> "But this is quite unnecessary. The words of the Legislature are used; the terms in question have a meaning stamped upon them by the Act 6 G. 4 c. 129 § 3; and we must take it that they are used here in that sense. And they are not employed as describing the substantive offence for which the indictment is preferred: that offence consists in the conspiracy, which is a misdemeanor at common law" (686).

The case of Regina v. Rowlands, 17 Ad. & El. 671, has been repeatedly judicially noticed in England, and its doctrine has been repeatedly applied, and never criticised, doubted, modified, or reversed.

This law is unaffected in West Virginia by § 41331.

Second Remedy.

Action at Law for Damages.

The old common law of England is the law of West Virginia on this subject.

In England, however, the Trade Disputes Act of 1906 has made some change. In that country the effort for years has been to create for labor a paramount estate. The Trade Disputes Act of 1906 was the culmination of the effort. And while that Act went further than we think a similar Act could constitutionally go in this country, under the Constitution of the United States and its amendments, and under the Constitution of West Virginia, still for acts such as these defendants have done,

they would even under the 1906 Trade Disputes Act be liable. And it will not be forgotten that defendants are sued individually, as well as officially.

Sustaining this, we ask attention to two recent cases—one of them, Bussy *v.* The Amalgamated Society of Railway Servants and Bell, K. B. Div. (1908), 24 T. L. R. 437; and the other of them, Smithies *v.* National Association of Operative Plasterers, and others, 1 K. B. Div. (1909) 310.

Bussy *v.* The Amalgamated Society of Railway Servants and Bell, 24 T. L. R. 437, holds:

> "s. 4 of the Trade Disputes Act, 1906, is general in its application, and protects a trade union against any action of tort, and is not limited to a tortious act arising out of a trade dispute. Therefore, an action for malicious prosecution will not lie against a trade union.
>
> An action will lie against a member or official of a trade union for a tort committed by him when acting on behalf of himself and all other members of the union, s. 4 only preventing him from being so sued as to render the trade union as such and its funds liable for the tortious act."

In deciding this case, Justice Darling said (p. 437):

> "From the humiliating position of being on a level with other lawful associations of his Majesty's subjects the Statute of 1906 has relieved all registered trade unions, and they are now *super legem*, just as the Medieval Emperor was *super grammaticam*. The defendant society are, therefore, entitled to judgment."

In this case the defense went so far as to claim that the 1906 Statute exempted the **officials** of labor unions

from all liability for their acts, criminal as well as civil. But Justice Darling replied that the language of the Act was not so clear as to require that and that if such were the law then in a union where all the members might be officials they could under that construction of the Statute and with impunity and without fear, or liability for punishment commit every crime in the calendar known to the law.

Smithies v. National Association of Operative Plasterers, and others, 1 K. B. Div. (1909) 310, holds:

> "The Trade Disputes Act, 1906, s. 4, is not retrospective so as to prevent the further maintenance of an action against a trade union which was commenced before the passing of the Act.
>
> "Two workmen, members of a trade union, who repectively had entered into contracts with an employer to serve him for a term of years, broke their contracts before the passing of the Trade Disputes Act, 1906, by striking, together with others in the same employ and continuing on strike, during the currency of the periods for which they had resepctively contracted to serve. **The trade union had originally sanctioned the strike in ignorance of the existence of the before-mentioned contracts, but subsequently gave the workmen strike pay, after they became aware of those contracts, in order to keep the workmen out on strike:**
>
> **"Held, that the trade union, by procuring a continuing breach of contract by the workmen, had rendered themselves liable in damages to the employer."**

Third Remedy.

INJUNCTION.

We claim that defendants are not plaintiff's competitors. And we also claim that if they are in any sense competitors, they are not entitled to bring about breaches of contracts which plaintiff has with its employes. Even competition does not admit of that.

Illustrative of that branch of the law, we cite the case of—

> The American Law Book Company v. The Edward Thompson Company. (Supreme Court, New York, 1903). 41 Misc. 396.

Bischoff, J., in that case, said:

> "By preliminary injunction, in an action for injunctive relief, the plaintiff seeks to restrain the defendant from making agreements with subscribers to the plaintiff's encyclopedia, whereby the defendant undertakes to indemnify these subscribers against claims for damages for their breach of contract in declining to receive and pay for the plaintiff's books, and from conducting and defraying the expenses of the defense to any action brought against the subscriber by the plaintiff.
>
> "The complaint alleges that these agreements have been systematically offered by the defendant to the plaintiff's subscribers for the purpose of causing them to subscribe to the defendant's encyclopedia and to repudiate their subscriptions for the work published by the plaintiff, and the allegations further disclose the making of intentional misrepresentations by the defendant to these subscribers, as to the relative merits of the encyclopedias, for the purpose of inducing the breach of contract.
>
> "**The defendant** admits the making of the agreements in question, but **asserts that the plaintiff has**

no remedy in equity upon the allegations of the complaint, the contention being that the plaintiff has his remedy at law for each contract broken; that the party to that contract has the right to break it and pay damages, and that, what the party can do, another person may ask him to do without restraint by injunction. It is also argued that the cases in which an injunction has been granted to prevent the solicitation of a breach of contract are found to have involved only contracts for personal services, and that there is no precedent for such an injunction as the plaintiff seeks. If there be no exact precedent for this injunction, none is needed. The complaint avers, and the affidavits support the averment, that the defendant is engaged in an attempt to obtain business which the plaintiff has secured, having no regard to fairness of competition, but with resort to trick and device.

"Whether the subscribers are in each instance actually led by the defendant's misrepresentations to break the particular contracts is not important, and is not an essential averment of the complaint. Intentional false statements, made with a view to obstruct the plaintiff's business and to divert it to the defendant, are charged, and the solicitation of the subscriber's breach of contract is but a more active step in the same scheme of unfair competition.

"The fraudulent intent followed to fruition in the actual inducement of persons dealing with the plaintiff to break their contracts for the intended benefit of the defendant and to the intended injury of the plaintiff is the basis of the defendant's wrong—a wrong which our system of remedial justice recognizes as the subject of relief. Rice *v.* Manley, 66 N. Y. 82; Rich *v.* N. Y. C. & H. R. R. Co., 87 Id. 392. And see Bowen *v.* Hall, 6 Q. B. Div. 333.

"That an action for damages would not afford an adequate remedy is obvious. The loss of business and the injury to business reputation resulting from the defendant's acts of obstruction, and from the

consequent litigation between the plaintiff and its delinquent subscribers, could not be estimated nor proven with any degree of certainty for the purposes of a recovery; nor could the plaintiff properly estimate the additional burden of the future litigation with subscribers, whose defense would (as is to be inferred from the past) be conducted by the defendant at great pains and expense, bearing no relation to the amount of the claim, but solely in the interest of obstruction and for advertising purposes.

"The invasion of a legal right being apparent and the inadequacy of relief at law being clear, a case for injunctive relief is made out, and, indeed, direct authority for an injunction upon a very similar state of facts is not wanting, Stoddard *v.* Key, 62 How. Pr. 137."

For an additional injunction labor case applicable to these defendants as intermeddlers, we cite

The W. P. Davis Machine Company *v.* Harry Robinson, individually, and as President, etc., *et al.* (Supreme Court, New York, 1903). 41 Misc. 329. 84 N. Y. Supp. 837.

Nash, J., said (41 Misc. 330):

"This action is brought to restrain the defendant Robinson and the Rochester City Lodge No. 93, of the International Association of Machinists, its officers, agents, members and servants, from interfering with the business of the plaintiff."

And again on the same page 330, said:

"The allegations of the complaint supported by affidavits upon which the preliminary injunction was granted are to the effect that, in March last, the defendant union, through its executive committee and its business agent, presented to the plaintiff for sig-

nature a contract which, among other things, provided that the plaintiff would be permitted to employ only machinists in good standing with the International Association of Machinists; and that no piece work or premium system, a system which was in vogue in the plaintiff's factory, should be allowed. The plaintiff refused to sign the proposed contract, and on the eleventh day of April the defendant union ordered a strike and ordered all members of its Lodge No. 93, who were in the employment of the plaintiff, to leave its factory in a body, and in obedience to such order the members of the defendant union on that day quit the plaintiff's employment. That at that time the plaintiff had in its employ over one hundred men, some sixty of whom were members of the defendant union. That the greater portion of the other employes of the plaintiff, who were not members of the union, left with the strikers. That the plaintiff thereafter, with such men as could be secured from Rochester and other places, and such of its employes as remained, has since attempted to continue its business."

Nash, J., further said: (41 Misc. 332)

"The defendants concede that prior to the granting of the injunction members of the union were stationed in and about the plaintiff's factory, morning, noon and night, when men employed by the plaintiff were going and coming from their work, for the purpose of persuading, and that they did persuade and endeavor to get the persons employed by the plaintiff, who had taken the places of the strikers, to leave the employment of the plaintiff. And it is insisted upon this motion that defendants have that right, and that they may by advice and persuasion induce the plaintiff's employees to leave the employment of the plaintiff. In other words, deprive the plaintiff of the means of carrying on its business, unless it accedes to the demands of the defendant. There is

no question of wages involved in the strike. The plaintiff was paying its employes full union wages. The strike was ordered because the plaintiff refused to sign an agreement that it would not employ any but members of the union, and refused to discard the premium system in its factory.

"It has not yet been held by the Courts of our State and I am not prepared to hold, that a business carried on in a lawful way may be so interfered with, merely because its owner refuses the dictation of the labor union as to the method in which the business shall be conducted or carried on. What means when assembled and co-operating together persons employed in any calling, trade or handicraft, may adopt, for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, under the provisions of the Penal Code, has not been fully defined. In one respect it has been found necessary to modify the provisions of the Code as to the right impliedly given. An amendment has been enacted which provides that a person who, either by himself, or with another, obstructs or annoys a member of the National Guard, or his employer, in respect of his trade, business or employment, because said member of said National Guard is such member, is guilty of a misdemeanor.

"In the case of Curran v. Galen, 152 N. Y. 33, it is held that, 'The organization or co-operation of workingmen is not of itself against any public policy, and must be regarded as having the sanction of law, when it is for such legitimate purpose as that of obtaining an advance in the rate of wages or compensation, or of maintaining such rate.'

The Court in rendering its decision there said:

"'In the general consideration of the subject, it must be premised that the organization, or the co-operation, of workingmen is not against any public policy. Indeed, it must be regarded as having the sanction of law, when it is for such legitimate purposes as that of obtaining an advance in the rate of

wages or compensation, or of maintaining such rate. Penal Code § 170. It is proper and praiseworthy, and, perhaps, falls within that general view of human society, which perceives an underlying law that men should unite to achieve that which each by himself cannot achieve; or can achieve less readily. But the social principle which justifies such organizations is departed from, when they are so far extended in their operation as either to intend, or to accomplish, injury to others. Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict, that freedom, and, through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our government and the nature of our institutions.'

"'In the course of its opinion the Court cited with approval the case of Regina v. Rowlands, 17 Ad. & El. (N. S.) 671, where the Court of Queen's Bench, upon motion for a new trial for misdirection of the jury by Mr. Justice Erle, below, approved of his charge, in which he instructed the jury that 'a combination for the purpose of injuring another is a combination of a different nature, directed personally against the party to be injured, and the law allowing them to combine * * * gives no sanction to combinations which have for their immediate purpose the hurt of another. The rights of workingmen are conceded; but the exercise of free will and freedom of action within the limits of the law is also secured equally to the masters. The intention of the law is, at present, to allow either of them to follow the dictates of their own will with respect to their own actions, and their own property, and either, I believe, has the right to study to promote his own advantage,

or to combine with others to promote their mutual advantage.'

"The distinction is plain. The acts of persons combining and confederating for the purpose of increasing their wages may be lawful, while combinations and acts which have for their objects and purpose injury merely to the business of another, without any pecuniary advantage to the persons so combining may be unlawful.

"The English case is in point. There the question involved was of the right by combination to prevent certain workingmen from working for their employers, and thereby to compel the latter to make an alteration in the mode of conducting their business, precisely the question here, the object of the defendant being to compel the plaintiff to change its method of business in such a manner as will conform to the requirements of the defendant union not in the matter of wages. It seems that the common-law right of action for enticing away from the master a servant has not been taken away, unless possibly for the purpose of obtaining an advance in or maintaining the rate of wages; hence when the rights of the master are unlawfully interfered with and there is not an adequate remedy at law, equity will take jurisdiction by injunction."

"The jurisdiction of a court of equity to enjoin interferences with property rights is not destroyed by the fact that they are accompanied by or are violations of the criminal law."

In re Debs *et al.* (1895). 158 U. S. 564. 39 L. ed. 1092. 15 S. C. 900.

Actions at law against the defendants for damages would be inadequate; a multiplicity of suits would be required.

Actions at law against employes who might break their contracts and join the Union would also be inadequate; and a multiplicity of suits against them would also be required.

The plain fact is that plaintiff's right to do business is at stake. With the injunctive fangs of the law fastened in them, defendants have been letting plaintiff alone. And plaintiff is running its business lawfully, peacefully, and with satisfaction to itself and to its employes, who are satisfied with their wages and with their work.

Will this Court unleash defendants?

CONCLUSION.

We have now considered plaintiff's case along the following lines—

First. The Wrong.

(1) The Plaintiff's Rights.

(1)a. Is plaintiff's business legitimate?

(1)b. What are plaintiff's rights in the conduct of its business?

(2) The Defendants' Rights.

(2)a. Are the defendants engaged in a legitimate business?

(2)b. What rights have the defendants in the conduct of their business?

(2)b. 1. If the United Mine Workers are an unlawful body.

(2)b. 2. If the United Mine Workers are a lawful body.

(2)b. 2x. Defendants' permissive rights.

(2)b. 2y. Plaintiff's affirmative rights which explain, limit, or modify defendants' rights.

(3) Salient Points Which Differentiate the Rights Which the Defendants Claim From the Rights Which They Really Lawfully Have.

(3)a. Certain facts in this case, which show the motive of defendants, and, therefore, should be considered by this Court.

(3)b. Plaintiff's rights and defendants' rights under those facts.

(3)c. Are the acts of the defendants heretofore committed, which have injured plaintiff, and are the acts, which they design to do, and which will likewise injure plaintiff, justified?

In connection with their justification, we have also considered two propositions advanced by the defendants:

1. That the injunction granted imperils the existence of Labor Unions, and that no case of like kind can be found in any decision of any English, nor of any American Court.

2. That public policy recognizes the benefit of Labor Unions and, incidental to their existence and necessary to their growth, the right of organizers to organize.

Second. The Remedy.

1. Indictment for conspiracy at common law.
2. Action at law for damages.
3. Injunction.

From a careful study of all authorities available to us, which have come under our notice, we are convinced that plaintiff is entitled to the relief it now has; and we are equally sure that defendants have not, either in precedent, law, justice, or morals, the privilege they contend for.

This Court will not forget that plaintiff had these defendants for masters once, to plaintiff's loss; neither

will this Court forget that defendants are trying to reassert their sway.

While in the toils of the Union, plaintiff was ridden as burdensomely and as constantly as was Sindbad, the Sailor, by "The Old Man of the Sea," who was ever with Sindbad, asleep and awake. One day "The Old Man of the Sea" got drunk and lost his hold on Sindbad. So did the defendants lose their hold on plaintiff, when, in the intoxication of an unbridled indulgence of an unlicensed power they shut down plaintiff's mine April 16, 1906. Defendants were warned in advance not to do as they did. They were told that plaintiff would never deal with them again. But in spite of that they persisted.

They thought they could resume their mastery over plaintiff when and as they pleased.

But it did not turn out so.

Plaintiff started up non-union June 12, 1906, and for more than eight years has been independent.

Finding their prey escaped, the Union interfered with plaintiff's men. Defendants sought to reunionize plaintiff's mine.

But plaintiff meanwhile checkmated defendants by contracting with its men that they would not join the Union while employed, and that while so employed plaintiff would run a non-union mine.

The plaintiff enjoined.

And this Court is now asked by these defendants to help them in their cause.

Will it do it?

Finally, we want to press home the point that this case is not one whereby the right of Labor Unions to exist is questioned or will be determined. The question is—May the United Mine Workers resort to tortious interference with plaintiff's contractual relations with

plaintiff's employes, in order to increase the Union's membership, and in order to reassert the Union's sway over plaintiff's business? The elements of malice in fact, malice in law, and the conspiracy are all to be kept in mind and are to be read into their efforts.

The United Mine Workers are not a responsible body as an entity. They are unincorporated. But as indicating their strength it is to be remembered that they have a membership throughout the United States of more than four hundred thousand men.

They are a body militant. Even as the Crusaders sought to spread their Gospel of Light, primarily by the use of persuasion, argument and reason, and, failing in that, resorted to acts of oppression and wrong that good to the Infidels might come, and in pursuit of their object forced their will upon the unwilling victims, even to the point of death, so do the United Mine Workers in their scheme contemplate the imposition of **their Rule** upon employers of labor in the coal mining industry and upon free men of this country, who for a livelihood are engaged in mining coal. And this the United Mine Workers claim the right to do regardless of the fact that the employer refuses to recognize the Union, expressly contracts with its men that they shall not be members of and shall not join the Union, and further expressly contracts with its men, and for their protection against their being forced to become outlaws in the labor world, that the employer will continue to refuse to recognize the United Mine Workers and will run non-union.

Defendants may, like the Crusaders, be made bold by numbers. They may be fervid in their devotion, sustained as were the Crusaders by dreams of conquest. They have been made fat in pocketbook by the check-off, even as the Crusaders became rich from the spoils of battle.

But to the Crusaders there came a time when their excesses wrought their downfall. So with these defendants.

In all lands and in all climes man has dreamed of liberty. Man's life principle is instinct with a desire for freedom. What is true of the individual is true of the State. But environment and the past make varied our conceptions of what is liberty and of what is freedom. And the Constitution of the United States and its amendments, and the Constitution of West Virginia, are so framed that what is one man's liberty is not another man's slavery. There is an equality of right, and our Courts have so interpreted our Constitutions and our laws.

With these constitutionally guaranteed principles of liberty, freedom and equality, quaintly condensed by Lincoln into the aphorism "No man is good enough to govern another man without that other's consent" these defendant labor leaders, and the Union they represent, have interfered.

And they ask this Court to help them to continue to interfere.

Their contention is foreign to the spirit of our government, State and National. It is in the teeth of our best adjudged cases. And if now upheld by this Court, such holding must result in chaos for government and in a complete somersault for the law.

By their appeal to the Circuit Court of Appeals and by their contention before this Court, these defendants assert that they have the right to go ahead and by permission or by other means, not including, however, force, fraud, violence, intimidation, or coercion, unionize plaintiff's men, and consequently its mine.

And it is to be remembered that this alleged right was reasserted by the defendants during the trial. Lewis, then President of the United Mine Workers of America,

testified (Record p. 630 l. 28–32), on direct examination, as did Sullivan, then President of District No. 6, United Mine Workers of America (Record, p. 743 l. 33–44, p. 744 l. 1, 2), on direct examination, as did Savage, then Secretary-Treasurer of District No. 6, United Mine Workers of America (Record, p. 590 l. 32–42, and p. 591 l. 1–29), on cross examination, that efforts to unionize the Hitchman mine would still be made if the injunction forbidding it were out of the way.

So the issue is clear cut.

The defendants assert that what they propose to do is certainly within their rights.

And the plaintiff denies it.

It is now for this Court to decide.

Study of the common law never taught us that contract rights created and existing within the law are not to be protected by the law.

Study of the common law never taught us that any set of men, trade unionists, or not, had or have any special privileges under law not accorded to other persons.

Study of the common law never taught us that any set of men, trade unionists, or not, may with impunity, and without liability under law, conspire to interfere with the will of other persons in the conduct of their business or work, lawfully undertaken, prosecuted and engaged in.

What these defendants contend for is not the law of the land.

It is one of the doctrines of modern militant unionism that membership is rightfully made compulsory through social or other pressure, and ought to be made compulsory by legal enactment, and that the right to work should be as much dependent upon membership in a trade union as does the right to vote depend upon citizenship in the State.

That, however, is not the law of this land, and under the Constitution of the United States, and under the Constitution of the State of West Virginia never can be law.

Trade unions may exist lawfully if their purposes are lawful; and they may carry out their lawful purposes if they do so in a lawful way.

That was and is the common law, and is the law of the State of West Virginia.

Trade unions may not exist for unlawful purposes, and the carrying out of unlawful purposes by acts otherwise lawful is unlawful.

That was and is the common law, and is the law of the State of West Virginia.

And if a trade union exists with some lawful, and some unlawful, purposes, the law determines what is the main purpose of the Union's existence, and upon that being determined, adjudges the Union to be a legal or an illegal body, according as its main purpose is within or is without the law.

That was and is the common law, and is the law of the State of West Virginia.

If a trade union, having both lawful and unlawful purposes, is adjudged to be an unlawful body, it has no right to exist; such lawful purposes, as it may have, become tainted with the unlawfulness of its main purpose, and it becomes, as an entire union, an outlaw to the law.

That was and is the common law, and is the law of the State of West Virginia.

It would be unlawful to solicit membership in an unlawful union.

In the bill which was filed in this case it was alleged that the United Mine Workers of America have some lawful and some unlawful purposes, that it was in carrying

out their unlawful purposes that they violated plaintiff's rights, and they were alleged to be an unlawful body under the common law and under the law of West Virginia. And during the trial, as well as in the final briefs and oral arguments, counsel for plaintiff attacked the Union for unlawfulness, while counsel for the defendants combatted such efforts and sought to show the Union's lawfulness.

We believe this Court will find the evidence to bristle with proof that most of the purposes of the United Mine Workers of America are unlawful; and that from such evidence this Court will be driven to the conclusion that their main purpose is so unlawful as to taint with illegality every other purpose they may have.

We ask this Court to find that the United Mine Workers of America are an unlawful body.

With that decision will follow, as a matter of law, that that Union may not solicit membership.

In asking this Court to reverse the decree of the Circuit Court of Appeals and to affirm the decree of the District Court of January 18, 1913, and to perpetuate the injunction granted thereby, and to hold that the United Mine Workers of America are an unlawful body, that they have been and are engaged in a conspiracy against the plaintiff to compel it to operate a union mine contrary to plaintiff's will and against plaintiff's protest, and that in carrying out such conspiracy they have been and are violating plaintiff's contractual as well as common law rights, we invoke consideration of section 20 of Article III, Bill of Rights, Constitution of West Virginia.

> "Free government and the blessings of liberty can be preserved to any people only by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles."

III.

The Decision of the Circuit Court of Appeals for the Fourth Circuit Violates Rights of the Hitchman Company which are Secured to it by the Fifth Amendment to the Constitution of the United States.

The Fifth Amendment of the Constitution of the United States contains this clause.

"Nor [shall any person] be deprived of life, liberty, or property, without due process of law."

9 F. S. A., p. 288.

"A similar clause, as an inhibition on the states, is contained in the Fourteenth Amendment."

Note 1, 9 F. S. A., p. 288.

On page 289 of 9 F. S. A., it is said of the foregoing language of Amendment Five:

"This Amendment only announces and reaffirms the ancient principles of the common law, and prevents them from being unjustly invaded by the power of the federal government."

North Carolina v. Vanderford, (1888) 35 Fed. Rep. 282.

On page 290, 9 F. S. A., it is said that this provision of the Fifth Amendment has application to corporations as well as to natural persons.

"VI. Application to Corporations.—From the nature of the prohibitions in this amendment it would seem, with the exception of the last clause, as though they would only apply to natural persons. No others can be witnesses; no others can be twice put in jeopardy of life or limb, or compelled to be witnesses against themselves; and therefore it might be said with much force that the word "person," there used in connection with the prohibition against the deprivation of life, liberty, and property

without due process of law, is in like manner limited to a natural person. But such has not been the construction of the courts. A similar provision is found in nearly all of the state constitutions; and everywhere, and at all times, and in all courts, it has been held, either by tacit assent or express adjudication, to extend, so far as their property is concerned, to corporations. And this has been because the property of a corporation is in fact the property of the corporators. To deprive the corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value."

> Railroad Tax Cases (1882), 13 Fed. Rep. 746. *See also* Santa Clara County *v.* Southern Pac. R. Co. (1883), 18 Fed. Rep. 389, affirmed on other grounds (1886), 118 U. S. 394.
>
> "This amendment contains a prohibition upon the Government of the United States, similar to the one in the Fourteenth Amendment against the action of the States, declaring that no person shall be deprived of life, liberty, or property, without due process of law; and it has been assumed, if not expressly held, that the provision protects the property of corporations against confiscation equally with that of individuals. San Mateo County *v.* Southern Pac. R. Co. (1882), 13 Fed. Rep., 151."
>
> 9 F. S. A., 290, VI.

In considering how far the rights of the Hitchman Company can be said to be affected and to be protected by the Constitutional provision above quoted, the following language taken from 9 F. S. A., page 303, and the case cited there as authority for the proposition, there advanced, tend to show that it is correct to claim on behalf of the Hitchman Company that the decision of the Circuit Court of Appeals for the Fourth Circuit professing to state and to apply the common law of West Virginia

upon the subject of contract [but really misapplying West Virginia law, as that law is declared to be by the Supreme Court of Appeals of that State in the case of Thacker Coal & Coke Company *v.* Burke (1906), 59 W. Va. 253; 53 S. E. 161; 8 A. & E. Ann. Cas. 885], violates the rights of the Hitchman Coal & Coke Company as guaranteed to it by the above quoted language of the Fifth Amendment of the Constitution of the United States.

> "14. Giving Unwarranted Effect to Decision of State Court.—A judgment of the Circuit Court of the United States claiming to give such unwarranted effect to a decision of a state court as to wrongfully deprive a party of his property, may be considered as presenting a question how far it can be sustained in view of the prohibitory langauge of this clause."
>
> Fayerweather *v.* Ritch (1904), 195 U. S. 208.

A later discussion of the doctrine announced in Fayerweather *v.* Ritch will be found in the case of Hannah O'Callaghan, *et al. v.* Terence O'Brien, admr., etc., *et als.* (1905), 199 U. S. 89, 50 L. ed. 101, 25 S. C. 727. (Officially reported under the title of "Farrell *v.* O'Brien.")

The case of Hovey against Elliott, decided by the Supreme Court of the United States (1897), 167 U. S. 409 42 L. ed. 215, disposes of the question as to whether the decision of the Federal Court can be said to violate rights of a citizen guaranteed to him by the foregoing provision of Amendment Five to the Constitution of the United States.

Mr. Justice White delivering the opinion of the Court in speaking on that particular point says:

> "If the legislative department of the Government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever

> of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent."
>
> Hovey v. Elliott. (Decided May 24, 1897.) 167 U. S. 409, **417.** 42 L. Ed. 215, **221.**

It seems clear, therefore, that the quoted portion of Amendment Five restrains the judicial as well as the executive branches of the Federal Government, and, therefore, the rights of the Hitchman Company may fairly be said to have been violated by the decision of the Circuit Court of Appeals for the Fourth Circuit.

It remains, however, to be considered whether the right violated is one of sufficient merit to justify the Supreme Court in granting or considering an appeal from the Circuit Court of Appeals either through an appeal proper or through an application for a writ of certiorari.

The right to do business and liberty of contract are involved in this case, and both of those rights are believed to have been violated by the decision of the Fourth Circuit Court of Appeals.

And that these rights are regarded as important rights is evidenced by the fact that they are guaranteed to citizens, not only by the Constitution of the United States as shown by the provisions of Amedment Five and

Amendment Fourteen to the Constitution of the United States, but by the fact that they are also guaranteed to citizens by the Constitution of the State of West Virginia.

Bill of Rights, §1. Art. III., Constitution of West Virginia:

"All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

Bill of Rights, §10, Art. III., Constitution of West Virginia:

"No person shall be deprived of life, liberty, or property without due process of law, or the judgment of his peers."

In State v. Goodwill (1889), 33 W. Va., 179; 10 S. E., 285, 287; 6 L. R. A., 621; 25 Am. St. Rep., 863, it is said:

> "A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. *And, as incident to this, is the right to labor or employ labor; make contracts in respect thereto, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue, and give evidence; and* to inherit, purchase, lease, sell, and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression."

and again—

> "The vocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the constitution. People *v.* Otis, 90 N. Y. 48. The right to use, buy, and sell property, and contract in respect thereto, *including contracts for labor—which is, as we have seen, property—is protected by the constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all contracts.*"

and in the same case—

> "The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void."
>
> State *v.* Goodwill, 32 W. Va. 179, *supra.*

These principles underlie the Declaration of Independence, and naturally and logically are embraced in our scheme of government, National and State.

And the decisions of the Supreme Court of Appeals of West Virginia interpreting the Bill of Rights of the Constitution of that State have their parallel in decisions of the Supreme Court of the United States upon the meaning and scope of the guaranties of the Federal Constitution as expressed in the Fifth and in the Fourteenth Amendments thereto.

Upon parallel provisions of the Constitution of the United States, Mr. Justice Field concurring with the opinion of the Court, which was delivered by Mr. Justice Miller, in Butchers' Union, etc., Co. *v.* Crescent City, etc., Co. (1884), 111 U. S. 746; 28 L. Ed. 585, 591; 4 S. C. 652, said:

> "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: 'We hold these truths to be self-evident,' that is, so plain that their truth is recognized upon their mere statement, 'that all men are endowed;' not by edicts of Emperors or decrees of Parliament or Acts of Congress, but 'by their Creator, with certain inalienable rights' that is, rights which cannot be bartered away or given away or taken away except in punishment of crime; 'and that among these are life, liberty and the pursuit of happiness, and to secure these,' not grant them but secure them, 'governments are instituted among men, deriving their just powers from the consent of the governed.'
>
> "Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.
>
> "The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except

> that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

In the same case, Mr. Justice Bradley, concurring, with whom concurred Mr. Justice Harlan and Mr. Justice Woods (111 U. S. 762; 28 L. ed. 589), said:

> "The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Delcaration of Independence, which commenced with the fundamental proposition that 'All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the Constitution. It is what no Legislature has a right to do."

In Allgeyer *et al. v.* State of Louisiana (1897), 165 U. S. 578, 589; 41 L. ed. 832, 835; 17 S. C. 427, Mr. Justice Peckham delivering the opinion of the Court said of the meaning of the word "liberty"—

> "The term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

In Lochner v. People of the State of New York (1905), 198 U. S. 45, 56; 49 L. ed. 937, 940, 941; 25 S. C. 539, Mr. Justice Peckham delivering the opinion of the Court said:

> "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution."

And again said:

> "*Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.*"

In the case of Adair v. United States (1907), 208 U. S. 161, 52 L. ed. 436, the Supreme Court indicated that it regarded the controversy in that case as a meritorious one. And Mr. Justice Harlan delivering the opinion of the court said:

> "May Congress make it a criminal offense against the United States—as, by the 10th section of the act of 1898, it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employe from service simply because of his membership in a labor organization?
>
> "This question is admittedly one of importance, and has been examined with care and deliberation. And the court has reached a conclusion which, in its judgment, is consistent with both the words and spirit of the Constitution, and is sustained as well by sound reason."
>
> 52 L. Ed. 441.

And he added:

> "The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based is repugnant to the Fifth

Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good. This court has said that "in every well-ordered society, charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may, at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."

Jacobson v. Massachusetts, 197 U. S. 11, 29, 49 L. ed. 643, 651, 25 Sup. Ct. Rep. 358, 362, and authorities there cited.

Without stopping to consider what would have been the rights of the railroad company under the Fifth Amendment, had it been indicted under the Act of Congress, it is sufficient in this case to say that, as agent of the railroad company, and, as such, responsible for the conduct of the business of one of its departments, it was the defendant Adair's right—and that right inhered in his personal liberty, and was also a right of property—to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be

accepted, and it was the right of Coppage to become or not, as he chose, an employe of the railroad company upon the terms offered to him. Mr. Cooley, in his treatise on Torts, p. 278, well says:

> "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rest upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress."

It will be seen from the foregoing that the constitutional provisions of the Federal Constitution and the provisions of the Constitution of the State of West Virginia are in substance the same, and it will also be seen that the interpretation placed upon the provisions of the Constitution of the United States by the Supreme Court of the United States and the interpretation placed upon the Constitution of the State of West Virginia by the Supreme Court of Appeals of that State are parallel if not identical.

While, however, it is plain enough that the Circuit Court of Appeals should have followed the general principles laid down by the decisions of the Supreme Court of the United States referred to in interpreting rights of the plaintiff which are shown to be rights guaranteed to it by the Constitution of the United States and the amendments thereto, it does not yet appear what the obligation of the Circuit Court of Appeals for the Fourth Circuit was with respect to rights guaranteed to the Hitchman Company by the Constitution of the State of West Virginia.

This last subject is covered by the case of Loeb v. Trustees of Columbia Township (1900), 179 U. S. 472, 45 L. ed. 280, holding that Federal courts in determining contract rights as affected by a state Constitution will enforce the contract in accordance with the Constitution of the State, as interpreted at the time the contract was made by the highest court of the State.

In deciding that case, Mr. Justice Harlan said:

> "As, however, the circuit courts of the United States are courts of 'an independent jurisdiction in the administration of state laws co-ordinate with, and not sub-ordinate to, that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws' (Burgess v. Seligman, 107 U. S. 20, 33, 34, 27 L. ed. 359, 365, 2 Sup. Ct. Rep. 10; Folsom v. Township Ninety-six, 159 U. S. 611, 624, 625, 40 L. ed. 278, 283, 16 Sup. Ct. Rep. 174), they may, in suits within their jurisdiction, properly hold, as in numerous cases this court has held, that the rights of parties arising under contracts not involving questions of a Federal nature are to be determined in accordance with the settled principles of local law as maintained by the highest court of the state at the time such rights accrued."
>
> 45 L. ed. 291.

The real controversy between the Hitchman Company, on the one side, and the defendants, on the other side, arises out of an effort on the part of the defendants, representing the United Mine Workers of America, to induce the Hitchman Company's employes to become members of their Union, and thus to enable the United Mine Workers of America to compel the Hitchman Company to operate what is called a union mine, that is, to operate a mine by making a contract with the United Mine Workers of America, and on the part of the Hitchman Company the

controversy is due to the effort of the Hitchman Company to keep from having its employes join that Union and to keep from being obliged to run a union mine and to have to contract with these defendants as representatives of the United Mine Workers of America.

In its effort to keep in position to be able to run a non-union mine, the Hitchman Company contracts with each of its employes along certain lines, and the net result is embodied in the following memorandum card:

> "I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America and will not become so while an employe of the Hitchman Coal & Coke Company, and that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of Amercia, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any effort amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above, or heard same read."
>
> Hitchman Coal & Coke Co. v. Mitchell, 202 Fed. 512, **553.**

The District Court of the United States for the Northern District of West Virginia held that this was a lawful contract.

> "An employer and its employes may lawfully contract with respect to the terms of the employment, and as incidental thereto that the employes shall not join a labor union and the employer shall not employ

union men; and, when such a contract has been made, a combination between officers or members of the labor union to induce either party to violate the contract, with which they have no rightful concern, constitutes an unlawful conspiracy, to restrain the carrying out of which the other party is entitled to an injunction."

Hitchman Coal & Coke Co. *v.* Mitchell *et al.* (Circuit Court, N. D. West Virginia. September 21, 1909.) 172 Fed. 963, Syl. 2.

The defendants upon appeal to the Circuit Court of Appeals for the Fourth Circuit against the foregoing decision, as to the legitimacy of such a contract, set up in their assignment of errors the following: The District Court erred—

"In holding that the defendants had not the lawful right to use argument, reason and persuasion to solicit, invite or peaceably induce the plaintiff's employes to become members of the United Mine Workers of America; or to use any lawful means to have the employes of the plaintiff become members of the said labor organization." Record p. 844.

"In finding and holding that the defendants were attempting to interfere with the contracts existing between the plaintiff and its employes, and attempting to induce said employes to break said contracts." Record p. 844.

"In holding that the plaintiff had entered into lawful contracts with its employes—contracts not in contravention of public policy—and that the plaintiff is entitled to be protected by a court of equity in the enforcement of its said contracts." Record p. 845.

"In declining to hold and adjudicate that the various contracts entered into between the plaintiff in this suit and its employes, was contrary to law, and against public policy, and illegal and void." Record p. 845.

The Circuit Court of Appeals, in considering this contract, did not reach the conclusion that the contract was unlawful, but did hold that an outsider, a stranger to the contract, could by peaceable means induce a breach thereof by one of the parties thereto. That Court said:

> "The Court below also reached the conclusion that the defendants have caused and are attempting to cause the non-union members employed by the plaintiff to break a contract which it has with the non-union operators. The contract in question is in the following language:
>
> "I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employe of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.'"
>
> "It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employe continues to work for the plaintiff he shall not join this organization, nevertheless, there is nothing in the contract which requires such employes to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employes

under this contract may, if they deem proper, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the non-union men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the non-union miners to become members of their organization.

"Under these circumstances we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization." Record pp. 892, 893.

It will be noticed that the conclusion reached by the Circuit Court of Appeals is based upon the proposition that it is lawful by peaceable means to persuade an employe at will to quit work.

And yet the Supreme Court of Appeals of West Virginia in the case of Thacker Coal & Coke Company v. Burke (1906), 59 W. Va. 253, 53 S. E. 161, 5 L. R. A. (N. S.) 1091, 6 A. & E. Ann. Cas. 885, held:

"One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor."

"If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person, to the injury of that third person, it is actionable."

"Persons who conspire to induce others to break a valid contract between other persons are liable to action therefor."

"The act found in Code, 1899, § 14, appendix, p. 1053, does not authorize any individual, or number of individuals, to maliciously entice servants to desert service in which they are engaged, or to prevent them from engaging in such service under a contract for such service."

Id., 5 L. R. A. (N. S.) 1091, 1092. Syl. 1, 2, 3, 4.

Judge Brannon, in delivering the opinion of the Court in the Thacker case, said:

"The Thacker Coal & Coke Company filed a declaration in trespass on the case in the Circuit Court of Mingo County against Charles Burke and five others for damages for enticing servants from the plaintiff's service, which declaration upon demurrer was dismissed, and the company sued out a writ of error.

"Certain legal principles control the case. In West Virginia Transp. Co. *v.* Standard Oil Co., 50 W. Va. 611, 56 L. R. A. 804, 88 Am. St. Rep. 895, 40 S. E. 591, we find it stated, on authority there given, that 'if one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable.' We find that holding confirmed in Angle *v.* Chicago, St. P. M. & O. R. Co., 151 U. S. 1, 38 L. ed. 55, 14 Sup. Ct. Rep. 240, in the language following: 'If one maliciously interferes in a contract between two parties, and induces one of them to break that contract, to the injury of the other, the party injured can maintain an action against the wrongdoer. When a man does an act which in law and fact is a wrongful act, and injury to another results from it as a natural and probable consequence, an action on the case will lie.' If additional authority were needed for such a proposi-

tion of common sense and justice, see the case decided by the highest English tribunal in 1901, Quinn v. Leathem (1901), A. C. 495. What I have already said refers to contracts in general. As to the particular contract between master and servant, the law is, if possible, yet more decided. The common law says that one who causes a breach of that contract is liable to damages. It has been said by some that action in such case lies only by reason of the act of Parliament in the reign of Edward III, A. D. 1350, making the act of enticement of a servant from his employer wrongful. If so, we might hesitate in saying that it is actionable in West Virginia; but I assert, believing that I am supported by ample authority, that action is given in such case by the common law. So the text writers and courts treat it. In Comyns's Digest, title 'Action on the Case,' A, p. 278, the common law rule is thus stated: 'In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages.' The Supreme Court of the United States, in Angle v. Chicago, St. P. M. & O. R. Co. *supra*, stated the rule thus: 'Wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie.' It is generally treated as a common-law cause of action. The general principle applicable to contracts in general would give action against a third party for wrongfully causing the breach of contract between master and servant; but as to this particular contract the law has been long settled:

"I cite the following authorities: 'It is well settled that any person who knowingly entices away the servant of another, and thereby induces him to violate his contract with his master, or who thereby deprives the master of the services of one then actually in his service, whether under a contract to serve or not, is liable to the master for his actual loss there-

from. But in this action it is necessary to prove not only that the person employed was in the service of the plaintiff, but also that the defendant, knowing the fact, wrongfully induced him to leave it. The intent of the defendant, and the natural or actual effect of its execution, is the gist of the action; and, unless the declaration discloses that the act was done intentionally or wilfully, and that it actually did, or was calculated to, cause damage to the plaintiff, and that it was done without right or justifiable cause, no recovery can be had. Malice is inferred from the wrongful character of the act, and the declaration or complaint must disclose such facts as support the inference. If a contract to serve is established, actual service under the contract need not be shown. It is enough to show that the defendant, with notice of the servant's contract obligation to the plaintiff, has persuaded him not to enter into the plaintiff's service under it.' Wood, Mast. & S. §§ 230, 231. 'The idea of interference with contract relations as a specific tort is of recent origin. The materials from which the generalization was worked out are found in several lines of precedents. From an early day it has been established that a master may maintain an action against one who entices away his servant or harbors and detains him with knowledge of his former contract.' 16 Am. & Eng. Enc. Law, 2d ed. p. 1109. 'Certainly since the statute of laborers the common law has recognized the right of a master to recover for the actual damage he may have suffered by the wrongful interference by a third person with his relationship to his servant by personal injury to the servant, or otherwise depriving the master, in whole or in part, of his service. * * * Actions for enticing servants from their employer, and for knowingly harboring servants who had previously left their employer, arose after the first statute of laborers. They survive its repeal, and occur in modern practice. Knowingly enticing from the service of another one who is employed under a contract not fully executed is an actionable wrong.

Indeed, from this basis there has grown up a branch of law in which malice is an essential ingredient.' Jaggard, Torts, § 155. 'To the relation between master and servant, and the rights accruing therefrom, there are two species of injuries incident. The one is retaining a man's hired servant before his time is expired; the other is beating or confining him in such a manner that he is not able to perform his work. As to the first, the retaining another person's servant during the time he has agreed to serve his present master. This, as it is an ungentlemanlike, so it is also an illegal, act; for every master has by his contract purchased for a valuable consideration the service of his domestics for a limited time. The inveigling or hiring his servant, which induces a breach of this contract, is therefore an injury to the master, and for that injury the law has given him a remedy by a special action on the case; and he may also have an action against the servant for the nonperformance of his agreement. But, if the new master was not apprised of the former contract, no action lies against him unless he refuses to restore the servant upon demand.' Bl. Com. bk. 2, 142.

"I deem it useless to occupy space by quotation from other text-books and decisions to prove the doctrine above stated. They all lay down the law to the same effect. 2 Kinkead, Torts, § 457; 3 Page, Contr. §§ 1326, 1327; 11 Am. St. Rep. 378, 474, notes; Schouler, Dom. Rel. § 487; Moran *v.* Dunphy, 177 Mass. 485, 52 L. R. A. 115, 83 Am. St. Rep. 289, 59 N. E. 125; Bowen *v.* Hall, L. R. 6 Q. B. Div. 333; Walker *v.* Cronin, 107 Mass. 555; Quinn *v.* Leathem (1901), A. C. 495; Taff Vale R. Co. *v.* Amalgamated Soc. (1901), A. C. 426. Hammon on Contracts, § 350, says: 'The duty to respect the contractual tie so far as not to interfere with it rests upon all the world. Thus it is everywhere agreed that it is an actionable wrong to entice away a man's servant from his employment. Independently of any right to sue the servant for breach of the contract of employment, the master may hold the guilty person liable in damages for thus

wrongfully inducing the servant to sever the relation. Many courts, indeed go further, and lay down the broad principle that a man who justifiably induces one of two parties to a contract to break it, intending thereby to injure the other or to obtain a benefit for himself, does that other a wrong, for which he must respond in damages.'

"The first count of the declaration alleges that the company is owner and operator of a coal mine, and was engaged on the 8th day of August, 1901, in the business of mining coal from the mine; that, in order to carry on the business, it was necessary for the plaintiff to employ, and it did employ, a large number of men to work in the mine, who were engaged in the company's service in working the mine and loading coal on railroad cars for shipment to parties with whom the plaintiff had contracts to furnish coal; that the defendants, well knowing these facts, but contriving and wickedly and maliciously intending to injure the plaintiff in its business, unlawfully, wrongfully, maliciously, without justifiable cause, without the consent and against the will of the plaintiff, molested, obstructed, and hindered the plaintiff in its said business 'by wilfully, wrongfully, and maliciously persuading, inducing, enticing, and procuring said servants of the plaintiff, employed as aforesaid, to absent themselves and depart from the plaintiff's service;' that on pretext, and by reason of such persuasion, enticement, and procuration, the said servants on the date aforesaid, without license and against the will and consent of the plaintiff, wrongfully absented themselves and departed from said service, and continued to do so; that the plaintiff was unable to employ other servants to work in its mine in the place of the servants so enticed away, and was thereby prevented from prosecuting and carrying on its business as extensively and profitably as it could and would have done had not its servants been induced and enticed by the defendants to quit its service. The first count does not, in words, state an express contract for service between employer and employe.

> By the language used in the books a contract must exist. This count says the miners were 'employed' by the plaintiff and in actual service. *Now, if the law gives action for enticement of a servant, it is not conceivable that a third person can maliciously entice away a lot of employes simply because there was no contract fixing term of service. The relation of master and servant exists. In such case there is a contract recognized by law, an implied contract by which the employe can recover for his service. By entering such service the employe agrees, contracts, to work.* IT IS NO DIFFERENCE THAT HE CAN QUIT WHEN HE PLEASES."
>
> *Id.*, 5 L. R. A. (N. S.) 1094-1101.

The Circuit Court of Appeals in not having held the contract unlawful must be considered as having held the contract to be lawful.

The question then arises what would be a breach of the contract by the employe. It would not be a breach of a contract by the employe for the employe to quit service, because under the express terms of the contract that right is expressly reserved to him. It would, however, be a breach of his contract for the employe to join the Union while in the employ of the Hitchman Company. And such action could be enjoined following the precedent laid down in the case of Lumley v. Wagner which was a companion case of the celebrated case of Lumley v. Gye.

The common law on this subject is well laid down in 20 Halsbury's Laws of England, page 114.

"Where, however, the contract of service includes a negative stipulation by which the master or the servant binds himself not to do a specific act, the court, while declining to enforce specific performance of the contract as a whole, will enforce the negative stipulation, and will restrain the master or servant by injunction from committing a breach thereof. The negative stipulation must,

however, be expressed on the face of the contract, or at least be clearly implied from its language;"

20 H. L. E. 114.

In the case of Lumley *v.* Wagner, Wagner had agreed with Lumley to sing at his theatre during a certain period of time, and not to sing elsewhere without his written authority, it was held on a bill filed to restrain her from singing for a third party, and to grant an injunction for that purpose, that the positive and negative stipulations of the agreement formed but one contract, and the court would interfere to prevent the violation of the negative stipulation, although it could not enforce the specific performance of the entire contract. Lumley *v.* Wagner, 1 De G. M. & G. 604; 21 L. J., Ch. 898.

The case of Lumley *v.* Gye is one of those cited and relied upon by the Supreme Court of the United States in deciding the case of Angle *v.* Chicago, St. P. M. & O. R. Co. (1894), 151 U. S. 1, 38 L. ed. 55, 14 S. C. 240.

In the Angle case, above referred to, the Supreme Court of the United States decided as follows:

> "If one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer."
>
> *Id.*, 38 L. ed. 55, Syl. 2.

Mr. Justice Brewer, in delivering the opinion of the Court in that case, said:

> "It has been repeatedly held that, if one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer. Green *v.* Button, 2 Cromp. M. & R. 707, in which the defendant, by

falsely pretending to one party to a contract that he had a lien upon certain property, prevented such party from delivering it to the plaintiff, the other party to the contract, and was held responsible for the loss occasioned thereby. Lumley v. Gye, 2 El. & Bl. 216, in which a singer had entered into a contract to sing only at the theatre of the plaintiff, and the defendant maliciously induced her to break that contract, and was held liable to the damages sustained by the plaintiff in consequence thereof. Bowen v. Hall, L. R. 6 Q. B. Div. 333, in which it was held that an action lies against a third person who maliciously induces another to break his contract of exclusive personal service with an employer, which thereby would naturally cause, and did in fact cause, an injury to such employer. In the opinion of Brett, L. J., it was said 'that wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie. This is the proposition to be deduced from the case of Ashby v. White, 1 Ld. Raym. 938. If these conditions are satisfied, the action does not the less lie because the natural and probable consequence of the act complained of is an act done by a third person; or because such act so done by the third person is a breach of duty or contract by him, or an act illegal on his part, or an act otherwise imposing an actionable liability on him.' Walker v. Cronin, 107 Mass. 555, in which a manufacturer was held entitled to maintain an action against a third party who, with the unlawful purpose of preventing him from carrying on his business, wilfully induced many of his employes to leave his employment, whereby the manufacturer lost their services, and the profits and advantages which he would have derived therefrom. Benton v. Pratt, 2 Wend. 385, 20 Am. Dec. 623. Rice v. Manley, 66 N. Y. 82, 23 Am. Rep. 30, in which a party had contracted to sell and deliver to plaintiffs a quantity of

> cheese, but having been made to believe through the fraud of the defendant that the plaintiffs did not want the cheese, sold and delivered it to him, and it was held that an action could be maintained against the defendant for the damages which the plaintiffs sustained from failing to get the cheese. Jones *v.* Stanly, 76 N. C. 355, in which the court said: 'It was decided in Haskins *v.* Royster, 70 N. C. 601, 16 Am. Rep. 780, that if a person maliciously entices laborers or croppers to break their contracts with their employer and desert his service, the employer may recover damages against such person. The same reasons cover every case where one person maliciously persuades another to break any contract with a third person. It is not confined to contracts for service.' "
>
> *Id.*, 38 L. ed. 62, 63.

The doctrine laid down in the Angle case in 1894 was reaffirmed in 1907 in the Bitterman case.

In the Bitterman case, Mr. Justice White, delivering the opinion of the court, said that in the Angle case it was held by the Supreme Court that an actionable wrong is committed by one who maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other.

And Mr. Justice White added:

> "We deem it unnecessary to restate the grounds upon which the ruling in the Angle case was rested, or to trace the evolution of the principle in that case announced, because of the consideration given to the subject in the Angle case and the full reference to the authorities which was made in the opinion in that case."
>
> Bitterman *v.* Louisville & N. R. Co. (1907), 207 U. S. 205, **222, 223,** 52 L. ed. 171, loc. cit. 182.

Paraphrasing the holding in the case of Lumley *v.* Wagner, *supra*, it is correct to say that the contract between the Hitchman Company and its employes is

entire; that there is a positive stipulation on the part of the Hitchman Company that while the employe remains in the Company's employ the Company will run its mine non-union, and there is a negative covenant on the part of the employe that such employe will not join the United Mine Workers of America while he remains in the Company's employ.

Following Lumley v. Wagner the Court could not compel the Company to run non-union, although it could restrain it from running union, at the instance of the objecting non-union employe; and likewise could not compel the employe to work as a non-union man, although it could restrain him from working as a union man while in the Company's employ.

It is not to the point to say that the law does not notice little things and that the Company could discharge its employe if the employe broke his contract and it did not want him to remain in its employ after he had joined the union; neither is it in point to say that the employe if non-union could quit his job if he was not satisfied to continue working for the company if it broke its contract with him and ran union.

In the Bitterman case the breaching of so small a thing as the conditions of a railroad excursion ticket was the minimum issue, although the continuation of such breachings constituted the practical damage and the real cause of suit.

So in the Hitchman case the breaching of the contractual relations with one employe is the minimum issue, but the continuation of such breachings with other employes constitutes the practical damage, and is the substantial wrong to prevent which the Hitchman Company asked for and obtained the injunction from the District Court which it now asks to have upheld and perpetuated by this Court.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT VIOLATES RIGHTS OF THE HITCHMAN COMPANY WHICH ARE SECURED TO IT BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Fourteenth Amendment of the Constitution of the United States contains this clause:

"Nor shall any state deprive any person of life, liberty, or property, without due process of law."

9 F. S. A. p. 416.

"A similar clause, as an inhibition on the national government, is contained in the Fifth Amendment."

Note 1, 9 F. S. A. 416.

This amendment applies to corporations as well as to natural persons and restrains the judicial as well as the legislative branches of the state government.

If the decision of the Circuit Court of Appeals for the Fourth Circuit correctly states and applies the law of West Virginia, then the rights of the Hitchman Company under the Fourteenth Amendment to the Constitution of the United States have been violated by that decision. Conversely, if the law of West Virginia has not been correctly stated and applied by the Circuit Court of Appeals, then the rights of the Hitchman Company under the Fifth Amendment of the Constitution have been violated by that decision.

FUNDAMENTAL RIGHT TO FREEDOM OF CONTRACT.

Aside from the provisions of the Fifth Amendment and aside from the provisions of the Fourteenth Amendment to the Constitution of the United States, there is under the Federal Constitution, as well as under the Constitu-

tion of the State of West Virginia, a constitutional right to freedom of contract derived from either of two sources, namely, the right of freedom to labor or the right to acquire property; neither right being of value unless one can make contracts concerning it.

Stimson's Federal and State Constitutions of the United States, chap. III, Book I, pp. 18 to 35, both inclusive.

PUBLIC POLICY.

The decision of the Circuit Court of Appeals, so far as the Hitchman Company's rights relating to freedom of contract are concerned, does not follow but violates all precedents.

The court cites no authority in the form of any adjudged case, because there is no case.

In denying to the Hitchman Company the enjoyment of its inherent and constitutional rights with respect to freedom of contract, the Circuit Court of Appeals has relied upon what it assumes and states to be public policy.

In deciding the case, the court says:

> "This is an age of co-operation through organization. In fact organization is the only means by which united effort can be secured in any branch of human endeavor. The doctors, dentists, school teachers, wholesale and retail merchants, bankers and manufacturers, and in fact every branch of industry in this country, are organized for the purpose of the mutual protection of the respective parties interested. Such being the case, it is just as essential, and perhaps more important, that the laboring people should organize for their advancement and protection, than it is for any of the vocations we have mentioned.
>
> "While labor and capital are vitally interested in the proper solution of these questions, it should be

remembered that the public is likewise interested, and in some instances affected to a greater extent than either labor or capital on account of the disputes and law suits growing out of these matters. Therefore, it may be properly said that these questions have a bearing upon the welfare of a large percentage of our people, and this is especially true as respects the coal industry. For instance, the suspension of the operation of coal mining in this country would in all probability result in a coal famine, which would, in a large measure, embarrass the manufacturers, to say nothing of the effect it would have upon the individual consumer, and all reasonable means should be employed to avert such a disaster. Therefore, we deem it our duty to define the rights of the parties to this controversy, in so far as we may under the facts of this case, so as to set at rest as many as possible of the vexatious questions that are a source of irritation, as well as productive of much litigation.

"In the first place, it should be understood once and for all that so long as capital employs legitimate means for the protection of property rights, that it is to be accorded the protection of the law, but this does not mean that capital may, by improper methods, form combinations for the purpose of preventing labor from organizing for mutual protection. Likewise, it should be definitely understood that the laboring men have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living; give their children moral and intellectual training; and secure the enactment of legislation requiring mine owners to adopt such methods as may be necessary to keep their mines in a sanitary condition, and, above all, to adopt methods to minimize, as much as possible, the occurrence of the awful catastrophes by which so many human lives have been lost. It should be understood that when a controversy arises between labor and capital that the use of dynamite or any other unlawful methods on the part of the representatives of labor, whereby

property and human lives are destroyed, is not to be tolerated by the courts.

"The relative rights of the parties are entitled to equal consideration, and we feel sure that when such controversies arise that they will be dealt with in the same spirit that actuates the courts in adjusting the differences between individuals, wherein questions are involved affecting the ordinary transactions of life.

"Until it is provided by state and national legislation that labor disputes shall be settled by arbitration, it will be the duty of the courts to determine questions of this character, when a proper case is presented. Under the law as it now exists, when property or personal rights are involved, the courts alone can furnish adequate relief. However, while this is true, we think that care and caution should be exercised in the issuance of injunctions of this character.

"We are inclined to the belief that in some instances a reasonable delay in the issuance of the writ would have a tendency to bring about a settlement between the parties by which the rights of both could be amply protected, and thus avoid the expense incident to litigation, to say nothing about the injury sustained by the employer as well as the employe, occasioned by the suspension of operations.

"In no instance should a union be restrained from using lawful and peaceable methods for the purpose of maintaining its organization, but while this is true, the court should restrain those who by violence, coercion, and intimidation seek to deprive the mine owner of the right to use his property as he may see fit.

"We have carefully considered the cases relied upon by the plaintiff, but are of opinion that they do not apply to case at bar. For the reasons stated, the decree of the court below is reversed, and the cause remanded with instructions to dismiss the bill at plaintiff's costs." Record pp. 893, 894, 895, 896.

This Court has this to say on public policy:

> "This Court can know nothing of public policy except from the constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or impolitic; considerations of that sort must, in general, be addressed to the legislature. Questions of policy determined there are concluded here."
>
> License Tax Cases, 1867, 5 Wall. 462, **469.** 18 Law. ed. 497, **500.**

And in the case of the Baltimore & Ohio Southwestern Railway Company v. Voight (1900), 176 U. S. 498, **505;** 44 L. ed. 560, **565;** 20 S. C. 385, Mr. Justice Shiras, in delivering the opinion of the Supreme Court, said:

> "It must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare. It was well said by Sir George Jessel, M. R., in Printing & N. Registering Co. v. Sampson, L. R. 19 Eq. 465: 'It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.' "

To uphold the contract as lawful and to enjoin the defendants from inducing by peaceable means breaches thereof by one of the parties thereto will not contravene public right or the public welfare.

The Hitchman Company is contending for its right to enjoy what is shown by the Federal Constitution and its amendments and by the Constitution of the State of West Virginia to be a public right.

And the fact that there is no legislative enactment, and no decided case which supports the last quoted portion of the opinion of the Circuit Court of Appeals, shows that the doctrine announced by the Circuit Court of Appeals in that opinion is not one which is called for by the public welfare.

In denying to the Hitchman Company the enforcement of the Company's inherent and Federal and State constitutional rights to freedom of contract, the Circuit Court of Appeals misapplied the law applicable to and overlooked the facts of the Hitchman Company's case.

The Circuit Court of Appeals says:

> "This is an age of co-operation through organization. In fact organization is the only means by which united effort can be secured in any branch of human endeavor. The doctors, dentists, school teachers, wholesale and retail merchants, bankers and manufacturers, and in fact every branch of industry in this country, are organized for the purpose of the mutual protection of the respective parties interested. Such being the case, it is just as essential, and perhaps more important, that the laboring people should organize for their advancement and protection, than it is for any of the vocations we have mentioned." Record pp. 893, 894.

The Record shows that the employes of the Hitchman Company have a union of their own and operate under a

charter procured from the State of West Virginia, and that their organization is known as "Independent Mine Workers of West Virginia." A copy of the charter is Albert Jarrett's Exhibit No. 1. Record p. 839, sec. 25.

NOTE.—The Record says "Albert Harrett's Exhibit No. 1," meaning "Albert Jarrett's Exhibit No. 1."

The Independent Mine Workers of West Virginia are not connected with the United Mine Workers of America.

At the time the defendant officers, representing the United Mine Workers of America, called out on strike April 16, 1906, plaintiff's employes in aid of the national strike which had been called by the national officers of the United Mine Workers' organization, and which went into effect on the first day of April, 1906, plaintiff's employes were members of the United Mine Workers of America. After an idleness of about two months, during which time the men became greatly dissatisfied with their Union because of the failure of the Union's officials to pay the men the benefits they were entitled to receive from their organization during time of strike, the men who had been in the employ of the Hitchman Company left the United Mine Workers of America and surrendered to the parent organization the charter for the local which they had operated under for some time up to April 16, 1906, and having surrendered their charter to the United Mine Workers of America, the employes formed the Independent Mine Workers of West Virginia.

The reasons of the men employed by the Hitchman Company for breaking away from the United Mine Workers of America, surrendering their charter from that organization, and taking out a charter from the State of West Virginia for the Independent Mine Workers of West

Virginia, are fully explained in the testimony of plaintiff's witnesses, as follows:

Oliver, Record, pp. 384–393.
Corn, Record, pp. 393–399.
Daugherty, Record, pp. 410–438.
Albert Jarrett, Record, pp. 444–449.
James Jarrett, Record, pp. 450–458.
Myers, Record, pp. 536–542.
Rowand, Record, pp. 377–384, 543–546.
Popage, Record, pp. 547–549.

The Circuit Court of Appeals then goes on to say:

> "Therefore we deem it our duty to define the rights of the parties to this controversy, in so far as we may under the facts of this case, so as to set at rest as many as possible of the vexatious questions that are a source of irritation, as well as productive of much litigation.
>
> "In the first place, it should be understood once and for all that so long as capital employs legitimate means for the protection of property rights, that it is to be accorded the protection of the law, but this does not mean that capital may, by improper methods, form combinations for the purpose of preventing labor from organizing for mutual protection." Record p. 894.

There is no suggestion in the record anywhere that the Hitchman Company has employed, or that it contemplates employing, any illegitimate means for the protection of its property rights. Neither is there in the record any suggestion that by improper methods it has entered into, or contemplates entering into, any combination for the purpose of preventing labor from organizing for mutual protection.

The Hitchman Company has merely employed an entirely legitimate and a highly necessary means for the

protection of its property rights by contracting with each of its employes—that while the Hitchman Company furnishes such employe work, such employe will not become a member of the United Mine Workers of America.

In the case of Adair v. United States (1907), 208 U. S. 161, **173,** Mr. Justice Harlan, delivering the opinion of the Court, quoted approvingly, as follows:

> " 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress.' "

With the reasons of the Hitchman Company for contracting that its employes shall not be members of the United Mine Workers of America, and that if they desire to become members of that organization they shall withdraw from the employment of the Hitchman Company, neither the public nor third persons have any legal concern.

The Circuit Court of Appeals further says:

> "In no instance should a union be restrained from using lawful and peaceful methods for the purpose of maintaining its organization." Record p. 895.

The issue in this case is not whether the United Mine Workers of America may use lawful and peaceable methods for the purpose of maintaining its organization, because it may solicit membership from men who are not employes of the Hitchman Company and from men who

have not agreed that they will not join the United Mine Workers of America while they are employed by their then employer.

If the United Mine Workers of America are to be held to be entitled to induce breaches of contracts between the Hitchman Company and that Company's employes because that organization has elected to try to batter down the barriers which that Company has by its contracts with its employes created to protect itself from being compelled to do business with the United Mine Workers of America, then such breaching of the contracts can only be done through legislative enactment. It cannot be done by judicial decree as public policy. And the Hitchman Company claims that such a thing cannot lawfully be done even by the Congress of the United States or by the Legislature of the State of West Virginia.

Speaking to the point of legislative power, Mr. Justice Harlan in Adair v. United States, 208 U. S. 179, 52 L. ed. 444 and 52 L. ed. 445, says:

> "If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ, in the conduct of its interstate business, only members of labor organizations, or only those who are not members of such organizations—a power which could not be recognized as existing under the Constitution of the United States."

"Every man has a right to pursue his trade or calling without molestation or obstruction, and anyone who by any act, though it be not otherwise unlawful, molests or obstructs him is guilty of a wrong, unless he can show lawful justification or excuse for so doing."

The foregoing is the doctrine broadly laid down in the ancient case of Keeble v. Hickeringill, 11 East, 574 n.

"If one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable."

West Virginia Transportation Company v. Standard Oil Company (1900), 50 W. Va. 611. 40 S. E. 491. 56 L. R. A. 804. 88 Am. St. Rep. 895.

"Rights of commerce give no authority to their possessor to invade the ferry franchise of another without authority from the holder."

Conway v. Taylor (1862), 1 Black 603. 17 L. Ed. 191.

LABOR UNIONS ARE NOT EXEMPT FOR THE REASON THAT THEY ARE LABOR UNIONS FROM THE APPLICATION OF THE LAW AGAINST TORTIOUS INTERFERENCE WITH THE CONTRACTUAL RELATIONS OF OTHERS.

"No one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of his own rights, or without malice, or bona fide, or in the best interests of himself, nor even that he acted as an altruist, seeking only the good of another and careless of his own advantage."

Read v. Friendly Society of Operative Stone Masons of England, Ireland and Wales (1902). 2 K. B. 88.

"If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person, to the injury of that third person, it is actionable."

Thacker Coal & Coke Co. v. Burke (1906). 5 L. R. A. 1091, Syl. 2.

The case of Flaccus *v.* Smith *et al.* (1901), 199 Pennsylvania, 128, is analogous to the Hitchman case.

Flaccus was the proprietor of glass works at Tarentum, Pennsylvania. He ran his works non-union, and his employes consisted of men and apprentices, all of whom had agreed with their employer not to connect themselves with the Union, which in that case was otherwise known as the American Flint Glass Workers' Union, affiliated with the American Federation of Labor.

The defendants in the case, W. J. Smith and others, were members of the American Flint Glass Workers' Union, and they tried to unionize the plaintiff's glass works at Tarentum by persuading the plaintiff's employes to join their Union. Flaccus, the plaintiff, brought his suit in the Court of Common Pleas, No. 2, for Allegheny County, to enjoin the defendants from interfering with his apprentices, and upon the Court, upon final hearing, enjoining the defendants from doing the acts complained of and from persuading the apprentices to join the Union, the defendants appealed.

In the report of the case, as decided by the Supreme Court of Pennsylvania, Judge Brown delivering the opinion of the Court, said (54 L. R. A. 642):

> "The court below found that Skelley, one of the appellants, had gatherings of the apprentices of the appellee at his room in a hotel and persuaded them to join the union referred to; that he knew the character of the appellee's works as an independent factory, in which members of the union were not employed and that his apprentices were bound in their identures not to join or become subject to the rules or regulations of any such organization as he represented; that he knew these facts at the time he swore in these apprentices as members of the union; that the apprentices who joined the union violated the covenant of their

indenture and subjected themselves to the orders of the union, which made obedience to it paramount to obedience to their employer; that the object of Skelley was to break down the appellee's factory as a non-union factory, either by preventing the operation of his works or compelling him to join the union; that the apprentices who joined the union, enticed and persuaded so to do by Skelley, violated an express covenant of their indenture, which was one of great importance to the appellee, and Skelley so knew at the time he so enticed them; that Skelley's conduct and actions were very injurious to the appellee and his business, and, if repeated and persisted in, would in all probability utterly ruin his business; that Skelley's co-defendants, by their counsel, openly and boldly justified him in all he did, contending that, as an officer or agent of the union, he had a perfect right to interfere with plaintiff's apprentices, persuade them to join the union, and secretly swear them in as members; that, if the union had that right, either Skelley or some other agent could go to Tarentum at any time and interfere with the appellee's apprentices and business until it would be destroyed."

In deciding the case Judge Brown said:

"This is not a controversy between the employer and his employes, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him. No question is here raised by the employer as to what his employes may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against

> the threatened ruin of his business, as found by the court below. Having reviewed all the evidence, we are not persuaded that any of the court's findings of fact ought to be disturbed, and, with them before us, the only question to be determined is whether the injunction should go out."

And on the same page (54 L. R. A. 642) in affirming the action of the lower court, Judge Brown for the Supreme Court of Pennsylvania, said:

> "The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The Court found that the interference was injurious to him, and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity. The test of equity jurisdiction is the absence of a plain and adequate remedy at law to the injured party, depending upon the character of the case as disclosed in the pleadings. If equity alone can furnish relief, the injunction must be issued."

The Circuit Court of Appeals for the Fifth Circuit in deciding the case of Louisville & Nashville Railroad Company *v.* Bitterman *et al.* (1906), 75 C. C. A. 192, 144 Fed. 34, quoted and relied upon Angle *v.* Chicago, St. P. M. & O. R. Co., and cited approvingly Flaccus *v.* Smith, and the decision of the Circuit Court of Appeals for the Fifth

Circuit above referred to was affirmed by the Supreme Court of the United States in 207 U. S. 205.

Of this same case of Flaccus v. Smith, the Circuit Court of Appeals for the Second Circuit, in deciding the case of American Malting Company v. Keitel (1913), 209 Fed. 351, **359,** said:

> "In Flaccus v. Smith, 199 Pa. 128, 48 Atl. 894, 54 L. R. A. 640, 85 Am. St. Rep. 779, an injunction issued to a third person, an officer of a labor union, restraining him from enticing the plaintiff's apprentices to break their contract of employment; they having agreed at the time of their employment not to become members of a union while working for the plaintiff. The court below had found as a fact that, if the interference was allowed to continue, it would ruin the plaintiff's business."

The Supreme Court of the United States has said:

> "Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.
>
> "But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it

> is the duty of government to protect the one against the many, as well as the many against the one."
>
> Gompers v. Buck's Stove & R. Co. (1911), 55 L. ed. 797, **805,** 221 U. S. 418, **439.**

If the decision of the Circuit Court of Appeals for the Fourth Circuit is law then it is correct to say that capital and labor, as respective classes, are so in conflict that each has a lawful interest in injuring the other.

In discussing this proposition the Circuit Court of Appeals for the Sixth Circuit says:

> "So far as the record in this case shows, there was no complaint by any of the company's employes regarding wages or the conditions of service, nor does it appear that the demanded wage scale was higher than the wages being paid. It is the fair inference from the record that the contest was wholly over "recognition." A concerted effort by strikers to cripple an employer's business, by persuading his workmen away from him, is an injury which requires justification, but it is permitted because it is incidental to the full exercise of the employes' clear and established right to strike for the improvement of their own condition. Such unlawfulness as there might otherwise be in that campaign of persuasion is merged in the dominant right to promote directly their own interest by effectually carrying on their contest. It may well be that the limits of lawful persuasion, when exercised by employes in the course of a strike by them to force from their employer better terms or conditions for themselves and as a means collateral to their side of the conflict, are wider than are such limits in a case where there is no complaint by employes, but where the strike is directed by officials of a labor organization for the primary purpose of compelling its recognition. In the one case, the benefit to the striking employes through winning their contest is immediate and

direct; indeed, its primary purpose is to improve the specific, existing conditions, and the injury to the employer's business is measurably incidental. In the other case, injury to the employer's business is the primary object, sought for the purpose of compelling a result said to be for the benefit of the working miners of several states grouped as a class, and for the benefit of these employes of this employer only in a remote or contingent or uncertain way. To say that every weapon lawful in a conflict between an employer and his workmen, over a question in which each has a direct personal interest, is also lawful as between him and a labor organization to which his men do not belong, is to say that capital and labor, as respective classes, are so in conflict that each has a lawful interest in injuring the other. This we are not prepared to do."

Tunstall *v.* Stearns Coal Co. (December 5, 1911). 192 Fed. Rep. 808, **810, 811.**

IMMUNITY OF EMPLOYE NOT A NON CONDUCTOR.

If the Hitchman Company suffers loss through its employes quitting its service, and has no right of action against them for the damage done for the reason that they have the right to quit if they want to do so, such fact does not carry with it immunity to the defendants, who, in inducing the employes either to quit working for plaintiff, or to join the union while in plaintiff's employ, disqualifying them for further employment by plaintiff, have controlled the actions of such employes to plaintiff's harm. The immunity of the employe is not a non conductor behind which these defendants may take refuge.

Moran *v.* Dunphy, 177 Mass., 485 (*supra*).

The court in that case spoke through Mr. Chief Justice Holmes.

PETITIONER'S CONTRACT IS NOT IN RESTRAINT OF TRADE.

Special reference is here made to the case of Associated Hat Mfrs. v. Baird-Unteidt Company, decided by the Supreme Court of Errors of Connecticut, July 13, 1914, (The Atlantic Reporter, Vol. 91, No. 3, pp. 373-380), in which the court said:

> "The United Hatters of North America is an unincorporated association of journeymen hatters, having over 9,000 members, and owning a union label, which it permits to be placed in hats manufactured in factories employing its members solely, and commonly called 'union or closed shops.' * * * On January 12, 1909, the board of directors of the plaintiff passed a resolution that it recommended to the association:
>
> " 'That the use of the union label to be discontinued in every factory of every member of this association one hour subsequent to the passage of this resolution unless during the said period of one hour the association receives official notice that the label will be restored to and the men immediately placed to work in the factory of the Guyer Company, located in Philadelphia, Pa., under the conditions existing at the time of the withdrawal of the label and men.'
>
> "* * * On January 15, 1909, the association communicated to all of its members the substance of this resolution, and the defendant and the other members of the plaintiff informed their employes that the union label would no longer be permitted to be used in their factories. Whereupon the employes who were members of the United Hatters, pursuant to its order, quit work, and all of the factories, including the defendants, on January 16, 1909, ceased to manufacture hats, which condition continued until January 29, 1909. The members of the plaintiff knew *that a large proportion of the members desired to resume the operation of factories as open*

shops, and on January 28, 1909, the board of directors of the plaintiff passed the following resolution:

" 'That the board of directors recommend to the association that each member offer situations to operatives as individuals, in their respective factories on February 9, 1909.'

"* * * *All of the members of the plaintiff, including the defendant, understood the resolution of January 28, 1909, to mean the hiring of their employes as individuals in an open shop.* * * * A vote that each member offer situations to operatives as individuals is a declaration for the open shop. *Its purpose was to preserve to employers the right to contract for their labor regardless of its membership in the union. The right to so contract is one of the unalienable rights of every employer of labor. Every employer and employe has, under the law, such freedom of contract. The law will not take it from him, much less declare illegal his effort to establish his right to it.* * * * The open shop resolution meant that the employers should be free to hire when they pleased and at such wage as the market for labor fixed, and that the employe should be free to choose his employer and to make his own conditions of employment. The agreement took from each the right to freedom of contract."

At an earlier stage of the opinion the court had said:

"It is too late to question the right of a labor union to make by-laws providing for strikes and to issue its order for a strike in an effort to secure lawful objects by lawful means. Reynolds *et al. v.* Davis *et al.*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. (N. S.) 162. And it may prosecute the strike by any means neither illegal nor in violation of the equal or superior rights of others.

"(1) So, too, the association of employers may enact a by-law giving it the right to order a shut down of the factories of its members, provided the objects sought be within its lawful purposes and the means used be

> lawful. *And the employer has the right freely to hire his labor in the market without denial or unfair restriction of this right.* The order of the association to stop work may curtail this right, but it is not, for this reason, illegal."

It was also claimed by the defendant that the plaintiff association is, by reason of its organization and its by-laws, illegal. "The foundation of this claim is threefold, because: (1) the real purpose and object of the association was to permit it to order a suspension of work by its members; (2) to make agreements relative to the use of the union label; and (3) *because the members of the plaintiff were engaged in interstate commerce, the association was a violation of the Sherman Act (Act July 2, 1890, C. 647, 26 Stat. 209 [U. S. Comp. S. 1901, p. 3200]), as its purposes were in restraint of trade.*" In answer to such contentions the court said:

> "We do not think it necessary to discuss the proposition that a vote by employers to conduct their factories as open shops and to exercise their right to hire their labor as individuals, and not as members of a labor union, is a restraint of trade within the Sherman Act. Nor do we think the proposition tenable that the object of the association was the making of the arbitration agreement which the plaintiff had with the United Hatters, and that it was void because it involved the exclusive employment by the members of the plaintiff of union labor. The arbitration agreement does not bear this construction, and its making was a mere incident of the business of the plaintiff. Moreover, it did not relate to, or enter into, the vote for the open shop. * * * The open shop resolution meant that the employers should be free to hire where they pleased and at such wage as the market for labor fixed, and that the employe should be free to choose his employer

and to make his own conditions of employment. The agreement took from each the right to freedom of contract. These employers knew what they were engaged upon, for, simultaneously with this agreement, they agreed with each other to indemnify against any liability which might arise to the plaintiff. Had they in good faith intended to run an open shop, would they have felt it essential to make provision for the contingency of their agreement being held to be a violation of their obligation to the plaintiff? In fact, the agreement was to hire exclusively union labor. The contracting employers included all the manufacturers, with two exceptions, in the chief industry of the Danbury district.

"We held in Connors *v.* Connolly *et al.*, 86 Conn. 641, such an agreement against public policy and void. Meritorious as the effort of these mediators to settle a strike of fatal consequences to large communities was, *we can not let our sympathy for the peacemaker cause us to forget that the security of society depends in great measure upon the preservation, inviolable, of the obligations of men.*"

In Styles *v.* Lyon, 87 Conn. p. 23, the court held:

"A contract in partial restraint of trade will not, as a rule, be held to be against public policy, unless it unduly interferes with the interests of the public.

"The true test of reasonableness is whether the restrictive provision is necessary to protect the legitimate interests of the employer as affected by the contract of employment."

"An agreement in restraint of trade must satisfy the following conditions:

(1) It must be reasonable.
(2) It must be founded on good consideration.
(3) It must not be too vague."

27 Halsbury's Laws of England, p. 553.

"Trade and Trade Unions."
§1073. "Restraint of Trade by Agreement."

"In estimating the reasonableness of a restraint, the paramount consideration which has to be taken into account is whether it is reasonably necessary for the protection of the interest of the covenantee, unless, it seems, there can be established some specific ground of public policy which must be taken to override the interest of the covenantee."

Ib. §1077.

"There cannot be a restraint of trade in gross—the restraint must be for the protection of a business in which the covenantee is interested."

Ib. §1078.

"There must be a valuable and legal consideration, even though the covenant be by deed. The consideration may be shown either on the face of the agreement or by extrinsic evidence, or may be reasonably inferred from the agreement."

Ib. §1095.

"A consideration is sufficient if it has some value and is not merely illusory. Mere employment at will is a sufficient consideration, so is the continuation of an existing employment at will."

Ib. §1097.

"When once it is established that there is a consideration of some value, the court will not inquire into its adequacy."

Ib. §1099.

"The ordinary rules of contract apply in all questions as to parties to an agreement in restraint of trade."

Ib. §1102.

"In construing a contract which is in restraint of trade, the ordinary rules applicable to contracts must be applied."

Ib. §1105.

"A valid covenant in restraint of trade will be enforced by injunction notwithstanding that it provides for the payment of a sum by way of liquidated damages."

Ib. §1117.

Reference should here be made to the recent English case of Howard *v.* Danner, decided in the Chancery Division of the High Court, on June 4, 1901, by Byrne, J., and reported in *The Times Law Reports*, vol. XVII, p. 548. In that case, "The receiver and manager of a restaurant business, appointed by the court in certain chancery proceedings, required each of the waiters at the restaurant to sign an agreement that in consideration of the employer retaining the waiter's services at 4s. per week, the latter agreed not to enter into the services of a new restaurant, about to be opened in the vicinity, during the current year, and in case of a breach to pay £1 a day for every day he might remain in the service of the new restaurant, as liquidated damages. Held, that the receiver and manager had authority to enter into the agreement, and that it was a reasonable agreement necessary for the protection of the business." After stating the facts the Justice said: "The present agreement with the defendant was, in his opinion, a reasonable agreement and a proper one under the circumstances, for the due protection of the Café Royal business and the estate of the testator; for it was obvious that a general defection of waiters to a rival establishment distant only two doors away, might do a great deal of mischief to plaintiff's business, and the plaintiff was well advised in taking the steps he did to prevent anything of this kind being possible."

And here the fact should be emphasized that in the case just cited the complaint was against a competitor, while in the case at bar the complaint is against an intermeddler. A Labor Union is not a competitor of the employer. The

Supreme Court of New Jersey, in the case of George Jonas Glass Company *v.* Glass Bottle Blowers' Association of the United States and Canada, *et. al.* (1907, N. J. Eq. 66 Atl. 953), said: "A labor organization seeking to compel a manufacturer to unionize his plant is not such a competitor in the labor market as to justify it in enticing employes to leave the service of their master, or to induce persons seeking employment with him from so doing, when the enticer does not employ labor. The competition which the law upholds must be honest competition, and not a malicious attempt to injure another."

RIGHT OF PETITIONER TO INJUNCTIVE RELIEF.

In the Flaccus case, heretofore cited, the court stated the precise issue before it in these terms: "This is not a controversy between the employer and his employes, *but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him.* No question is here raised by the employer as to what his employes may or may not do, and the complainant sets forth no misconduct by them for which relief is asked." In speaking of such "relief" the court said: "that the interference was injurious to him [the employer], and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, *and justice demands that specific relief be furnished in a court of equity.*" So in this case the controversy is not "between the employer and his employes, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor," who are seeking to induce the employes

of petitioner to violate the terms of their contract with petitioner. As the damages resulting from such an injury is this case, as in the Flaccus case, "are incapable of ascertainment at law, * * * justice demands that specific relief be furnished in a court of equity." And so in the Bitterman case, heretofore quoted, this court said: "Concluding, as we do, that the commission of a legal wrong by the defendants was disclosed by the case as made, we are brought to consider the several contentions concerning the jurisdiction of the court and its right to afford relief. * * * Besides, the substantial character of the jurisdictional averment in the bill is to be tested, not by the more immediate pecuniary damage resulting from the acts complained of, but by the value of the business to be protected and the rights of property, which the complainant sought to have recognized and enforced. * * * The contention that, though it be admitted, for the sake of argument, that the acts charged against the defendant 'were wrongful, tortious, or even fraudulent,' there was no right to resort to equity because there was a complete and adequate remedy at law to redress the threatened wrong when committed, is, we think, also devoid of merit. * * * The circuit court of appeals decided that error had been committed in refusing to grant an injunction against dealing in non-transferable tickets to be issued in the future, and directed that the decree below be enlarged in that particular. It is insisted that the circuit court of appeals erred in awarding an injunction as to dealings 'in non-transferable tickets that may be hereafter issued * * * since it thereby undertook to promulgate' a rule applicable to conditions and circumstances which have not yet arisen, and to prohibit 'the petitioners from dealing in tickets not *in esse* * * * and is, therefore, violative of the

most fundamental principles of our government.' But when the broad nature of this proposition is considered, it but denies that there is power in a court of equity in any case to afford effective relief by injunction. Certain it is that every injunction, in the nature of things, contemplates the enforcement, as against the party enjoined, of a rule of conduct for the future as to the wrong to which the injunction relates. Take the case of trespasses upon land where the elements entitling to equitable relief exist. See Slater v. Gunn, 170 Mass. 509, and cases cited. It may not be doubted that the authority of a court would extend, not only to restraining a particular imminent trespass, but also to prohibiting like acts for all future time. The power exerted by the court below which is complained of, was in no wise different. * * * The action of the circuit court of appeals, therefore, in causing the injunction to apply not only to the illegal dealings as to the then outstanding tickets, but to like dealings as to similar tickets which might be issued in the future, was but the exertion by the court of its power to restrain the continued commission against the rights of complainant in the future of a definite character of acts adjudged to be wrongful." An inspection of the record will show that the injunction issued in the case at bar conforms, in every particular, with the foregoing rule as this court has defined it.

All of which is respectfully submitted.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Counsel for Petitioner.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

JOHN MITCHELL, *et al.*,
Appellants,

v.

HITCHMAN COAL & COKE COMPANY,
Appellee.

In Equity
No. 1220.

The said John Mitchell *et al.*, appellants, now respondents, are hereby notified that the Appellee, now petitioner for a writ of certiorari, will on Monday, the 12th day of October, 1914, upon its verified petition and a copy of the entire record in this cause, at the opening of the court on that day, or as soon thereafter as counsel can be heard, submit a motion (a copy of which and of the petition for a writ of certiorari, as above set forth, are herewith delivered to you) to the Supreme Court of the United States, at its Court Room at the Capitol, in the City of Washington, D. C.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Counsel for Petitioner.

Service of the foregoing notice and delivery of a copy of the said motion and petition for writ of certiorari, on the .....day of September, 1914, is hereby acknowledged.

Counsel for Respondents.

Office Supreme Court, U. S.
FILED
NOV 21 1916
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 411

HITCHMAN COAL & COKE COMPANY, a Corporation,
Petitioner,
v.
JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et als.*,
Respondents.

CERTIORARI

To Circuit Court of Appeals for Fourth Circuit.

Writ granted March 13, 1916.

RE-ARGUMENT.

Petitioner is also referred to as Plaintiff.

BRIEF FOR PETITIONER.

NOTE.—Along with this brief, petitioner's counsel have filed a book called "Plaintiff's Index," which contains:

(1) Index to testimony in printed Record.
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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 43.

HITCHMAN COAL & COKE COMPANY, a Corporation,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et als.*,
Respondents.

CERTIORARI

To Circuit Court of Appeals for Fourth Circuit.

Writ granted March 13, 1916.

RE-ARGUMENT.

Petitioner is also referred to as Plaintiff.

BRIEF FOR PETITIONER.

The decision of the Circuit Court of Appeals is reported in 131 C. C. A. 425, and 214 Federal 685.

The decision of the District Court for the Northern District of West Virginia, Dayton, Judge, reversed by the Circuit Court of Appeals, is reported in 202 Federal 512.

Each decision is a final decree upon the merits.

NOTE.—Along with this brief, petitioner's counsel have filed a book called "Plaintiff's Index," which contains:

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I.

STATEMENT OF THE CASE.

At its last term this Court made the following order:

> "No. 241 Hitchman Coal & Coke Company, appellant and petitioner, *v.* John Mitchell, individually, *et al.* Appeal from and petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit. Per Curiam:
>
> "(1) Appeal dismissed for want of jurisdiction upon the authority of Shulthis *v.* McDougal (225 U. S., 561, 569); Omaha Electric Light and Power Co. *v.* Omaha (230 U. S., 123); St. Anthony Church *v.* Pennsylvania R. R. Co. (237 U. S. 575, 576, 577).
>
> "(2) Considering the petition for certiorari hitherto filed and upon which action was previously postponed until the merits of the case came to be disposed of, it is ordered that the said petition be, and the same is, granted, the record on appeal to stand as a return to the writ of certiorari. It is further ordered that the case on the return to the writ of certiorari be placed on the docket for argument before a full bench."

From the record on appeal, which now stands as a return to the writ of certiorari, granted as aforesaid, it appears that your petitioner, the Hitchman Coal & Coke Company, on October 24, 1907, commenced, in the District Court of the United States for the Northern District of West Virginia, a suit in equity for injunctive relief against the above named respondents, averring among other things, the following:

THE PLAINTIFF *is a West Virginia corporation* operating a coal mine at Benwood, West Virginia, near Wheeling;

(*a*) Primarily, to supply coal to the B. & O. R. R. engines at its yards at Benwood, West Virginia, four miles below Wheeling, for which trade a contract was made

before the mine was opened. Such coal is termed "Engine Coal."

(*b*) Secondarily, to ship coal to the general markets, local and otherwise, as its production became great enough in the course of its development to admit of that trade. Such coal is termed "Commercial Coal."

Its Trade consists of about half engine and half commercial coal.

Engine coal must be mined and delivered with regularity and without the shut-downs that are incident to strikes.

The same is true as to mining coal for the lake trade. It can only be mined and shipped while lake navigation is open.

Mines in Ohio near Wheeling are plaintiff's competitors in supplying engine coal and in shipping coal for the lake trade.

These Ohio mines are union, that is, they are operated under contracts entered into between the operators and officials of the United Mine Workers of America.

The Hitchman Mine opened up and was run non-union to April 1, 1903, was run union to April 16, 1906, and has run non-union since June 12, 1906; it never had any shutdown or suspension even for one day running non-union; and it has lost no time by reason of labor troubles since June 12, 1906.

Since resuming non-union June 12, 1906, the Hitchman Company has made individual contracts with its employees whereby it aims to protect itself against the United Mine Workers of America, in the efforts of that organization to unionize its mine again, and that agreement is evidenced by memorandum cards, signed by the men, reading as follows:

> "I am employed by, and work for, the Hitchman Coal & Coke Company, with the express under-

standing that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company, and that the Hitchman Coal & Coke Company is run non-union, and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any effort amongst its employees to bring about the unionizing of that mine, against the company's wish. I have either read the above or heard same read."

The wages paid by the Hitchman Company are the same except in one instance and in that instance a little better than the wages paid by mines operated under the United Mines Workers' scale.

In the unionized State of Ohio 16 or 17 days in the month constitute a high average and many engaged in the mines decline to labor more than 12 or 14 days.

THE DEFENDANTS are the national officers of the United Mine Workers of America, the officers of District No. 6, which covers the State of Ohio and the Northern Panhandle of West Virginia, and the officers of Subdistrict No. 5 of District No. 6, which covers the southeastern portion of Ohio and the Panhandle in West Virginia.

The reason for including the West Virginia Panhandle in the Ohio District is that the vein of coal mined in southeastern Ohio and in the West Virginia Panhandle is the same and that mining conditions and markets are the same, the latter being competitive.

The United Mine Workers of America and their district and their sub-district organizations are voluntary and no one of them is incorporated.

More than two-thirds of their total membership is in the States of Pennsylvania, Ohio, Indiana, and Illinois.

In signing the scale for the operation of a union mine the officials of the United Mine Workers contract for and enforce the closed shop, under which agreement no man may work at the mine who is not a member of the United Mine Workers of America.

States in which closed shop agreements are made and enforced by the United Mine Workers of America are Ohio, Indiana, Michigan, Illinois, Iowa, Kansas, Missouri, Oklahoma, Texas, Arkansas, part of Kentucky, part of British Columbia, part of Washington, all Wyoming, all Montana, part of Central Pennsylvania and greater part of Western Pennsylvania.

The controversy between plaintiff and the defendants hinges upon efforts of the United Mine Workers of America to carry out a contract with union operators and to advance the cause of their own union.

In its bill petitioner avers that the defendants

> "have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure your orator's miners or mine workers, employed by your orator and working for your orator in or around your orator's mine, to break, violate and disregard their several contracts with your orator, all with the avowed purpose of compelling your orator to unionize its plant, without your orator's consent, and to such end have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel by threats and intimidation and by other unlawful means your orator's said employes to join the Union and to apply to their own relation with your orator, in the matter of their employment, the rules of the Union, and to enable said Union to apply its rules and regulations to your orator under penalty of closing down your orator's mine, provided your orator

still refuses to unionize its plant and recognize the Union.

"Your orator says that it has no contractual relation whatever with any one of the defendants hereto and that each of said defendants is fully aware that your orator is operating a non-union mine and will not consent to operate a Union mine; that its employes are non-union; that said employes are required by your orator at the time of entering service to agree not to become connected with the Union, while employed by your orator, and that if they do join the Union, their employment with your orator shall cease; that with such understanding your orator's employes enter into its employment and that they are now working for your orator under such contract and with such conditions, all of which is known to these defendants and to each of them, as aforesaid.

"Your orator further says that the said John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes, individually, and as officers, agents, employes and servants, as aforesaid, of said United Mine Workers of America and of its said subordinate associations or branches are fully aware that your orator's said employes are satisfied with their employment; that your orator is engaged in mining coal and in fulfilling contracts for coal; that it would be impossible to fulfill those contracts without the labor of its said employes and that it would entail upon your orator great financial loss to have its ability to fulfill its contracts interfered with by the failure of its men to work longer for your orator, and likewise would entail great loss and damage to your orator to have its mine shut down and to have a strike declared, yet your orator says that the said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely: to cause your orator's mine to be shut down, its plant to remain idle, its contracts to be broken and unful-

filled until such time as your orator shall submit to the demand of the Union, that it shall unionize its plant, and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the Union, paramount to the orders of your orator, their employer, and until in thus unionizing its plant your orator shall surrender its control and the management of its business to the Union under the various rules and regulations laid down by the Union and accede in advance to every demand the said Union by its said officers, agents, employes and servants may make. * * *

"Your orator says that at a Convention of Sub-District 5 of District 6 United Mine Workers of America held at Wheeling, March 14–19, 1907, the said defendants, A. R. Watkins, Lee Rankin, T. L. Lewis, John Zelenka and Thomas Hughes were present and participated in the proceedings.
Said defendant, A. R. Watkins, in his report which he submitted to the Convention as President of Sub-District 5 of District 6 U. M. W. of A. said: 'The general strike in our sub-district last year was characterized by a great deal of bitter feeling by a few operators trying to operate their mines on a non-union basis. The attempt of those operators to operate their mines was defeated by the splendid loyalty of our members in standing shoulder to shoulder in that bitter struggle. You and those who stood so loyally to the organization deserve great credit for your conduct, under the trying conditions that existed in some sections of the district during the strike.' * * * 'At our last Annual Convention it was unanimously decided that the Eastern Ohio scale should apply to the West Virginia Pan Handle counties. The operators of those counties refused to meet us in joint convention to sign a general scale. Some of the operators even refused to sign a contract and this resulted in several local strikes, all of which were settled except the one now on at Elm Grove where the men are on strike and are standing firm.

It is with regret that some of the locals in the Pan Handle broke away and the members went to work without any union or without getting a scale signed.'
* * *

"Your orator says that in refusing to recognize the Union after the declaration of said strike April 1, 1906, and after its men had left your orator's employment, pursuant to said strike, and in thereafter and now running its mine non-union your orator did not seek to reduce the wages of its said employes nor cause its said employes to work for less than the scale of wages established by said United Mine Workers of America, nor does your orator now seek nor contemplate any reduction in the wages of its present employes. Your orator's sole purpose in running non-union and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representative of the said United Mine Workers of America was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants. * * *

"Yet your orator says that although it has refused to permit it, still the said defendants, further proceeding to carry out their conspiracy, are now endeavoring to unionize your orator's mine, and threaten to, and your orator has reasonable ground to fear that they will, and so alleges, close down your orator's mine and keep it closed until your orator will agree to sign the scale and employ none but union labor.

"Your orator says that on or about September 7, 1907, the defendant, Thomas Hughes, was noticed about the Glendale mine and about the Hitchman mine intercepting the miners, taking lists of names of employes and trying to induce the men by persuasion, threats, coercion and intimidation, and by various other unlawful methods and devices, to quit working for your orator and to join the Union, and such efforts said Hughes is keeping up at each mine, although he has been ordered off of the premises of each mine and has been directed to stay off and to let your orator's employes alone.

"Your orator says that as a result of the labors of the defendant, Hughes, who has been assisted by others of the defendants, from time to time, by their counsel and advice, and aiding and abetting him, with their presence, about your orator's mine and about the Glendale mine, the said defendants succeeded in getting twenty-four of the employes of the Glendale mine to agree to join the Union and to quit the service of the Glendale Coal Company. And your orator says that while the said defendants have so far been unable to bring about or induce your orator's employes to quit its service, still the said Hughes has recently stated to one of your orator's miners whom he was trying to induce to leave your orator's service and join the Union, that he, Hughes, had succeeded in having one hundred and twenty-five men at the Hitchman mine sign their names agreeing to become members of the United Mine Workers of America and that just as soon as he got twenty-five more names he was going to shut the Hitchman mine down, and in this connection your orator says that fifty-four of your orator's present employes have in writing signed a statement that they are satisfied with their employment with your orator, with the wages paid to them, and with their work, and that they would like to remain in your orator's employ. Your orator employs from one hundred and seventy-five to two hundred men at its mine as a general rule and now has in its employ one hundred and sixty to one hundred and seventy-five men.

"Your orator says that the said United Mine Workers of America, the said International Union United Mine Workers of America, the said District No. 6 United Mine Workers of America, and the said Sub-District 5 of District 6 United Mine Workers of America, voluntary associations as aforesaid are under their Constitutions violating the common and statutory law of the State of West Virginia as well as the Constitution of said State; especially in this, to-wit: in the provisions of Section 1, Section 3 and Section 4 of Article X., Constitution International Union, U. M. W. of A.; and in the provisions of

Section 1, and Section 2 of Article VIII, and Section 15 of Article IX., Constitution District No. 6, U. M. W. of A.; and in the provisions of Section 2 and Section 3 of Article 1, Section 1 of Article IV., Section 6 of Article VI, and Sections 2 and 3 of Article IX., Constitution Sub-District 5 of District 6, U. M. W. of A.; and as well in the said oath which is administered to each member of the U. M. W. of A. on his initiation. * * *

"Your orator says that the said United Mine Workers of America, including its said subordinate associations or branches is a secret voluntary organization having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes that the matters and things herein complained of by your orator have arisen. * * *

"Your orator says that the said John Mitchell, the said T. L. Lewis, the said W. B. Wilson, acting in their several official capacities hereinbefore stated; the said William Green, the said D. H. Sullivan, the said George W. Savage, acting in their several official capacities hereinbefore stated; the said A. R. Watkins, the said John Zelenka and the said Lee Rankin, acting in their several official capacities hereinbefore stated, are representative of the said United Mine Workers of America, the said International Union United Mine Workers of America, the said District 6 United Mine Workers of America, and the said Sub-District 5 of District 6 United Mine Workers of America, respectively; and that the said Thomas Hughes is acting as an organizer of said United Mine Workers of America, all voluntary associations; that the principal office of said United Mine Workers of America and of said International Union U. M. W. of A. is at Indianapolis, Indiana, the office of said District No. 6 U. M. W. of A. is at Columbus, Ohio, and that said Sub-District 5 of District 6, U. M. W. of A. has no office, business being transacted at the places of residence of the said A. R. Watkins, John Zelenka and Lee Rankin, President, Vice-President and Secretary-Treasurer, respectively, all residing

within the State of Ohio as aforesaid; that the jurisdiction of this court is invoked on the ground that your orator is a resident of the Northern District of West Virginia and a citizen of said State, and that each of the said defendants is a resident of a different State, to-wit; no defendant is a resident of the State of West Virginia, and that the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars. * * * "

In its bill

"Your orator further says that unless enjoined by this Court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and will compel your orator to contract with its employes through the said defendants as officers of the said associations under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the Union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and further will compel your orator to agree that each of its future employes as members of the said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employes would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator *which dis-*

tinctly violate your orator's contractual, common law, statutory and constitutional rights as a citizen of the State of West Virginia.

"Your orator further says that in effecting their said object of unionizing your orator's mine the said defendants propose and threaten to, and your orator being so informed and believing it to be true, alleges on such information and belief that said defendants will and are about to, indulge in all of the many methods of accomplishing their result by the use of threats, intimidation, force, violent or abusive language, picketing your orator's premises, picketing or patrolling or guarding the streets and approaches to your orator's premises and going to the homes or boarding houses of your orator's employes for the purpose of intimidating or coercing them to leave your orator's employment and to picket railroad and street cars passing to and from or through your orator's premises for the purpose of intercepting your orator's employes in going to or from your orator's premises and for the purpose of intercepting and preventing persons coming to your orator's premises for the purpose of seeking or for the purpose of entering into your orator's employment."

After protracted litigation a final decree was rendered in said cause on January 18, 1913, in favor of petitioner, awarding to it a perpetual injunction against the United Mine Workers of America. In the course of his opinion District Judge Dayton said:

> "The final question arises how is this plaintiff, the Hitchman Coal & Coke Company, affected and what right has it to complain and appeal for injunctive relief? The evidence establishes these facts:"

After stating the facts thus established, the Court said:

> "I conclude, therefore, that this organization, known as the United Mine Workers of America, is an unlawful one because, (a) of its principles as set forth in its constitutions, obligation for membership

and rules which (1) require its members to surrender their individual freedom of action, (2) seeks to require, in practical effect, all mine workers to become members of it whether desirous of doing so or not, (3) seeks to control, and restrict, if not destroy, the right of the mine owner to contract with its employees independent of the organization, (4) to exclude his right to employ non-union labor if he desires, (5) to limit his right to discharge, in the absence of contract, whom he pleases, when he pleases and for any cause or reason that to him seems proper, (6) assumes the right on its part, by and through its officers, to control the mine owner's business by shutting down his mine, calling out his men upon indefinite strike in obedience to their obligation to the Union, whether the men desire to quit work or not, whenever the Union's officers deem it to be for the best interests of the Union, regardless of the rights and interests of the mine owner, and regardless of his direct loss and damages and such indirect loss and damage as may be incurred by him by reason of the resultant violation of contracts by him with others. Adair *v.* United States, 208 U. S. 161, 52 L. ed. 436. I further conclude that it is an unlawful organization because, (b) of its procedure and practices in that, (1) it seeks to create a monopoly of mine labor such as to enable it, as an organization, to control the coal mining business of the country, and (2) has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other states, to control, restrain and, to an extent at least, destroy the coal trade of the State of West Virginia. It has spent fourteen years time and hundreds of thousands of dollars in effort to accomplish this unlawful purpose. The rules of law relating to the responsibility of individual members concerned in such combination and conspiracy are plain and well defined. Great latitude in establishing conspiracy by the admission of circumstantial evidence is allowed, circumstances tending in slight degree to a determination of the truth are allowed to be proved. Clune *v.* United States, 159 U. S. 590,

40 L. ed. 269. The acts and declarations of co-conspirators in execution of a conspiracy are evidence against others of their number. Id. * * *

"In Loewe v. Lawlor, 208 U. S. 274, it was held that the Sherman Anti-Trust Act 'prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business;' and this includes 'restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes' and that it 'makes no distinction between classes. Organizations of farmers and laborers were not exempted from its operation, notwithstanding the efforts which the records of Congress show were made in that direction' and that 'a combination of labor organizations and the members thereof, to compel a manufacturer whose goods are almost entirely sold in other states, to unionize his shops and on his refusal so to do to boycott his goods and prevent their sale in states other than his own until such time as the resulting damage forces him to comply with their demands,' is a 'combination in restraint of trade.'

"I further conclude that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy, the coal mining industry of West Virginia in the interest of their co-conspirators, rival operators and producers in Ohio, Western Pennsylvania, Illinois and Indiana competitive fields, have sought and still seek to compel the plaintiff, the Hitchman Coal & Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful effort to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its said employees."

In the course of its opinion the Court also said:

> "As regards the second aspect, the relation of these organizations to the general public as consumers of the products of capital and labor it must be admitted that, in the absence of special legislation such as that of England, (of doubtful constitutionality at least in this country under the written constitutions, Federal and State, thereof) it is just as unlawful for labor to combine to form a trust or monopoly as it is for capital to do so. The same rule of common law governs the one as the other and the Act of Congress, known as the Sherman Anti-Trust Law, I conceive to be simply declaratory of this principle. The latest construction of this act by the Supreme Court set forth in the Standard Oil Company v. United States, 221 U. S. 1 and United States v. American Tobacco Company, 221 U. S. 106, is that 'it prohibits all contracts **and combination** which amount to an unreasonable or undue restraint of trade in interstate commerce.' By the English authorities, I have hereinbefore cited, it will be perceived that the same doctrine of the 'unreasonable' restraint of trade has been applied there as against these labor organizations."

After citing the case of Adair v. United States, 208 U. S. 161, the Court said:

> "In this latter case the Supreme Court holds such a provision 'to be an invasion of personal liberty as well as of the right of property, guaranteed by the Fifth Amendment to the Constitution of the United States.' This leaves the Act of June 29, 1886, Ch. 567, 24 Stat. L. 86, 7 Fed. Stat. Ann. 334, entitled 'An Act to legalize the incorporation of National Trade Unions,' as our only Federal law in amendment or modification of the Common Law upon the subject of Trade Unions. * * *
>
> "Further citation of authority would seem to be unnecessary to establish the proposition that under Federal legislation and that of West Virginia the common law is in full force and that the several prop-

> ositions I have set forth are the principles of law to govern in the determination of this case. * * * *It may be unfortunate for those states that nature has favored West Virginia, Kentucky and other southern states by giving them better coal and less expensive mining conditions, but this does not warrant the operators and miners there to combine and confederate for the purpose of depriving the consuming public of the right to purchase the better coal at the lower cost, if desired. Such a combination is clearly a common law conspiracy, too far reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust Law. It is further in my judgment, a combination or conspiracy against the rights of the many thousands of non-union miners in West Virginia who are entitled to enjoy the advantage in their labor that nature has given them.*

Concluding his last opinion Judge Dayton said (202 Fed. 556):

> "I further conclude that this union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy, the coal mining industry of West Virginia in the interest of their co-conspirators, rival operators and producers in Ohio, Western Pennsylvania, Illinois and Indiana competitive fields, have sought and still seek to compel the plaintiff, the Hitchman Coal & Coke Company, to submit to contractual relations with it as an organization relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful effort to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employes, have unlawfully sought to cause the breach of the said contracts on the part of its said employes. *It is admitted* in the testimony of Lewis, Sullivan, and Savage that, if this injunction is dissolved, *such efforts will be repeated.* I do not stop now to further consider the law declaring efforts to secure the

breach of contracts unlawful. I have fully considered this question in my former opinion in this case to which I now refer."

In that opinion to which *Judge Dayton* refers he *states the facts* as follows (172 Fed. 963-965):

"Upon October 24, 1907, the plaintiff corporation presented its bill for injunction to a judge of this court against John Mitchell and nine others, alleging itself to be a corporation under the laws of West Virginia and the defendants to be citizens and residents of several different states other than West Virginia; that nine of said defendants first named are presidents, vice-presidents, and secretary-treasurers, respectively, of the United Mine Workers of America, and of the International Union United Mine Workers of America, of District No. 6 United Mine Workers of America, and of subdistrict 5 of District No. 6 United Mine Workers of America, and the defendant Thomas Hughes to be an organizing agent of said organizations; that plaintiff is the owner of about 5,000 acres of coal, has a mine and mining plant on the Baltimore & Ohio Railroad that is mining and shipping a daily output of about 1,400 tons of coal, largely under contracts, between 500 and 600 tons to the railroad for its daily engine fuel, and has large contracts for future delivery; that prior to April 1, 1906, it operated its mine by employment of men affiliated with the United Mine Workers of America, but on that day a strike was ordered by the officers of the union, and on April 16, 1906, the men so employed, in obedience to the demands and orders of defendants, went out and ceased to work. It is charged that this strike was ordered because certain other operators refused to sign the scale demanded by the union; that so far as plaintiff was concerned it was wholly without justification or excuse, because it distinctly agreed to pay the scale price and any increased price fixed thereby from April 1, 1906, the date of the strike order, whenever it might be fixed and agreed upon, with which proposition the miners

themselves, whose labor was involved, were entirely satisfied; that notwithstanding this, at the instance of defendants, its mine was shut down from April 16 to June 12, 1906, to its great financial loss and embarrassment by reason of its inability to comply with its existing contracts. The bill then sets forth in detail in effect that on the last-named date, in order to be able to run said mine, it entered into a contract with its men whereby it agreed with them to run its mining operation wholly upon a nonunion basis, refusing absolutely to employ any union men, and whereby the men on their part agreed not to join or become members of this union and to work for plaintiff as nonunion men; that plaintiff has since that time been running its mine under this contract with its men to the entire satisfaction of both, paying its men as high wages as paid in any of the union mines. It then charges the officers and agents of the union, with full knowledge of the existence of this contract, to have repeatedly sought to have plaintiff violate it and agree to reunionize its mine, which plaintiff has refused to do, whereupon such union officers and agents are seeking by inducements, threats and intimidation to induce plaintiff's employes, bound by said contract with it, to leave its service, break their contract, join the union, and also to prevent other men from engaging in its employ, and this it is charged with the unlawful purpose to prevent any but union men to work in its mine, compel it to employ none but union men, and to submit its business and its property to the jurisdiction and control of said union and its officers. The bill then proceeds to charge the United Mine Workers' Union of America and its subordinate organizations, to be unincorporated organizations, having unlawful purposes and designs to create a monopoly and trust in coal mining labor, and in support of these allegations sets forth in extenso what purports to be excerpts from the constitutions and by-laws of the supreme and subordinate unions, together with the obligation required to be taken by its members and extracts from the proceedings of its national conventions. A distinct conspiracy on the

part of defendants as individuals is charged to secure, by reason of their positions as officers of this union, the abandonment by the men of their contract with plaintiff, their joining the union, the inability of plaintiff to employ others, and the entire shutting down of its mine, to its irreparable loss and injury. Presented with this bill were some 28 affidavits in support of its allegations. A temporary restraining order was granted until the next regular term of court, to be held at Parkersburg on January 14, 1908, for which date plaintiff's motion for a temporary injunction was set down for hearing. This hearing, on motion of defendants, was continued until May 26, 1908, when plaintiff presented more than 20 additional affidavits and argued its motion for temporary injunction; counsel for defense stating they 'did not desire to be heard in opposition to said motion so far as the granting of a temporary injunction at the time was concerned, and not consenting, but objecting, thereto.' The temporary injunction was on that day granted in exact accord with the terms of the restraining order.

"Answers have been filed, exceptions entered thereto, motions as to certain unserved defendants to have said bill dismissed as to them have been made, and a motion by defendants, disclaiming 'any intention of conceding the truth of the allegations of the plaintiff's bill whereby fraud, coercion, and intimidation or violence in any form whatsoever is imputed to them,' has been entered to dissolve the injunction, 'on the face of the bill and exhibits,' in so far as said injunction restrained said defendants, or any of them, from the use of argument, reason, and persuasion, to induce the employes of the plaintiffs, or any of them, to become members of the United Mine Workers of America or any of its subordinate branches; in so far as it restrains them from interfering or talking to any person or persons in the employment of the plaintiff, or about to enter the employment of the plaintiff, for the purpose of inducing such persons to become members of the United Mine Workers of America or any of its subordinate branches, in a peaceable and law-

abiding manner, and unaccompanied by intimidation, force, fraud, violence, or coercion; also in so far as it restrains defendants from visiting the homes of platintiff's employes for the purpose of inducing them by reason, persuasion, and argument, unaccompanied by force, fraud, intimidation, violence or coercion, to become members of the United Mine Workers of America or any of its subordinate branches; in so far as it restrains defendants from going near the premises of plaintiff for the purpose of talking with or inducing the employes of plaintiff to become members of the United Mine Workers of America; in so far as it restrains from unionizing or attempting to do so plaintiff's mine, if by 'unionizing' is meant action on the part of defendants to induce the employes of plaintiff to become members of the United Mine Workers of America by the use of argument, persuasion, and reason, unaccompanied by force, violence, coercion or intimidation; and also in so far as it restrains defendants from interfering with plaintiff's employes, if by the term 'interfering' is meant that defendants shall be precluded from interviewing and visiting plaintiff's employes for the purpose of inducing them to become members of the union. This motion, on April 7, 1909, was argued and submitted, and is now to be determined."

And in *deciding the contractual rights of the plaintiff Judge Dayton said* (172 Fed. 965, *et seq.*):

"It is to be borne in mind that this motion is made only for partial dissolution, and that, too, without prejudice to defendants' right to move for full dissolution upon final hearing. It is based solely upon the ground that the allegations of the bill on its face warrant, if they do not demand it. Under these circumstances, while I am entitled to construe the allegations of the bill, and all of them, in the light most favorable to the plaintiff as upon demurrer, I am not inclined, at this time, to consider the charges, substantially made, that the United Mine Workers of America is an unlawful organization seeking to

establish a monopoly in labor contrary to the common law, or a trust therein contrary to the Sherman act (Act July 2, 1890, c. 647, 26 Stat. 209 [U. S. Comp. St. 1901, p. 3200]). Such questions deserve more consideration than I have had time yet to give them and may well be postponed to the final hearing after the case has been fully made up, if it then becomes necessary to decide them under the conditions at that time existing.

Nor do I regard it necessary to discuss the utility or futility of labor organizations. The right of labor to organize for its mutual benefit and protection is as well settled and determined by law as the right of capital to organize for the same purpose. That one may resort to the voluntary association of individuals without incorporation and the other to articles of incorporation is wholly immaterial, provided the voluntary association be one for lawful purposes and be conducted in lawful manner. That such associations may be secret in character, may have and enforce by-laws, and act through officers and agents, cannot longer be disputed. Their members may stand together, may accumulate funds for the support of those of their number not employed, may unite with other unions, may advise with their officers and others as to their interests and employment, may expel those who refuse obedience to the authority of the association's laws, and may individually or collectively peaceably leave their employer's service when the terms thereof become unsatisfactory to them, as so clearly set forth by Taft, Judge, in Thomas v. C., N. O. & T. P. Ry. Co. (C. C.) 62 Fed. 803, by Thayer, Judge, in Hopkins v. Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99, and by Justice Harlan in Arthur v. Oakes, 11 C. C. A. 209, 63 Fed. 310, 25 L. R. A. 414. It is absolutely needless to add that, under ordinary circumstances, the right of the members of a labor union to solicit others and by reason, argument and persuasion induce them to join their labor associations is just as clear a right as that of members of fraternal organizations, such as Masons, Odd Fellows, and the like, to do the same

thing. While all these things are true, it is not to be forgotten that associations organized for the best and noblest purposes, church organizations even, may be misused by those who have secured control for the purpose and prostituted them to unlawful purposes and designs. When this is done, it becomes as much the duty of the law to restrain them from lawlessness as is its duty to stay the hand of the legally incorporated company of capital that has perverted its lawful purposes to lawless deeds.

"It is necessary for us in this case to recognize that *this is not a controversy between plaintiff and its employes; it is not a strike; it is not a case where the labor union has longer any legitimate interest or concern.* If the allegations of this bill are true, the employes of this company are not members of this union, but have actually contracted with the company not to become members of it as a condition precedent to their employment. Mr. Justice Harlan, in Adair *v.* United States, 208 U. S. 161, 28 Sup. Ct. 277, 52 L. Ed. 436, speaking for the Supreme Court, says:

"'While, as already suggested, the right of liberty and property, guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraint as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. *The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employe to quit the service of the employer, for whatever the reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employe.* It was the legal right of the defendant, Adair, however unwise such a course may have been, to discharge Coppage

because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so, however unwise such a course on his part might have been, to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land.'

"And many cases are cited in support of these principles. It necessarily follows that if the employer can discharge his employe because he belongs to a labor organization, and if the employe can quit his employment because his employer employs non-union men, they two, having these personal and individual rights, can contract with each other as to what the status of the employment in this particular shall be. *The employe on his part may require, as a condition precedent to the sale of his labor, that the employer shall buy it under the terms and upon the conditions prescribed by the labor union, and, moreover, shall employ his other labor upon the same terms. If the employer contracts to do this, he must be held to his contract; for he has accepted the labor upon those conditions. Per contra, the employer may contract with his employe to buy his labor upon terms other than the union ones, and, in order that the union ones may not be disturbing elements in the conduct of his business, may bind his employe not to become a member of the union, and thereby disqualify himself, it may be by reason thereof, from continuing his employment upon the terms and conditions of the contract.* These views seem to be clearly established in principle by this Adair Case and the authorities cited therein. With full knowledge that such a contract has been legally consummated between employer and employe, what legal status has the union in the premises? It may regret that its advice, help, and assistance was not sought by the employe in disposing of his labor; but, now that it is disposed of, can it come forward and

incite either to break the contract? Its mission, it claims, is to aid and uplift labor; but it could hardly fulfill this mission by persuading men to become breakers of contracts and the repudiators of their lawful promises and pledges, and, if they do, their legitimate functions are prostituted into a conspiracy to destroy others' vested contract rights.

"In Arthur *v.* Oakes, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, it is held:

"'According to the principles of the common law, a conspiracy upon the part of two or more persons, with the intent, by their combined power, to wrong others or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in the execution of such conspiracy. This is fundamental in our jurisprudence. So a combination or conspiracy to procure an employe or body of employes to quit service in violation of the contract of service would be unlawful, and in a proper case might be enjoined, if the injury threatened would be irremediable at law.'

"And the Supreme Court of the United States, in Angle *v.* C., St. P., M. & O. R. Co., 151 U. S. 1, 14 Sup. Ct. 240, 38 L. Ed. 55, and Bitterman *v.* L. & N. R. Co., 207 U. S. 205, 28 Sup. Ct. 91, 52 L. Ed. 171, has distinctly set forth this same general principle in cases involving a different state of facts.

"*In Transportation Co.* v. *Oil Co., 50 W. Va. 611,* 40 S. E. 591, 56 L. R. A. 804, 88 Am. St. Rep. 895, *the Supreme Court of Appeals of this State has held:*

"'*If one* wantonly and maliciously, whether for his own benefit or not, *induce a person to violate his contract with a third person,* to the injury of that third person, *it is actionable.*'

"*And in Thacker Coal Co.* v. *Burke, 59 W. Va. 253,* 53 S. E. 161, 5 L. R. A. (N. S.) 1091, *this doctrine* as to contracts generally *is reaffirmed and applied to labor contracts.* It is there held:

"'*One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor.*'

"And again:

"'The act found in Code, 1899, § 14, Append. p. 1053, does not authorize any individual, or number of individuals, to maliciously entice servants to desert service in which they are engaged, or to prevent them from engaging in such service under a contract for such service.'

"These last two cases, recent in date, decided by its court of last resort without dissenting voice, would seem absolutely to settle the law of this matter in this State. But it is insisted that to ask and induce, by reason, argument, and persuasion, plaintiff's employes to join *a* labor union, is not asking them *directly* to violate their labor contracts. It is, so far as *this* organization is concerned. *They have* not only *contracted*, as a condition to their employment, *that they will not join this particular union;* but, if they do join it, they must absolutely quit such employment, because the plaintiff has contracted not to employ members of this union, and this union has on its part, by its laws, solemnly declared that none but its members shall be employed at the mine.

"But, in addition to this question of inducing the violation of lawful contracts, it seems to me very clear that, no matter how meritorious an organization this United Mine Workers of America may be in purpose and intent, the allegations of this bill, if true, and they must be conceded to be so upon the determination of this motion, disclose as plain a conspiracy upon the part of these defendants to injure and ruin the plaintiff as could well be conceived of. They have secured control of this organization. They have bound its members to obey their orders and do their will. Clothed with this power, they have said to plaintiff: 'Notwithstanding you have complied with all the requirements of the organization, have agreed to all its terms and conditions, have employed only union men, have secured near $10,000 to the union's funds in the way of dues from your miners, we propose to stop your operations, require your men to cease working for you, shut down your mine, compel you to violate and lose your contracts, and, in accordance

with this purpose to injure, have actually carried out these declarations, have stopped operations, have called out the men, and compelled them, against their will, to cease work, have shut down the mine, and held it in this condition from April 16 to June 12, some 50 working days, at a loss, judging from the output of the mine, that may be estimated from $300 to $700 per day, and with then no promise of let-up before plaintiff's final ruin should be accomplished. What excuse is set up for so foul and injurious prostitution of this organization, claimed to be in existence for philanthropic and lawful purposes, to a conspiracy so glaringly designed to injure and destroy? The sole excuse is alleged to be that some of plaintiff's rival operators refused to comply with the union's demands and exactions! Rival operators, whose actions plaintiff necessarily could not control! Rival operators, who under many conditions might design and scheme to bring about this very condition of things in order to ruin plaintiff and destroy its rivalry! Such an excuse, if it be the only one that can be advanced, adds only insult to injury, and makes more clear and irrefutable the existence of the conspiracy alleged.

"Actuated by a natural sympathy for labor and an earnest desire to uplift and aid it, which we all have, many sincere, but misguided, persons would concede to it an estate superior to and above that possessed by other classes in this republic of liberty and equal rights, and they are fond of denouncing courts of equity for staying the hands of labor leaders in their unlawful exercises of power to achieve this end. We must not forget that we have a Constitution guaranteeing these equal rights, and that courts established thereunder have no discretion in enforcing its guaranties in favor of all those who are denied them and may appeal for redress. As said by Snyder, Judge, in State *v.* Goodwill, 33 W. Va. 179, 10 S. E. 285, 6 L. R. A. 621, 25 Am. St. Rep. 863:

"'A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to

this, is the right to labor or employ labor, make contracts in respect thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts, to sue, to give evidence, and to inherit, purchase, lease, sell, and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery—between liberty and oppression. * * * The vocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the Constitution. People v. Otis, 90 N. Y. 48. The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution.'

"And again:

"'The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances.'

"These principles were enunciated in a decision holding unconstitutional a legislative act, passed at the instance of labor organizations, which sought to regulate the method of payment of labor wages. The Adair Case, to which I have referred, held unconstitutional an act of Congress seeking to restrict the right of an employer to discharge his employe because of his membership in a labor organization. These are but two of many cases illustrating how carefully these inalienable property rights have been and must be guarded by the courts, in order that our liberties under constitutional government may be perpetuated.

"It seems clear that under the allegations of this bill a conspiracy has existed between these defendants to injure and destroy the plaintiff's business; that it has already occasioned a damage of many thousand dollars to it, which, it would seem from the authorities we have cited, plaintiff has a clear right to institute its action at law to recover against them,

personally and independent of their connection with the labor organization and any relation it, as such, may have to the controversy. The important question now arises whether, this injury being an accomplished fact, there remains any reason for the exercise of the restraining power of equity through the intervention of this injunction. Is this conspiracy a thing of the past, or does it continue at the present time for the same original purpose to injure and destroy? Here the allegations can have no uncertain meaning. It is charged in effect that these defendants, thwarted in their purpose for the time being by the making of the contracts with the employes direct, now are actively seeking with renewed effort to achieve their unlawful purposes; that they have the same control over the labor organization; that its by-laws still require the same exclusion from work at the mines, under its control, of all nonunion labor; that its members are to be bound by the same obligation to cease labor when ordered to do so by these defendants as its officers; that they were, at the time the injunction was granted, actively seeking to persuade plaintiff's employes to break their contracts and become members of this organization, bound by such laws and obligations; that their organizing agent has been sent upon the ground, and has stated, as shown by affidavit filed, that:

"'He had succeeded in having 125 men at the Hitchman mine sign their names, agreeing to become members of the United Mine Workers, and that just as soon as he got 25 more names he was going to shut the Hitchman mine down.'

"Surely these things, if true, negative any idea of abandonment of the conspiracy; and they would, if true, fully justify the charge that plaintiff is in imminent danger of irreparable loss and injury unless equity shall intervene. It would, then, seem that such intervention is necessary for the protection of all parties concerned. The language of the Circuit Court of Appeals (Fourth Circuit) in Atwell *v.* United States, 162 Fed. 97, 89 C. C. A. 97, 17 L. R. A. (N. S.) 1049, applied there to the court's dis-

cretionary power to punish for contempt, may well be here applied to the necessity for it to exercise the injunctive power in a case like this:

"'Very frequently those who complain the loudest against its exercise are ultimately benefited the most. Men, inflamed by passion, are frequently not capable of rightly judging of their own conduct or of foreseeing the consequences thereof. In such cases the restraining power on the part of judges, acting under solemn obligations to do 'equal right to the poor and to the rich' chastened and humbled by the sense of the weighty responsibilities laid upon them, may save such persons from liability to civil and criminal actions, calculated to bring to them ruin and loss of liberty.'

"The motion to modify or dissolve this injunction in any particular must at this time at least be overruled."

From said final decree rendered in favor of this petitioner on January 18, 1913, by said District Court, an appeal was taken to the said Circuit Court of Appeals for the Fourth Circuit, and was there argued on February 12, 1914, before Circuit Judges Pritchard, Knapp and Woods, the first named delivering the opinion and judgment of the Court on May 28, 1914, reversing the decree of the Court below, and remanding the cause with instructions to dismiss the bill at plaintiff's costs.

DECISION OF CIRCUIT COURT OF APPEALS UPON THE SUBJECT OF PLAINTIFF'S CONTRACTS.

"The Court below also reached the conclusion that the defendants have caused and are attempting to cause the nonunion members employed by the plaintiff to break a contract which it has with the nonunion operators. The contract in question is in the following language:

"'I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United

Mine Workers of America, and will not become so while an employe of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run nonunion and agrees with me that it will run nonunion while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.'

"It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employe continues to work for the plaintiff he shall not join this organization, nevertheless there is nothing in the contract which requires such employes to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employes under this contract, if they deem proper may, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the nonunion men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case, it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the nonunion miners to become members of their organization.

"Under these circumstances, we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization."

DECISION OF CIRCUIT COURT OF APPEALS UPON THE LAWFULNESS OF THE UNITED MINE WORKERS AS AN ORGANIZATION.

"A consideration of the purposes of this organization as set forth in its constitution impels us to the conclusion that there is nothing contained therein to justify the contention that its purposes are unlawful."

DECISION OF CIRCUIT COURT OF APPEALS UPON THE COMBINATION MADE BY THE UNITED MINE WORKERS WITH OPERATORS OF THE UNIONIZED FIELDS OF OHIO, WESTERN PENNSYLVANIA, INDIANA AND ILLINOIS TO HAVE PLAINTIFF'S AND OTHER WEST VIRGINIA NONUNION MINES UNIONIZED OR PUT OUT OF BUSINESS.

"At the final hearing the plaintiff introduced certain documentary evidence bearing upon the question as to whether the defendants had entered into a combination with operators and coal producers in Ohio, Western Pennsylvania, Illinois and Indiana, competitive fields, to compel the plaintiff to submit to contractual relations with the United Mine Workers of America relating to the employment of labor and production, contrary to the wishes of plaintiff.

"The Court in referring to this phase of the question said:

" 'I further conclude that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of mine labor, and to restrain, suppress, if not destroy, the coal mining industry of West Virginia in the interest of the co-conspirators, rival operators, and producers in Ohio, Western Pennsylvania, Illinois, and Indiana, competitive fields,

have sought and still seek to compel the plaintiff, the Hitchman Coal & Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful efforts to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employes, have unlawfully sought to cause the breach of the said contracts on the part of its said employes.'

"The documentary evidence consisted of the declarations of a small percentage of the miners and operators who were present at these conferences. It was not shown that either before or after these declarations were made that those participating in the conference had entered into a conspiracy for an unlawful purpose. Indeed, these declarations were brought out in response to a proposition on the part of the miners for an increase of wages. A fair interpretation of the evidence shows that it was the purpose of the defendants to induce the miners of West Virginia to become members of the organization, and thereby secure as high wages as possible, compatible with the successful operation of the mines of that State by the respective owners. They had a perfect right to form a combination to accomplish such purposes by peaceable and lawful methods, and so long as they refrained from resorting to unlawful measures to effectuate the same they could not be said to be engaged in a conspiracy to unionize plaintiff's mine."

DECISION OF THE CIRCUIT COURT OF APPEALS AS TO THE ANTI-TRUST LAW.

"We do not understand that a private person can question the validity of a combination or conspiracy under the Sherman Anti-Trust Law for the purpose of having the same declared to be unlawful."

II.

THE DEFENDANTS DID NOT DEMUR TO THE BILL.

"Objections to proceedings in equity other than an entire absence of matter of equitable cognizance, must be reasonably interposed or they are waived. Sometimes the rule is stated that the existence of an adequate remedy at law is waived by submitting to the jurisdiction or by not seasonably raising the objection (Brown *v.* Lake Superior Iron Co., 134 U. S. 530; Kilbourn *v.* Sunderland, 130 U. S. 505). In other cases it is said that the objection is waived if not reasonably interposed, where it is competent for a court of equity to grant the relief sought and it has jurisdiction of the subject matter (Allen *v.* Pullman's Palace Car Co., 139 U. S. 658)." Cyc. L. and P., Vol. 16, 128.

OBJECTIONS TO JURISDICTION, WHEN AND HOW TAKEN, AT WHAT STAGE OF PROCEEDINGS.

"Unless the matter is wholly beyond the domain of equitable cognizance, no objection to the jurisdiction of equity can be made for the first time on appeal (Wylie *v.* Coxe, 15 How. 415). Ibid., p. 129. * * * Accordingly, it is said that an answer to the merits submits defendants to the jurisdiction, but more frequently that an answer to the merits without objection to the jurisdiction waives such objection, and in some cases it is expressly held that the objection may be removed by specially presenting it in the answer." Ibid., 132.

"WHERE IN THE COURT BELOW THE DEFENDANT DID NOT DEMUR TO THE COMPLAINT AS ASKING A FORM OF RELIEF INCONSISTENT WITH THE TERM OF THE CONTRACT ALLEGED, BUT WENT TO TRIAL ON THE MERITS, THE OBJECTION THAT THE CASE MADE AND FOUND WAS DIFFERENT FROM THE ONE ALLEGED COMES TOO LATE WHEN URGED FOR THE FIRST TIME IN THE APPELLATE COURT."

Wasatch Mining Company *v.* Crescent Mining Company (1893), 148 U. S. 293, syl. 5.

NOT DEMURRING, DEFENDANTS ANSWERED.

The Issue Raised.

From the separate answer of A. R. Watkins filed May 26, 1908, this is taken:

> "And this respondent, for further answer unto said bill, says that it is true that the said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a nonunion mine and refuses to consent to operate a union mine; that its men are nonunion; that said employes are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed; and that if they do join the union their said employment shall cease; that with such understanding plaintiff's employes entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but this respondent avers that any condition, stipulation, contracts or agreements on the part of said plaintiff with its said employes as a condition upon which they shall enter into employment and continue in their employment with plaintiff *are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and cannot be made a condition upon which to base any valid and binding contract or obligation between employer and employe.*" Record, pages 92, 93.

The same averment is made in:

Amended answer of A. R. Watkins filed August 20, 1908, Record, pages 150, *155*.

And in:

Separate answer of William Green, filed July 13, 1908, Record, pages 118, *123*.

And in:

Separate answer of D. H. Sullivan, filed July 13, 1908, Record, pages 133, 138, and *139*.

And in the

Joint and several answer of T. L. Lewis, *et al.*, filed July 13, 1908, Record, pages 102, *108*.

And attention is called to the fact that the separate answer of A. R. Watkins and his amended answer are under oath (Record, pages 101, 165), and that each one of the five answers mentioned is signed by Charles E. Hogg, the same who represents respondents (Record, pages 101, 165, 133, 148, 117).

The bill avers that the acts complained of violate plaintiffs:

(*a*) Contractual common law rights,

(*b*) Contractual statutory rights,

(*c*) Contractual constitutional rights,

and besides the allegation of the conclusion of law the facts are alleged and these facts show that plaintiff's charge is correct and that plaintiff's broad constitutional rights are involved and that they are being violated, and the defense made was by way of confession and avoidance.

This Court, however, *has held contractual rights similar to those set up in plaintiff's bill to be constitutional rights* in these words:

> "When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employe.

> "To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for 'it takes two to make a bargain.' Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."
>
> Coppage v. Kansas, 236 U. S. 1, 20, 21.

and has also held that liability for breaching them may be enforced.

> In a later case this Court said:
>
> "The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will."
>
> Truax v. Raich, 239 U. S. 33.

III.

FACTS PROVED.

The existence of the United Mine Workers of America as an organization dates from January, 1890. As a body they were initially made up of several others which had theretofore been warring with each other, and had, of course, been unsuccessful in their special field of endeavor. And the founders had in mind the creation of a body which would be national in character and national in power. In doing this a far-sighted policy was pursued. The organization had its National Constitution, which in later years was changed in name to International owing to the inclusion of mine workers outside of the United States. It had also its District Constitutions and its Sub-District Constitutions. It has those today. The Sub-Districts have their Locals, which are the equivalent of Lodges. In representation these Locals make up a Sub-District Convention. District Conventions are made up of delegates from Locals in the given District. And the National Convention is made up of delegates from the Locals in all the Districts. Certain power is given to each body to legislate. And each body has a President, a Vice-President and a Secretary-Treasurer. National or International matters are disposed of by the National Conventions, District by District Conventions, and Sub-District by Sub-District Conventions. The defense introduced testimony that the organization of the United Mine Workers of America was patterned after the United States Government, and after the State, County and Township governments. And theoretically that seems to some extent to be borne out by an examination of literature of the Union. For it appears that Locals have and exercise all the powers they wish which have not been in express terms delegated to the Sub-Districts, Sub-Districts all not delegated to the Districts, and Districts all

not delegated to the National or International Union. But the order is inverse; the analogy not complete. And from this attempt to apply to a labor union governmental principles of a political nature there has grown a National body, the rules and regulations of which, taken together in their International, District, Sub-District and Local features, are a chaotic mass, some lawful and some unlawful, but pregnant with unmeasured and unmeasurable abuse of unlimited and unregulated power.

The United Mine Workers of America are a secret body, and no part, International, District, Sub-District or Local, is incorporated.

Its purposes are made known to mine workers through men who are sent out by the National President as organizers. These organizers may do their work secretly or openly, but in practice they are governed by the rule that the end justifies the means. Upon a Local being organized, one-half or thereabouts of the Charter Fee is paid to the organizer.

Starting with a membership in 1890 of about 20,000 there were less than 10,000 members in 1896. This is said to have been due to the unsuccessful National strike of 1894. The work of organizing was then pushed, and in 1897, with a membership of about 40,000, another National strike was declared. That strike was unsuccessful too, and as a result the membership fell to 32,000 in 1898. It was then that the leaders recognized the futility of their efforts and came to a realization of the fact that unless some other methods were adopted the United Mine Workers of America would dwindle away as had been the case with other labor unions in the mining fields. So they proposed to certain operators in Western Pennsylvania, Ohio, Indiana and Illinois that a joint meeting between themselves and the United Mine Workers' representatives be held at Chicago to figure out if possible

some way whereby, ostensibly, strikes could be avoided. The operators to whom this proposition was made, and by whom it was acted upon, were employers of the bulk of the membership of the United Mine Workers of America. *This meeting*, upon being held, *resulted in* what is known as *the Chicago Agreement of 1898*. By it what is known as the Joint Interstate Movement was established. It was designed to be, and with two interruptions has been, a continuous movement to date. *By that agreement the miners secured an eight hour day* in the Central Competitive Field *and in turn agreed to protect the operators* of that field *from competition from the non-union fields*. What measures were adopted and taken and what are now being used are in evidence. Some of them will be referred to in treating of the activities of the Union.

The bulk of the membership in 1898 resided in Western Pennsylvania, Ohio, Indiana and Illinois. That is so today. The coal produced in those sections of the United States competed in common markets in the north and west in 1898. That is so today. Therefore, the plan of the United Mine Workers of America to bring about and perpetuate a Joint Interstate Movement in that part of the country between themselves and operators engaged in competition with each other. And the name Central Competitive Field referred to those states as well as to their geographical location within the United States. That is so today.

While the Chicago Agreement of 1898 brought the eight hour day to the Union, in return for which the Union agreed to protect the operators of the Central Competitive Field from competition from the non-union fields, the eight hour day was not all the Union got by any means. By the 5th Clause of the Chicago Agreement of 1898 it was provided

> "That on and after April 1, 1898, the eight hour work day with eight hours' pay, consisting of six days per week shall be in effect in all of the districts represented, and that uniform wages for day labor shall be paid the different classes of labor in the fields named, and that internal differences in any of the states or districts, both as to prices or conditions, shall be referred to the States or districts affected for adjustment."

Pursuant to the comprehensively suggestive terms of that clause of the agreement, and of a resolution passed for the purpose by the Scale Committee of the Interstate Convention held at Chicago which resulted in the making of the Chicago Agreement of 1898, a Joint Interstate Convention was held at Columbus in March, 1898, for the making of a uniform day work scale based upon the districts upon which the mining prices were based. This latter Convention evolved what is known as the Columbus Day Wage Scale. It established an inside day wage scale for an eight hour day, but failed to establish any wage scale for outside day labor. Of the inside day wage scale the Columbus Agreement says:

> "The above scale was arrived at by taking the average of the wages paid in all the competitive districts, and reducing said average to an eight hour day, then adding the advance to said average to correspond with the advance in price of mining to be paid April 1 next."

Regarding the failure to make a scale for outside day labor, that Convention passed a resolution reading as follows:

> "Whereas, We have failed to agree upon a uniform rate of wages for the different classes of outside labor for the entire competitive field owing to the variation of conditions over which we have no control:

"*Resolved*, That the employing of outside day laborers around the mine, and wages to be paid the same, shall be left entirely to the employers and such employes in all the competitive districts, and the question of uniform wages for outside labor be referred to our next Interstate Joint Convention.

"*Resolved*, That where any members of the present force of outside day labor in the competitive field prefer to work in the mine in preference to accepting the wages offered for their services as outside day laborers, they shall be given places in the mine to mine coal."

Subsequently, a wage scale for outside day labor was agreed upon. And through this Joint Movement the wages of all men who work in and around the mines in Union territory are now fixed. The prices are competitive having regard not to the earning power of the men but to the competition existing between the operators participating in the Joint Movement, and to the competition those same operators encounter from coal from the non-union fields.

By the 5th Clause of the Chicago Agreement of 1898, the United Mine Workers of America succeeded in establishing the check-off system and the closed shop. Both of these are prominent features of the Union.

By the check-off the operators are made the collection agents of the Union, and compelled to collect from their employes and pay to the Union's officials what the Union demands from its members who are in the employ of the operators. The experience of the leaders of the United Mine Workers had shown them that their members were slow and uncertain pay. Hence the check-off system was devised. And with what wisdom it was devised and is still adhered to is shown by a consideration of the fact that these officials received in 1910 from the operators dealing with them more than $1,500,000.00.

By the closed shop concession the Union has succeeded in so intrenching itself that it has closed shop wage agreements covering all the men employed in and around all the mines in Ohio, Indiana, Illinois, Michigan, Iowa, Kansas, Missouri, Oklahoma, Texas, Arkansas, part of Kentucky, part of British Columbia, part of Washington, all of Wyoming and Montana, Northern Colorado until some recent trouble there, part of Central Pennsylvania and the greater part of Western Pennsylvania.

The operators who participated in the establishment of the Joint Interstate Movement evidently thought they would receive enough benefit from the suppression of competition from the non-union fields to warrant them conceding the check-off and the closed shop. But reports of the later Joint Interstate Conventions are filled with bitter reproaches. And although the United Mine Workers as an organization have to date waged an industrial war against the non-union fields the Union operators still complain of the competition from those fields and urge the Mine Workers to greater efforts along the same line, and to other and more desperate and unlawful acts.

In sharp contrast to the manifest disposition of the Union operators to get from under the jurisdiction of the United Mine Workers is the attitude of the Union's officials. These know and assert their power and say to the operators of mines in unionized territory that those mines must be run Union, or not at all. And being confronted with a United Mine Worker membership of more than 300,000, but now at the time of the preparation of this statement, although, of course, outside of the record, claimed to be more than 400,000, and with an income of more than $1,500,000.00 per annum, the operators must perforce and do submit.

Following the granting of the check-off the Union had plenty of money to employ organizers. And the power of organizers was increased by the granting of the closed shop wage agreement. Membership increased from 32,000 in 1898 to 61,000 in 1899, from 61,000 in 1899 to 115,000 in 1900 and from 115,000 in 1900 to 198,000 in 1901. And then came the 1902 Anthracite Strike, and a reduction of membership to 175,000. Following the settlement of that strike which was waged to compel recognition of the Union, the work of the organizers was resumed. Membership increased from 175,000 in 1902, to 247,000 in 1903, from 247,000 in 1903 to 251,000 in 1904 and from 251,000 in 1904 to 264,000 in 1905. In 1906 a National strike was called, and membership dropped to 230,000. The 1906 strike was a disastrous one for the Union, but upon its settlement and funds coming to hand again from the check-off paid in by the operators in Union territory, the work of organizers was again resumed. Since then the work of organizing all the coal mines in the country has progressed to such a degree that in December, 1910, the Union had over 300,000 members, while the organization claims that it now has over 400,000 members and that there are now over 350,000 miners in the United States who are not members of that organization.

In this recital of this part of the history of the United Mine Workers of America, we have not sought to mention all the National strikes, and no mention has been made of the other innumerable strikes the organization has been concerned in.

Some idea of the warring proclivities of *the Union* may be derived from a consideration of the fact that from 1900 to 1910, both years inclusive, the National organization *paid out* of its own treasury *more than $8,000,000.00 in support of strikes*. The United Mine Workers spent more than $1,250,000.00 in Alabama for strike purposes

and were finally run out of that State; nearly $1,500,000.00 for the same purpose in the Anthracite fields; $329,000.00 for the same purpose in the Irwin Field in Pennsylvania; and $669,000.00 for a like purpose in West Virginia, and with the result that in West Virginia their officials claim they are run out of the State, or their lives endangered if they stay, after being discovered.

Such is a part of the history of the United Mine Workers of America; and it is of their own making.

We will *ask attention* next *to some of their principles, methods of procedure, and practices.*

The Constitution of the International Union contains this clause:

"ARTICLE I.

"SECTION 2. The objects of this Union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes."

The Constitution of District No. 6 contains this clause:

"ARTICLE I.

"SEC. 2. One of the objects of this organization is to unite all employes in and around the coal mines of Ohio and the Panhandle District of West Virginia."

The Constitution of Sub-District 5 of District No. 6 contains these two clauses:

"ARTICLE I.

"SEC 2. The objects of this organization is to unite the mine employes of Belmont, Jefferson, Tuscarawas, Harrison and Carrol Counties in Ohio, and that part of Stark County south of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio and Marshall Counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike."

"ARTICLE I.

"SEC. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines."

In connection with this design, evidenced by their Constitutional provisions, *to control all labor employed in and around the coal mines of the country, the organization* in its recent National Conventions *has taken steps to bring about the solidification of its forces with the forces of the Western Federation of Miners*, and the including of both of their organizations *in a new department of the American Federation of Labor to be known as the Mining Department*. The language of that part of the Resolutions relating to the Western Federation of Miners and that particular feature is as follows:

> "*We declare in favor of forming a mining department under the jurisdiction of the American Federation of Labor to control the mining industry of the American Continent*, along similar lines to those departments which are now organized under the jurisdiction of the American Federation of Labor."

The United Mine Workers of America and the Western Federation of Miners have an agreement for the mutual exchange of membership transfer cards, and both unions are integral parts of the American Federation of Labor. The purpose of the American Federation of Labor as an integral whole is to bring all the International and National organizations of labor in this country into one family or federation of unions, and at the same time not to take away from the International and National unions the power and authority to regulate their own affairs.

Some of the rules and conditions enforced by the United Mine Workers of America are:

Men shall not work on idle days without permission of the Union, but if allowed to work, such work must be evenly distributed amongst the mine's employes.

If railroad cars in which coal for shipment is to be loaded are not at the mine within thirty minutes after starting time the miners are to go home and not work that day.

If an operator shall so manage his business that four of his employes are out of cutting or drilling when work time comes in the morning, the mine committee may shut the mine down for the next day.

Sons of members of the United Mine Workers are to be given the preference of going into the mines when becoming of proper age.

Each two men shall have two working places in the mine, and the operator shall not employ more men until each two men have two working places.

The turn shall be uniform throughout the mine, in entry driving as well as mining coal in rooms.

Members of the mine committee are not to be required to stay at their working places in the mine if while away they are looking after the interests of the Union.

The men upon going to work in the mine are to be paid for two hours' work whether the mine runs two hours or not.

There shall be but one loader in each entry.

If the miner fails to produce clean coal the operator may close down his mine, but may not discharge the miner.

A miner may not be transferred from his working place inside the mine to a working place outside the mine unless he consents and unless in addition he is paid inside scale wages for outside work.

Where one company operates more than one mine on the same line of railroad in the same vein of coal the work between the respective mines shall be divided and made as nearly equal as business conditions will permit.

If for any grievance, real or supposed, any of the workmen shut down the mine each employe shall pay the company one dollar per day during such shut down; and if because of any grievance with any employe, real or supposed, the company shuts down its mine, it shall pay one dollar per day to each workman in and around the mine during such shut down.

Officers of the United Mine Workers may close down mines whenever they deem it to be for the best interests of the Union.

When officers of the United Mine Workers of America close down a mine, they may, if they deem it wise, close every other mine in the District, or they may distribute the men from the mine which they have closed down into any other mine or mines in the same District.

A method of procedure in the matter of Joint Interstate agreements is that whatever is agreed to is subject to either the previous or the subsequent ratification of the entire organization of United Mine Workers. The officials of that body have repeatedly tried to compel the operators who meet them in Joint Convention to admit the miners from other sections of the country who have, as those operators claim, no interest whatever in the result to be arrived at by the particular Joint Convention. And in reply to that objection it appears from the evidence that the Union's officials contemplate enforcing whatever agreement is arrived at regardless of the fact that particular operators or miners are not parties to the Joint Convention which may have agreed to the particular scale.

Some of the practices of the United Mine Workers of America are, by their officials, to drive operators out of business who incur their displeasure. This is done by means of strikes, called or induced by them, so that the operator is no longer able to operate his mine. Other things indulged in by the United Mine Workers are:

They have sent out men to the trade to boycott West Virginia coal.

They aim to have all wage agreements expire on the same date, both in the Anthracite and in the Bituminous Fields, and then by strike or by cessation of work throughout the entire United States compel compliance with their demands.

They engage in politics and maintain lobbies for the purpose of affecting legislation.

They put operators at a disadvantage who refuse to go into the Joint Interstate Movement.

They compelled operators in the Southwest territory to join the operators' association by refusing to allow their members to work for operators who did not join that operators' association upon that association agreeing not to employ any man who was not a member of the United Mine Workers of America.

They have constantly aimed to involve West Virginia and other non-union fields in local or National strikes; and that is their aim today.

Through their President, the defendant Mitchell, they threatened to stop every mine in the Pittsburgh district by filling them with organizers, if necessary, in order to compel compliance with their wishes. Mitchell boasted of this.

They recognize that organizing the mine workers of the non-union fields is the all important problem which confronts their Union, and they are constantly aiming to increase the cost of the West Virginia operators' coal through organizers and secret agents sent out to stir up strife.

We come now to a consideration of the *relations which once subsisted between the United Mine Workers of America and the Hitchman Coal & Coke Company.*

The Hitchman Coal & Coke Company opened and at first in 1903 operated its mine non-union. At the same

time in 1903 the same persons owning the capital stock of the Hitchman Coal & Coke Company, together with some other persons not owners of any of the capital stock of the Hitchman Coal & Coke Company opened and operated a Union mine at Mount Pleasant, Ohio. Sometime prior to April 1, 1903, the United Mine Workers secretly placed organizers in the Hitchman mine. These men worked as miners. When these organizers had worked up a sentiment amongst the Hitchman miners in favor of joining the Union, the officials of the United Mine Workers notified the management of the Hitchman mine that unless the Hitchman mine was run Union they would close down the Mount Pleasant mine. Being confronted with that alternative, the management of the Hitchman mine agreed that if their employes wanted to join the Union no objection would be interposed provided the Union was run right. An official of the Union then formally organized the men into a Local of the United Mine Workers. The organizers disappeared, and the next day after the local was organized the men were called out on a strike. This was on April 2, 1903, and the men remained out until May 23, 1903. The occasion of the strike was that the Union's officials claimed that the Hitchman mine was not paying scale price on run of mine coal. The United Mine Workers then had a rule that the price for mine run should be five-sevenths of the price of screened coal based upon the Hocking Valley. That scale even in Ohio was then a dead letter. Run of mine coal in Ohio was then in practice paid for on the screened coal basis. The coal was mined and screened, and so paid for, and, if sold run of mine, was then all put together again. At the Hitchman mine, the railroad engine fuel was then and is now run of mine. When the Local was organized in 1903 the Coal Company was paying what it considered the proportionate price for run of mine coal

based upon the screened coal price for the kind of coal at that mine, but paid for by the car. And when the strike was called to enforce the Hocking Valley price of five-sevenths the price of screened coal, the Hitchman management stated that such price was prohibitive, but agreed to permit a test to be made at which the Union's officials should be present to determine the true ratio between screened coal and slack at that mine. The Union's officials declined to do this until May 23, 1903, during which time the mine was kept idle, and the men not allowed to go to work. On May 23, 1903, the mine resumed work under an agreement that a two weeks' test be made. A test was made for a few days by the Union's officials and then abandoned by them. They then settled with the Company on a price which was much less than the scale price for which the strike was called. The agreed price accepted as correct by these officials as the result of this test was about one cent and a half per ton more than the Company had been paying for run of mine coal paid for by the car prior to the men joining the Union. And that basis so established by that test has, ever since it was made, been the basis upon which the Company has paid its men for run of mine coal. That strike cost the Company $7,242.00.

On April 20, 1904, the Union's officials again called the Company's men out on strike. This time it was about the run of mine coal. They were not satisfied with the 1903 settlement and wanted to try what they called the average as distinguished from the tonnage basis. They kept the men out and the mine idle until June 15, 1904. When work was resumed it was on the average basis. This strike cost the Company $17,000.00.

When April 1, 1905, came *the officials of the Union insisted on returning to the tonnage method on the basis of the 1903 run of mine settlement,* as the men claimed

they made more money under that than they did on the average basis. *The Company then readopted the 1903 tonnage basis.*

As the time approached for the National strike which was called for April 1, 1906, the Company's management tried to arrange with the Union's officials to have the men continue at work and to take care of the engine fuel trade. The Company offered to pay the 1903 scale, for which the Union's officials contended as the result of a modification of the demands of the United Mine Workers of America resultant upon the holding of the second 1906 Joint Interstate Convention between the miners and operators of the Central Competitive States. *The Union's officials agreed to let the men* employed at the Hitchman mine *work* under those conditions *provided the Company did not mine any commercial coal and only took care of the railroad engine trade.* BUT THIS PERMISSION WAS WITHDRAWN AFTERWARDS AND THE MEN WERE ORDERED TO QUIT WORK AND DID QUIT WORK ON APRIL 16, 1906. The men were out and the mine was idle until June 12, 1906. Before quitting work on April 16, 1906, the men employed at the mine tried to get permission from their officials to continue work loading engine coal, and explained that unless they were allowed to do so the B. & O. Railroad Company would haul in non-union coal and have it loaded into their engines from the Hitchman Company's tipple and bins. And in addition to that the Company's management notified these Union officials that if they called the men out on strike the mine would not be run Union again.

While the Hitchman mine was still being kept idle, these same officials, through the defendant Sullivan, effected a settlement with the Lorain Coal & Dock Company, and coal was shipped from the Wheeling Creek mine near Bridgeport, Ohio, to the Hitchman Mine and loaded over that Company's

tipple and from that Company's bins into engines of the B. & O. R. R. Co. It was part of the Railroad Company's contract with the Hitchman Company that in case of strikes at the Hitchman mine, the Hitchman Company would load over its tipple and from its bins into the B. & O. engines such coal as the B. & O. R. R. Co. might furnish for that purpose. This coal came from the same mine that the defendant Lewis worked at, when working in the mine, at his home in Bridgeport, Ohio. In addition to that, the Lorain Coal & Dock Company was a party to and represented by the same person at the Joint Interstate Conventions held in 1906, 1908 and 1910 between the operators and miners of the States of the Central and Competitive Field, that the defendant Sullivan settled the strike with.

The Hitchman Coal & Coke Company was not a member of any operators' association and was not a party to any of these Joint Interstate Conventions.

The settlement of this strike so far as the Lorain Coal & Dock Company was concerned was made by the defendant Sullivan between May 16, 1906, and May 20, 1906, and on May 22, 1906, B. & O. Railroad cars were found at the Hitchman mine loaded with coal from the Wheeling Creek mine which was taken up over the tipple and loaded into engines of the B. & O. Railroad Company from the bins of the Hitchman Coal & Coke Company. The National strike of 1906 was not really settled in Sub-District 5 of District 6 until at a Joint Convention of miners and operators which was held at Wheeling, July 24th, 25th, 26th and 27th, 1906, when a settlement was effected on the basis of the 1903 scale.

During the period of time the Hitchman mine had been run Union, that is from April, 1903, to April,

1906, the Company paid nearly $10,000.00 to the Union's officials as check-off.

When the strike of 1906 came the men expected to receive benefits. They were not paid the benefits they were entitled to, and this fact coupled with the knowledge that Union coal was being loaded into the B. & O. engines over the Hitchman Coal Company's tipple and from its bins, which was mined at the Wheeling Creek mine of the Lorain Coal & Dock Company, at Bridgeport, Ohio, Lewis's home, made them discontented and indignant. They resented the fact that their Union officials would allow the Lorain Coal & Dock Company's mines to operate and yet would not let the Hitchman mine run when its management had offered to pay the 1903 scale, the very scale the Union was contending for.

The 1906 strike cost the Hitchman Company $24,500.00, and together with $17,000.00 in 1904 and $7,242.00 in 1903, made a loss of $48,742.00 in the three years the mine was operated Union.

By *June 12, 1906*, the Union men who had struck under orders April 16, 1906, came to an agreement of their own with the management of the Hitchman Coal & Coke Company, and *the mine resumed work non-union. It has been run so ever since, and is running so today.* And it is noteworthy that from the time the mine was opened up non-union in 1902 to April 1, 1903, when the mine started to run Union, there had been no strike of any kind, and that from June 12, 1906, to this date, or for more than the last ten years the mine has not lost a single day on account of labor trouble, and that all it has been threatened with has been that caused by the United Mine Workers of America in their efforts to reunionize plaintiff's men and mine and to re-assert their sway.

About the time, or shortly after the men started to work non-union at the Hitchman mine, the officials of the United Mine Workers of America came after and got the Charter they had issued to the Local when it was organized in 1903, and also got the seal. They wanted the money the Local had, but this was refused them, and they were told that the men at the Hitchman mine had paid the money into the Local treasury and that they were going to use it to get out a State Charter for an independent mine workers' organization. This plan was consummated and the record shows that on June 25, 1906, a Charter was issued by the Secretary of State of the State of West Virginia to the Independent Mine Workers of West Virginia.

The evidence establishes that beginning with June 12, 1906, the Company and its men entered into contracts whereby the men were to work non-union and the mine was to be run non-union, and that on this subject a memorandum employment card put into use in the Company's office on January 1, 1908, and used ever since and in use now is a correct statement of the verbal agreement of employment entered into when the mine resumed work non-union June 12, 1906. The memorandum card is as follows:

> "I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America and will not become so while an employe of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said Company, and agree that while I am in the

employ of that Company that I will not make any efforts amongst its employes to bring about the unionizing of that mine against the Company's wish. I have either read the above, or heard the same read."

In this connection, plaintiff filed a list of 579 names of its employes who beginning with January 1, 1908, and down to March 8, 1911, had signed such cards, and submitted the cards themselves for verification. These cards still remain in the custody of the Clerk of the Court.

When the United Mine Workers of America held their National Convention in January, 1907, at Indianapolis, Indiana, they were confronted with a decreased membership, depleted funds and an interruption in the Joint Interstate Movement. They promptly, by Convention action, took steps to recover the lost ground. And the minutes of their proceedings show that they passed a resolution approving the enforced action of their officers in having largely withdrawn the organizing forces because of want of funds, but at the same time directed that work to be resumed as soon as the state of the Union's finances would warrant it. That Convention also instructed the International officers to negotiate with the operators of the Central Competitive Field for an interstate meeting to be held sometime prior to the time of expiration of the contracts the Union then had, and a suitable length of time prior to April 1, 1908. These officers were also instructed to make a reasonable effort to secure the admission of all soft coal producing states desiring admission to the Joint Interstate Movement.

After months of work on the part of the Union, the 1908 Joint Interstate Convention was arranged for and subsequently held, but the operators from Illinois refused to participate. The miners from Illinois demanded admittance to that Convention, but were not admitted owing to the refusal of the operators from Western Penn-

sylvania, Ohio and Indiana to allow that unless the operators of Illinois could be induced to return. And it was then announced by the Union's officials that whatever agreement might be entered into at that Convention would have to be ratified by vote of the entire membership of the United Mine Workers. And the record shows that subsequently by a referendum vote of the entire membership of the United Mine Workers the two year contract negotiated at the 1908 Joint Interstate Convention was approved. And in addition an adjournment of that Convention was had until the first Tuesday in February, 1910, at 10 o'clock A. M., in the City of Toledo, Ohio. It was declared by that Convention that the Illinois operators and miners should be a part of the Central Competitive Joint Movement, and they were urged to become part of it, and to join in what was then the next Joint Interstate Convention to be held in February, 1910.

Having seen that *the National Convention* of the United Mine Workers *held in 1907* took steps to bring about the holding of a Joint Interstate Convention in 1908, for the same Central Competitive States, and also *took steps to proceed with the organization of the non-union fields in accordance with previous plans to suppress the competition the operators of the States composing the Central Competitive Field had been so long complaining of* let us now see what really was next done on that line. *And at this point we* will *ask* the Court's *attention to the effect of this general attempt* at organizing all non-union fields *as it was applied to the Hitchman Coal & Coke Company.*

When the Annual Convention of the United Mine Workers of Sub-District 5 of District No. 6 was held at Wheeling in March, 1907, the defendant Rankin made a report as Secretary-Treasurer, in which he said:

"We have one mine at Bellaire, O., and five mines in the Panhandle District which I believe should be organ-

ized. I believe those mines can be organized, and in my opinion this Convention should adopt some plan to organize those mines."

The evidence shows that he referred to the Hitchman mine, the Glendale and the Richland, amongst the five.

The Convention then passed the following resolution:

"RESOLUTION NO. 8.

"Whereas, There are mines in the Panhandle District and Ohio that are not organized, and believing every mine should be organized, be it

"*Resolved*, By this Ninth Annual Convention, that the Sub-District officers together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done."

The evidence also shows that the Hitchman mine, the Glendale and the Richland were amongst those intended to be affected by Resolution No. 8.

Pursuant to that action, the officers of District No. 6 and of Sub-District 5 of District No. 6 took up the question of organizing the non-union mines in the Panhandle District, and some of these defendants as such officers visited the management of the Hitchman mine and held a conference at the office of the mine at the mine.

And other conferences were subsequently had in Wheeling. These officials stated plainly that they wanted to organize the men and mine again, and resume their former contract relations with the Hitchman Company. The management of the mine declined to entertain the suggestion and reminded them of the warning given prior to the time the men were called out on strike April 16, 1910, that the mine would not be run Union again if that strike was called. The officials finally asked that the question of reunionizing be submitted to the Company's Board of Directors. That was done; the Board of Direc-

tors refused to have anything whatever to do with the Union and these officials, and this action was promptly made known to them. These dealings ran along into the summer of 1907, and as a result reports were put in circulation by the Union's officials that the mine was going to be unionized, and that unless the men joined the United Mine Workers they would soon be out of their jobs.

The evidence also shows that each year during the time intervening between the opening of lake navigation, usually about December first, coal is shipped from West Virginia, Pennsylvania and Ohio to Lake ports for reshipment by vessel to points in the North and West, from which points it is then distributed to the trade and to consumers generally. During this period of time operators make every effort to increase their working force of miners so as to take care of what lake trade they can get. It is also in evidence that the Hitchman Company had a large lake tonnage contracted for in the summer and fall of 1907, and that the defendants were aware of that. And so with that information they sought to cripple that mine by circulating reports that the mine was to be unionized. This deterred many miners from taking employment and also deterred the management of the Hitchman Company from hiring men indiscriminately for fear of the mine being filled with organizers.

The same persons who were the owners of the capital stock of the Hitchman Coal & Coke Company were the owners of another mine adjoining the property of the Hitchman Company. That mine was called the Glendale mine. It is so called and so owned now. The operation of that mine is managed from the office of the Hitchman Company by the same persons who manage the Hitchman mine. It was so in 1907.

Early in September, 1907, the defendant Thomas Hughes was sent by the officials of the United Mine

Workers into the Panhandle District of West Virginia with instructions to organize the non-union mines, and compel them to recognize the Union or else be shut down. He visited the Hitchman mine, the Glendale and the Richland. As a result of his work, he succeeded in organizing the men at the Richland mine, and when the operator controlling that mine refused to recognize the Union, Hughes shut the mine down. At the Glendale mine, Hughes succeeded in having twenty-two men join the Union and quit work. The loss of twenty-two men crippled that mine, but it still continued to operate non-union. At the Hitchman mine, Hughes, according to his statements, succeeded in having enough men agree to join the Union to enable him to unionize the mine, and he was about ready to shut it down, which he also stated he would do, if the management did not recognize the Union.

In the direct examination of J. C. McKinley (Record, pp. 414-415) the following occurs:

> "Q. Have you any recollection of having any conversation with Mr. Rankin, one of the defendants, upon the subject of unionizing the mines in the northern Panhandle District?
>
> "A. I have.
>
> "Q. State what that conversation was, as nearly as you now recall?
>
> "A. My recollection is that just after the Sub-District convention adjourned I met Mr. Rankin on the street and knowing him very well I entered into conversation with him. During that conversation I said to him, 'Well, what did you all do?' 'Well,' he said, 'there is one thing we did, and that was to arrange to organize the Panhandle district of West Virginia.' 'Well,' I said, 'Why don't you let us alone?' and he replied, 'That was brought up in the convention and a resolution was passed directing us to organize the Panhandle'; and he said further,

'We will be over to see you right away,' or something to that effect.

"Q. In 'Plaintiff's Documentary Exhibit No. 5,' which purports to be the proceedings of the Ninth Annual Convention Sub-District 5, District 6, held at Wheeling March 14, 15, 16, 18 and 19, 1907, I find on page 28 this resolution:

"RESOLUTION NO. 8.

"Whereas, there are miners in the Panhandle District and Ohio that are not organized, and believing every mine should be organized; be it

"'*Resolved*, by this ninth annual convention that the sub-district officers together with the district officers, be authorized to take up the work of organizing every mine in the sub-district as quickly as it can be done.'

"Q. (continued). Was that the resolution referred to in your talk with Mr. Rankin?

"A. I suppose so. He did not tell me the number of the resolution but that is the gist of it.

"Q. Now, what happened after that talk with Rankin with reference to the attempted unionizing of the northern Panhandle District of West Virginia, as nearly as you now recollect?

"A. My recollection is that we did not hear anything about it for two or three months, and I thought they had given up the attempt until along about the middle of the summer they commenced to come in to see me, and mentioned the fact at different times when I saw them that they were going to organize us, and then afterwards I found that they were sending organizers about our mines, as well as other mines in the Panhandle District, and they told me what they were doing at other mines. They neglected to say, however, just what progress they were making at our own mine, except that they were going to get us sooner or later.

"Q. And if they got the men and didn't get you, what would happen with your mine, did they say?

"A. Oh, they said they would shut us down and compel us to recognize the union.

"Q. Did they say anything on that line with reference to the other mines in the northern Panhandle District that were running nonunion?

"A. Yes, sir; they stated specific mines that they were going to organize.

"Q. What mines were they?

"A. The Glendale, Hitchman, Richland—which was ours—and the Beech Bottom mine.

"Q. Do you know from them what progress they made at the Glendale mine?

"A. Yes, sir; they told me that they had twenty some men (I think it was twenty-four) who had joined the organization, and that they had sixty men who had signed up or had agreed to join the organization at Hitchman, and that they were going to shut the mine down as soon as they got a few more men.

"Q. The Hitchman mine?

"A. Yes, sir; and all of the mines in the Panhandle District would have to recognize the union or remain closed.

"Q. You say they did not tell you what progress they were making at the Richland mine?

"A. They did not.

"Q. What was your experience that disclosed what progress they were making at that mine?

"A. Our first experience that showed us the progress they had made was when they succeeded in shutting us down, which was about the middle of October, 1907.

"Q. And after the mine was shut down did it resume union, or did it stay shut down, or did it resume non-union again?

"A. It staid shut down until a restraining order was allowed by the court, immediately after which it resumed non-union and has been so operated since.

"Q. You have had no labor troubles since?

"A. No; we have not."

At this stage of the proceeding, the Hitchman Company, the Glendale Company and the Richland Company applied to the Circuit Court of the United States for the

Northern District of West Virginia for injunctive relief. And a similar restraining order was issued in each one of the three cases.

At the Hitchman mine so great had been the disturbance created by the attempt to organize the men there that with the number the Company could safely employ it was unable to fulfill its contracts for delivery of coal for the lake trade from its mine, and from ten to fifteen thousand tons of coal had to be bought elsewhere.

IV.

FREEDOM OF CONTRACT AS GUARANTEED BY ENGLISH LAW AGAINST INTERFERENCE FROM LABOR UNIONS.

The basic principle is the doctrine of Lumley *v.* Gye.

Lumley was the lessee and manager of the Queen's Theater in London, and he contracted with Johanna Wagner to perform in his theater for a certain time, with a condition, amongst others, that she should not sing nor use her talents elsewhere during the term without plaintiff's consent in writing; yet the defendant knowing of this, and while the agreement was in force and before the expiration of the term enticed and procured Wagner to refuse to perform; by means of which enticement and procurement, Wagner wrongfully refused to perform and did not perform during the term.

The above constitutes the substance of the first two counts of the declaration. The third count differs from the first two, in that it sets out that Wagner was really performing in the theater for reward to her, and that the defendant had maliciously procured her to depart out of plaintiff's employment, whereby she did depart out of the employment and service of plaintiff, whereby damage was suffered by the plaintiff.

Each count in the declaration alleged special damage. There was a demurrer and joinder. The Court in Lumley *v.* Gye laid down this rule:

"Where there is a contract between two persons for exclusive personal service to be rendered by the one to the other, an action lies against a third person (not a party to the contract), who intentionally induces the former party to break his contract so as to cause, as the natural consequence of the breach, loss to the other."

An effort was made in Lumley v. Gye to show that the proposition laid down by the Court would not apply, because it was claimed that the relation of master and servant in the strict sense did not exist between plaintiff and Wagner, and that the law as to enticing servants was contrary to the general rule and principle of law, and anomalous, and probably had its origin from the state of society when serfdom existed, and was founded upon, or upon the equity of, the Statute of Laborers.

The Court rejected that contention, and announced the rule above stated.

Lumley v. Gye (1853). 2 E. & B. 216. 1 E. R. C. 706, Subscription Edition May, 1905.

Simpson's Cases on Torts, 1908, p. 329.

Bowen carried on the business of brickmaker, near Stourbridge, England. He made a contract with one of the defendants, Pearson by name, under which Pearson agreed and undertook, for the consideration of certain prices named in the contract, to find all labor for the whole manufacture in a workman-like manner, of best quality white-glazed bricks and baths (with exception of hooping the baths and preparing the clay mass) in such quantities as Bowen might require, and when Bowen might require, and to deliver anywhere they might be required on plaintiff's premises, the quality to be equal to sample supplied, and the prices to be subject to the standard prices of the trade for the manufacture of the same.

The contract contains a somewhat extended scale, covering the different articles of manufacture.

Pearson agreed not to engage himself to any one else for a term of five years, and Bowen, on his part, agreed not to engage any one else for the same work for a term of five years.

It will be noticed that the contract for five years on the part of Pearson and Bowen was negative in each instance.

Pearson did not agree to work for Bowen for five years. He only agreed not to work for any one else for a term of five years. Bowen did not agree to employ Pearson for five years. He only agreed that he would not engage any one else for the same work for a term of five years. The contract bore date June 18, 1877, and in May, 1878, the defendants, Hall and Fletcher, Fletcher being Hall's manager, wrongfully induced Pearson, contrary to his agreement with plaintiff, to depart from the exclusive service of plaintiff, and to manufacture on account of the defendant Hall glazed bricks and baths such as he had contracted to manufacture for the plaintiff.

Plaintiff sued Hall and Fletcher for damages, and claimed an injunction to restrain them from employing Pearson, and also claimed an injunction to restrain Pearson from engaging himself to Hall and Fletcher until the expiration of his contract of service with plaintiff.

It was held that the doctrine announced in Lumley *v.* Gye, *supra*, applied, and that an action would lie against the defendants, Hall and Fletcher, for wrongfully enticing away and keeping the other defendant, Pearson, from plaintiff's employment, and for wrongfully receiving and harboring him after notice of his being the servant of the plaintiff, and as against the said defendant Pearson for unlawfully and against the will of the plaintiff departing from the service of the plaintiff.

The Court was of the opinion that the act of the defendants was done with knowledge of the contract between the plaintiff and Pearson; was done in order to obtain an advantage for one of the defendants at the expense of the plaintiff; was done from a wrong motive, and would, therefore, justify a finding that it was done in that sense maliciously.

Bowen *v.* Hall (1891). 6 Q. B. D. 333. (s. c. 50 L. J. Q. B. 305). 1 E. R. C. 717, Id. ed.

The defendants were members of a joint committee of three trade unions connected with the building trade in Hull. A firm of builders there having refused to obey certain rules laid down by the unions with regard to building operations, the unions sought to compel them to do so, by preventing the supply of building materials to them. In pursuance of this object, they requested the plaintiff, a master mason and builder in Hull, who supplied building materials to the firm, to cease to supply them with such materials, but the plaintiff refused to do so. Thereupon, with the object of injuring the plaintiff in his business, in order to compel him to comply with such request, the defendants induced persons who, to the knowledge of the defendants, had entered into contracts with the plaintiff for the supply of materials, to break their contracts, and not to enter into further contracts with the plaintiff, by threatening that the workmen would be withdrawn from their employ. The plaintiff sustained damage in consequence of such breaches of contract, and of the refusal of such persons to enter into contracts with him: *Held*, that an action was maintainable by the plaintiff against the defendants for maliciously procuring such breaches of contract, and also for maliciously conspiring together to injure him by preventing persons from entering into contracts with him.

The right of action for maliciously procuring a breach of contract is not confined to contracts in the nature of contracts of personal service.

Lopes, L. J., said:

> "I presume that the principle is this, viz: that the contract confers certain rights on the person with whom it is made and not only binds the parties to it by the obligation entered into but also imposes on all the world the duty of respecting that contractual obligation."
>
> Temperton v. Russell, 1 Q. B. (1893) 715, 730.

The action in Quinn v. Leathem was originally brought in the High Court in Ireland by Leathem, the respondent, as plaintiff, against Quinn and four other persons, to recover damages for a wrongful interference with the plaintiff's business of a butcher at Lisburn, a few miles from Belfast. For upward of twenty years before July, 1895, Leathem had carried on business in Lisburn, having as one of his constant customers, Andrew Munce, who kept a butcher's shop at Belfast, to whom he supplied weekly £20 or £30 worth of the best meat; and he had in his employ as assistants several men at weekly wages.

The Belfast Journeymen Butchers' and Assistants' Association was formed in 1893. Leathem was not a member, nor were any of his assistants. The members of the union adopted a rule that they would not work with non-union men, and would not cut up meat that came from a place where non-union hands were employed. Prior to 1895, there had been no controversy with Leathem but in July, 1895, Leathem was invited to attend a meeting of the union which was held at Lisburn. The defendants were there.

Leathem was notified that he must run his shop union, and must quit employing non-union labor, and that if he did not do so, the men employed by Munce, to whom Leathem had been selling meat, would be called out.

In addition to this, the Union persuaded some of Leathem's men to join the Union and quit working for Leathem. This was done in order to try to inconvenience Leathem and compel him to unionize his place of business.

Leathem brought suit, and on appeal the following was held:

> "A conspiracy to injure, if there be damage, gives rise to civil liability; and an oppressive combination differs widely from an invasion of civil rights by a single person. It is a violation of right to interfere with contractual relations recognized by law if there be no justification for the interference. This principle cannot be confined to inducements to break contracts of service. If such wrongful interference with a man's liberty of action is intended to injure and, in fact, damages a third person, such third person has a remedy by an action.
>
> "Annoyance and coercion by many may be actionable where like conduct on the part of one person would not be so.
>
> "The appellant, an officer of a trade union, in combination with other members of the Union—first, induced a servant of the respondent to break his contract with the respondent; secondly, induced a customer of the respondent, by threats of calling out the customer's men, to withdraw his custom, and thirdly, induced the respondent's servants to leave his service; *Held*, that the appellant had been guilty of an actionable conspiracy for which he was liable in damages and that, as there was no 'trade dispute' within the meaning of the Conspiracy and Protection of Property Act, 1875, s. 3, the appellant was not entitled to the benefit of that section."

The Court in Quinn *v.* Leathem approved Lumley *v.* Gye, *supra*, and Temperton *v.* Russell, *supra*.

Quinn *v.* Leathem (1901). 70 L. J. P. C. 76, 97. (s. c. 1901, A. C. 495.) 27 E. R. C. 66, Id. ed., 1908 Supplement.

Simpson's Cases on Torts, 1908, 362.

The Glamorgan Coal Company and seventy-three other plaintiffs, owners of collieries in South Wales, brought this action against the South Wales Miners' Federation for inducing workmen in the collieries to break their contracts of service with the plaintiffs, and alternatively for wrongfully and maliciously conspiring to do so. By the terms of employment, the wages were paid upon a sliding-scale agreement, rising and falling with the price of coal. In November, 1900, the Federation fearing that the price of coal would be reduced and wages, therefore, lowered, resolved to order a "stop-day" on November 9, 1900, and informed the workmen. The order was obeyed by over 100,000 men, who took a holiday and thereby broke their contracts of service. At a conference held on November 12, 1900, between delegates of the men and the council, a resolution was passed authorizing the council to declare a general holiday at any time they might think it necessary for the protection of wages and for the industry generally. In October and November, 1901, the council ordered four stop-days for the same reason as before, and the men took a holiday on each of those days in breach of their contracts. The lower Court found that the action of the Federation was dictated by an honest desire to forward the interest of the workmen, and was not in any sense prompted by a wish to injure the masters, between whom and the men there was no quarrel or ill-will, and that there was justification or excuse for what the defendants did, and judgment was given for the defendants.

In the House of Lords, the Earl of Halsbury, Lord Chancellor, said:

> "I cannot think that in this case there is anything to be determined except the question of fact. I say so because the questions of law discussed are so well settled by authority, and by authority in this House.
>
> "To combine to procure a number of persons to

break contracts is manifestly unlawful. This is found as a fact to have been done here, and is also found to have caused serious damage to the persons who were entitled to have these contracts performed."

And the following was held:

"To interfere with contractual relations recognized by law, as by inducing and procuring another to break his contract, is an actionable wrong unless there be sufficient justification for the interference.

"Thus, the officers and executive council of a federation of miners are liable in damages for procuring the members of the federation to stop work on certain days in breach of their contracts of employment and without notice to their employers, it being no defense that the wrong thus committed was done without malice or ill-will towards the employers, and for the sole purpose of keeping up the price of coal and the wages of the miners."

South Wales Miners' Federation *v.* Glamorgan Coal Company (1905). A. C. 239. 2 A. & E. Ann. Cas. 436.

Simpson's Cases on Torts, 1908, 342.

In Long *v.* Larkin, *et al.*, first tried in an Irish divisional court and then in the Irish Court of Appeal, [1914] 2 I. R. 285; Long, a stevedore, hired dock laborers, many of whom were members of a trade union known as the Irish Transport Union. There was also a Stevedores' Association formed in order to compel ship owners to pay higher rates, which Association plaintiff refused to join. In order to compel plaintiff to do so, the officers of the Union and Association conspired together to induce his laborers to break their contracts with him and to leave his employment, and also to induce workmen to refuse to work for him. In the King's Bench Division, Kenny, J., said:

"The case is a very important one from the points of view of both employer and employed—involving,

as it does, questions as to the legality of acts which are alleged to invade unjustifiably the civil rights of another,—the effect of such acts when done by several in combination,—and the protection which the Trade Disputes Act, 1906, for the first time afforded to acts done in furtherance of a trade dispute. These questions have been the subject of consideration by the House of Lords in The Mogul Case (1) in 1892; Allen *v.* Flood (2) in 1898; Quinn *v.* Leathem (3) in 1901; The Glamorgan Case (4) in 1905; and Conway *v.* Wade (5) in 1909; and while it is sometimes not a very easy task to reconcile certain of the judgments when one is seeking for uniformity in the grounds and reasons on which they are based, large principles have been laid down which cannot fail to afford a guide in cases of a similar or analogous character. * * *

"It has not been disputed in the course of the arguments before us, and could not be, having regard to the dicta in the speeches in the House of Lords in the cases I have mentioned, that, inasmuch as damages are recoverable for breach of a contract, such breach is unlawful in the sense explained by Lord Lindley in Quinn *v.* Leathem (1), and, being unlawful, the act of anyone inducing or procuring such breach is also unlawful and consequently actionable where damage has been sustained. If several persons combine to induce or procure such breach, each of them makes himself liable to an action for what is a tortious act and can be proceeded against by way of action for conspiracy. In such an action the gist of the action is not the conspiracy, but the wrongful act done in pursuance of it, namely, the inducing or procuring of the breach of contract. It is, I think, unnecessary for the purposes of the present case to consider in what circumstances conspiracy would be the basis and gist of an action, or in what circumstances a combination of two or more persons to do a certain act could alter the character of the latter and render actionable in the case of several what would be innocent in the case of a single person. * * *

"Whether the act of inducing or procuring be that of a single individual or of a number of individuals in combination, it is a tortious act—unlawful and actionable if committed without justification: Quinn *v.* Leathem (1); The Glamorgan Case (2). It was argued that this case and the Mogul Case (3) were not dissimilar, and that the defendants here were acting merely in their own interests and within legal bounds. But in the Mogul Case (3) the defendants were acquitted of having resorted to any unlawful means in order to accomplish their objects, and it is manifest that if it had been established in that case that the defendants had endeavored to procure the breaking of contracts the result would have been different. The Glamorgan Case (2) is as striking a one of self interest as the Mogul Case (3), and its decision leaves no doubt upon the law that no matter what the motive of the defendants be—no matter how bona fide and free from malice or ill-will it may be—if, in endeavoring to attain their object, whether that object be a selfish and personal one or of a broader character, they purposely procure or induce an unlawful act, such as the breaking of contracts, to be committed, they are guilty of an actionable wrong. It is said that in the present case breaches of contract were not contemplated because it was considered that there would be no contracts entered into by the dock laborers; but such a contention is an idle one in the face of what actually occurred, for the men were ordered out when they were in the very act of the discharge to which their hiring related.

"On the question of justification for their action, the Glamorgan Case (1) is a direct authority. A prima facie actionable wrong was committed in that case, just as one is alleged to have been committed in the present, and it was sought to be justified on the ground that the defendants' federation or council who had directed and ordered the strike that involved the breach of the miner's contracts had in so doing acted honestly, without malice, and with the object only of keeping up the price of coal by

which their wages were regulated. So far as the motive of self-interest was concerned that case was on the same plane as the Mogul Case (2), but differed from it in the methods employed to carry out the defendants' object. It was not denied that there might be some cases of a very special character which would afford a justification for that which in itself was an actionable wrong; but even in a case in its facts so strongly founded on good faith and the absence of indirect motive as the Glamorgan Case (1), the House of Lords were unanimous in holding that there was no lawful excuse or justification for the interference with contractual relations. The present case seems to me to be an *a fortiori* one."

From this decision, an appeal was taken to the House of Lords which affirmed the decision of the Irish Court of Appeal.

From the opinion of Lord Atkinson, the following is taken:

"Serjeant Sullivan, on behalf of the appellants, insisted that the fact that the members of the Transport Union thought it for their own interest to pass a rule that they should not work for a stevedore who was not a member of the Stevedore's Union was quite legitimate, that they were not bound to work for him or for any other person for whom they did not choose to work, and were, in the legitimate promotion of their own interest, entitled, within the decision of Mogul Steamship Co. *v.* McGregor, Gow & Co. (1), to observe that rule, though it might incidentally cause injury to those who desired to employ these workmen, but for whom they themselves did not desire to work. It is undoubtedly true that the members of a trade union need not work for those for whom they do not desire to work. That is the right to personal freedom of action referred to in the following well-known passages from the judgment of Lord Bramwell in Reg. *v.* Druitt (2) and from the essay of Sir W. Erle on Trade Unions (p. 12). They have been many times approved of in your Lord-

ship's House. They respectively run thus: 'The liberty of a man's mind and will, to say how he should bestow himself and his means, his talents, and his industry was as much a subject of the law's protection as was that of his body.' And, 'Every person has a right under the law, as between himself and his fellow subjects, to full freedom in disposing of his own labor or his own capital, according to his own will. It follows that every person is subject to the correlative duty arising therefrom and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others.'

"But it is equally true that the members of trade unions are bound to respect the right of other workmen to work for whom they please, on what terms and at what times they please, so long as they do nothing illegal, and are also bound to respect the right of an employer to undertake any work he pleases to undertake, and to employ what workmen he chooses, on whatever terms they both agree to unless there is something unlawful in his action. If, therefore, any two or more members of a trade union, whatever its rules may be, wilfully and knowingly combine to injure an employer by inducing his workmen to break their contracts with him, or not to enter into contracts with him, resulting in damage to him, that is an entirely different matter. That is an invasion of the liberty of action of others, and has no analogy to the action of the defendant in the Mogul Case (1); for there, as Lord Halsbury pointed out in Quinn *v.* Leathem (2), no legal right had been interfered with, no coercion of mind or will had been effected, all were left free to trade on what terms they willed, and nothing was done except in rival trading which could be supposed to interfere with the appellant's interest.

"The fact that members of a trade union are merely acting in obedience to a rule of their union believed by them to be for their benefit is no defense to an action for the breach of any contracts they have entered into—Read *v.* Friendly Society of

Operative Stonemasons (3)—and still less is it a defense to the wilful and malicious infringement in combination of that legal right of personal freedom of action which they claim for themselves, but which others are entitled to quite as fully and as absolutely as they are."

Larkin, *et al.*, *v.* Long [1915] A. C. 814-846, at pp. 829, 830. H. L. (I).

V.

FREEDOM OF CONTRACT AS GUARANTEED BY PENNSYLVANIA LAW AGAINST INTERFERENCE FROM LABOR UNIONS. FLACCUS v. SMITH.

In perfect harmony with the English cases is the case of Flaccus *v.* Smith, *et al.* (1901), 199 Pa. 128.

Flaccus was the proprietor of glass works at Tarentum, Pennsylvania. He ran his works non-union, and his employes consisted of men and apprentices, all of whom had agreed with their employer not to connect themselves with the Union, which in that case was otherwise known as the American Flint Glass Workers Union, affiliated with the American Federation of Labor.

The defendants in the case, W. J. Smith and others, were members of the American Flint Glass Workers' Union, and they tried to unionize the plaintiff's glass works at Tarentum by persuading the plaintiff's employes to join their Union. Flaccus, the plaintiff, brought his suit in the Court of Common Pleas, No. 2, for Allegheny County, to enjoin the defendants from interfering with his apprentices, and upon the Court, upon final hearing, enjoining the defendants from doing the acts complained of and from persuading the apprentices to join the Union, the defendants appealed.

In the report of the case, as decided by the Supreme Court of Pennsylvania, Judge Brown delivering the opinion of the Court said (54 L. R. A. 642):

"The Court below found that Skelley, one of the appellants, had gatherings of the apprentices of the appellee at his room in a hotel and persuaded them to join the Union referred to; that he knew the character of the appellee's works as an independent factory, in which members of the Union were not employed and that his apprentices were bound in their indentures not to join or become subject to the rules or regulations of any such organization as he represented; that he knew these facts at the time he swore in these apprentices as members of the Union; that the apprentices who joined the Union violated the covenant of their indenture and subjected themselves to the orders of the Union, which made obedience to it paramount to obedience to their employer; that the object of Skelley was to break down the appellee's factory as a non-union factory, either by preventing the operation of his works or compelling him to join the Union; that the apprentices who joined the Union, enticed and persuaded so to do by Skelley, violated an express covenant of their indenture, which was one of great importance to the appellee, and Skelley so knew at the time he so enticed them; that Skelley's conduct and actions were very injurious to the appellee and his business, and, if repeated and persisted in, would in all probability utterly ruin his business; that Skelley's co-defendants, by their counsel, openly and boldly justified him in all he did, contending that, as an officer or agent of the Union, he had a perfect right to interfere with plaintiff's apprentices, persuade them to join the Union, and secretly swear them in as members; that, if the Union had that right, either Skelley or some other agent could go to Tarentum at any time and interfere with the appellee's apprentices and business until it would be destroyed."

In deciding this case Judge Brown said:

"This is not a controversy between the employer and his employes, but between him and certain individuals associated as a labor union, unfriendly

> to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him. No question is here raised by the employer as to what his employes may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the Court below. Having reviewed all the evidence, we are not persuaded that any of the Court's findings of fact ought to be disturbed, and, with them before us, the only question to be determined is whether the injunction should go out."

And on the same page (54 L. R. A. 642) in affirming the action of the lower Court, Judge Brown for the Supreme Court of Pennsylvania said:

> "The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The Court found that the interference was injurious to him, and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity. The test of equity jurisdiction is the absence of a plain and adequate remedy at law to the injured party, depending upon the character of the case as disclosed in the pleadings. If equity alone can furnish relief, the injunction must be issued."

Counsel for the defendants criticized in the lower court the case of Flaccus *v.* Smith, said it was not applicable because it was a case of enticement of apprentices, who, for all that appeared from the report, might have been bound out to service for a period of years, the term of apprenticeship not having expired; and further criticized the case on the ground that, by the enticement, Flaccus, the plaintiff, was deprived of the further services of his apprentices, and that, in this case, which is now at the bar of this Court, the plaintiff would, by the terms of its contracts with its employes, be, of its own volition, terminating those contracts upon plaintiff's employes joining the Union.

The entire record of the case of Flaccus *v.* Smith is in the prothonotary's office at Pittsburgh, 790, Oct. Term, 1899, Court Common Pleas No. 2, Allegheny County, Pa. That record shows that the period of apprenticeship in each case was four years. Some had expired; some had not. Some of the apprentices were still under age; some were over the age of twenty-one years, but still working as apprentices. The bill was framed solely upon the ground that the defendants interfered with the contract relation created by the indentures of apprenticeship, each of which contained a clause which forbade the apprentice during his apprenticeship from joining any labor union or other organization which would interfere with the proper performance of his duties as apprentice while he remained an apprentice. The apprenticeship indentures did not mention the American Flint Glass Workers Union by name, and the question whether or not a breach of the indenture of apprenticeship was brought about by the apprentice joining the American Flint Glass Workers Union was a question of fact which the Court decided in favor of Flaccus.

When the apprentices joined the Union they were given their choice by Flaccus, either to renounce the Union or

to quit work. Some renounced the Union, and others quit work and adhered to the Union. And it was claimed by the defendants that the plaintiff, Flaccus, discharged the apprentices, and, therefore, had no cause of complaint against the defendants who had simply persuaded the apprentices to join the Union. The plaintiff's counsel in that case replied to that argument by saying, if Flaccus permitted the apprentices who had joined the Union to continue at work, his factory would soon be unionized, and that was just what the defendants were trying to accomplish and just what Flaccus was trying to prevent.

So, in the case now at the bar of this Court, plaintiff's employes have each made an express contract not to join the United Mine Workers of America, and there is no question of fact in this case, as there was in the Flaccus case, as to whether joining that Union would be detrimental to the interests of the employer, and, therefore, violative of the contract. The language of plaintiff's contracts with its employes is specific. **Each employe has agreed not to join the United Mine Workers of America.**

Plaintiff's case is a stronger case than the Flaccus case. And to establish that, in addition to the reference above made to the difference in the contracts in the two cases, a stronger case is presented for plaintiff by consideration of the fact that in the Flaccus case the persons enticed were merely apprentices, while in plaintiff's case the persons enticed are employes.

Dean Bigelow says:

> "It was formerly matter of some doubt whether an action could be maintained for interrupting, with notice, the gratuitous relation of master and servant. It was sometimes supposed that inasmuch as the master could not require the service, he had no right to it which could be infringed. But this view does not now obtain. Though a person may not be able to

require a gratuity he has a right to it when it is given and as it is being received, and no one may lawfully interrupt his actual enjoyment of it. Hence, if a person be actually engaged in giving his services to another without reward, any one who with notice interrupts the service becomes liable for any damage sustained." Bigelow on Torts, Eighth ed. 259, 260.

Flaccus *v.* Smith, *et als.*, is cited approvingly by the Court in—

Louisville & Nashville Railroad Company *v.* Bitterman, 75 C. C. A. 203, and

Louisville & Nashville Railroad Company *v.* Bitterman, 75 C. C. A. 203,

was affirmed by the Supreme Court of the United States in—

Bitterman *v.* Louisville & Nashville Railroad Company, 207 U. S. 205.

VI.

FREEDOM OF CONTRACT AS GUARANTEED BY WEST VIRGINIA LAW AGAINST INTERFERENCE FROM LABOR UNIONS.

In State *v.* Goodwill (1889), 33 W. Va., 179; 10 S. E., 285, 287; 6 L. R. A., 621; 25 Am. St. Rep., 863, it is said:

"A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. *And, as incident to this, is the right to labor or employ labor; make contracts in respect thereto, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue, and give evidence; and* to inherit, purchase, lease, sell, and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between

freedom and slavery; between liberty and oppression."

And again—

"The vocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the Constitution. People *v.* Otis, 90 N. Y. 48. The right to use, buy, and sell property, and contract in respect thereto, *including contracts for labor—which is, as we have seen, property—is protected by the Constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all contracts.*"

And in the same case—

"The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others, when there is no public necessity for such discrimination, is unconstitutional and void."

State *v.* Goodwill, 32 W. Va., 179, *supra.*

The Thacker Coal & Coke Company engaged in mining coal in West Virginia, brought suit in the Circuit Court of Mingo County against Burke and others, respresenting the United Mine Workers of America, for enticing the company's servants from the company's service. The Thacker Coal & Coke Company was running non-union, and the purpose of the defendants was to require the company to run its mine union. In the lower Court the declaration upon demurrer was dismissed, and the com-

pany sued out a writ of error. The Supreme Court of Appeals of West Virginia in the case of Thacker Coal & Coke Company *v.* Burke (1906), 59 W. Va. 253, 53 S. E. 161, 5 L. R. A. (N. S.) 1091, 6 A. & E. Ann. Cas. 885, held:

> "One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor."
>
> "If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person, to the injury of that third person, it is actionable."
>
> "Persons who conspire to induce others to break a valid contract between other persons are liable to action therefor."
>
> "The act found in Code, 1899, § 14, appendix, p. 1053, does not authorize any individual, or number of individuals, to maliciously entice servants to desert service in which they are engaged, or to prevent them from engaging in such service under a contract for such service."

Id., 5 L. R. A. (N. S.) 1091, 1092. Syl. 1, 2, 3, 4.

Judge Brannon, in delivering the opinion of the Court in the Thacker case, said:

> "The Thacker Coal & Coke Company filed a declaration in trespass on the case in the Circuit Court of Mingo County against Charles Burke and five others for damages for enticing servants from the plaintiff's service, which declaration upon demurrer was dismissed, and the company sued out a writ of error.
>
> "Certain legal principles control the case. In West Virginia Transp. Co. *v.* Standard Oil Co., 50 W. Va. 611, 56 L. R. A. 804, 88 Am. St. Rep. 895, 40 S. E., 591, we find it stated, on authority there given, that 'if one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable.' We find that holding confirmed in Angle *v.* Chicago, St. P. M. & O. R. Co.,

151 U. S. 1, 38 L. ed. 55, 14 Sup. Ct. Rep. 240, in the language following: 'If one maliciously interferes in a contract between two parties, and induces one of them to break that contract, to the injury of the other, the party injured can maintain an action against the wrongdoer. When a man does an act which in law and fact is a wrongful act, and injury to another results from it as a natural and probable consequence, an action on the case will lie.' If additional authority were needed for such a proposition of common sense and justice, see the case decided by the highest English tribunal in 1901, Quinn *v.* Leathem (1901), A. C. 495. What I have already said refers to contracts in general. As to the particular contract between master and servant, the law is, if possible, yet more decided. The common law says that one who causes a breach of that contract is liable to damages. It has been said by some that action in such case lies only by reason of the act of Parliament in the reign of Edward III, A. D. 1350, making the act of enticement of a servant from his employer wrongful. If so, we might hesitate in saying that it is actionable in West Virginia; but I assert, believing that I am supported by ample authority, that action is given in such case by the common law. So the text writers and courts treat it. In Comyns's Digest, title 'Action on the Case,' A, p. 278, the common law rule is thus stated: 'In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages.' The Supreme Court of the United States, in Angle *v.* Chicago, St. P. M. & O. R. Co. *supra*, stated the rule thus: 'Wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie.' It is generally treated as a common-law cause of action. The general principle applicable to contracts in general would give action against a third party for wrongfully causing the breach of

contract between master and servant; but as to this particular contract the law has been long settled:

"I cite the following authorities: 'It is well settled that any person who knowingly entices away the servant of another, and thereby induces him to violate his contract with his master, or who thereby deprives the master of the services of one then actually in his service, whether under a contract to serve or not, is liable to the master for his actual loss therefrom. But in this action it is necessary to prove not only that the person employed was in the service of the plaintiff, but also that the defendant, knowing the fact, wrongfully induced him to leave it. The intent of the defendant, and the natural or actual effect of its execution, is the gist of the action; and, unless the declaration discloses that the act was done intentionally or wilfully, and that it actually did, or was calculated to, cause damage to the plaintiff, and that it was done without right or justifiable cause, no recovery can be had. Malice is inferred from the wrongful character of the act, and the declaration or complaint must disclose such facts as support the inference. If a contract to serve is established, actual service under the contract need not be shown. It is enough to show that the defendant, with notice of the servant's contract obligation to the plaintiff, has persuaded him not to enter into the plaintiff's service under it.' Wood, Mast. & S. §§ 230, 231. 'The idea of interference with contract relations as a specific tort is of recent origin. The materials from which the generalization was worked out are found in several lines of precedents. From an early day it has been established that a master may maintain an action against one who entices away his servant or harbors and detains him with knowledge of his former contract.' 16 Am. & Eng. Enc. Law, 2d ed. p. 1109. 'Certainly since the statute of laborers the common law has recognized the right of a master to recover for the actual damage he may have suffered by the wrongful interference by a third person with his relationship to his servant by personal injury to the servant, or otherwise depriving

the master, in whole or in part, of his service. * * * Actions for enticing servants from their employer, and for knowingly harboring servants who had previously left their employer, arose after the first statute of laborers. They survive its repeal, and occur in modern practice. Knowingly enticing from the service of another one who is employed under a contract not fully executed is an actionable wrong. Indeed, from this basis there has grown up a branch of law in which malice is an essential ingredient.' Jaggard, Torts, § 155. 'To the relation between master and servant, and the rights accruing therefrom, there are two species of injuries incident. The one is retaining a man's hired servant before his time is expired; the other is beating or confining him in such a manner that he is not able to perform his work. As to the first, the retaining another person's servant during the time he has agreed to serve his present master. This, as it is an ungentlemanlike, so it is also an illegal, act; for every master has by his contract purchased for a valuable consideration the service of his domestics for a limited time. The inveigling or hiring his servant, which induces a breach of this contract, is therefore an injury to the master, and for that injury the law has given him a remedy by a special action on the case; and he may also have an action against the servant for the nonperformance of his agreement. But, if the new master was not apprised of the former contract, no action lies against him unless he refuses to restore the servant upon demand.' Bl. Com. bk. 2, 142.

"I deem it useless to occupy space by quotation from other text-books and decisions to prove the doctrine above stated. They all lay down the law to the same effect. 2 Kinkead, Torts, § 457; 3 Page, Contr. §§ 1326, 1327; 11 Am. St. Rep. 378, 474, notes; Schouler, Dom. Rel. § 487; Moran *v.* Dunphy, 177 Mass. 485, 52 L. R. A. 115, 83 Am. St. Rep. 289, 59 N. E. 125; Bowen *v.* Hall, L. R. 6 Q. B. Div. 333; Walker *v.* Cronin, 107 Mass. 555; Quinn *v.* Leathem (1901), A. C. 495; Taff Vale R. Co. *v.* Amalgamated Soc. (1901), A. C. 426. Hammon on Contracts, § 350,

says: 'The duty to respect the contractual tie so far as not to interfere with it rests upon all the world. Thus it is everywhere agreed that it is an actionable wrong to entice away a man's servant from his employment. Independently of any right to sue the servant for breach of the contract of employment, the master may hold the guilty person liable in damages for thus wrongfully inducing the servant to sever the relation. Many courts, indeed go further, and lay down the broad principle that a man who justifiably induces one of two parties to a contract to break it, intending thereby to injure the other or to obtain a benefit for himself, does that other a wrong, for which he must respond in damages.'

"The first count of the declaration alleges that the company is owner and operator of a coal mine, and was engaged on the 8th day of August, 1901, in the business of mining coal from the mine; that, in order to carry on the business, it was necessary for the plaintiff to employ, and it did employ, a large number of men to work in the mine, who were engaged in the company's service in working the mine and loading coal on railroad cars for shipment to parties with whom the plaintiff had contracts to furnish coal; that the defendants, well knowing these facts, but contriving and wickedly and maliciously intending to injure the plaintiff in its business, unlawfully, wrongfully, maliciously, without justifiable cause, without the consent and against the will of the plaintiff, molested, obstructed, and hindered the plaintiff in its said business 'by wilfully, wrongfully, and maliciously persuading, inducing, enticing, and procuring said servants of the plaintiff, employed as aforesaid, to absent themselves and depart from the plaintiff's service'; that on pretext, and by reason of such persuasion, enticement, and procuration, the said servants on the date aforesaid, without license and against the will and consent of the plaintiff, wrongfully absented themselves and departed from said service, and continued to do so; that the plaintiff was unable to employ other servants to work in its mine in the place of the servants so enticed away, and was

thereby prevented from prosecuting and carrying on its business as extensively and profitably as it could and would have done had not its servants been induced and enticed by the defendants to quit its service. The first count does not, in words, state an express contract for service between employer and employe. By the language used in the books a contract must exist. This count says the miners were 'employed' by the plaintiff and in actual service. *Now, if the law gives action for enticement of a servant, it is not conceivable that a third person can maliciously entice away a lot of employes simply because there was no contract fixing term of service. The relation of master and servant exists. In such case there is a contract recognized by law, an implied contract by which the employe can recover for his service. By entering such service the employe agrees, contracts, to work.* IT IS NO DIFFERENCE THAT HE CAN QUIT WHEN HE PLEASES."

Id., 5 L. R. A. (N. S.) 1094–1101.

VII.

FREEDOM OF CONTRACT GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES AS CONSTRUED BY THIS COURT.

The Fifth Amendment to the Constitution of the United States contains this clause:

"Nor [shall any person] be deprived of life, liberty, or property, without due process of law."

9 F. S. A., p. 288.

"A similar clause, as an inhibition on the States, is contained in the Fourteenth Amendment."

Note 1, 9 F. S. A., p. 288.

On page 289 of 9 F. S. A., it is said of the foregoing language of Amendment Five:

"This Amendment only announces and reaffirms the ancient principles of the common law, and prevents them

from being unjustly invaded by the power of the federal government."

North Carolina *v.* Vanderford, (1888) 35 Fed. Rep. 282.

On page 290, 9 F. S. A., it is said that this provision of the Fifth Amendment has application to corporations as well as to natural persons.

"VI. Application to Corporations.—From the nature of the prohibitions in this amendment it would seem, with the exception of the last clause, as though they would only apply to natural persons. No others can be witnesses; no others can be twice put in jeopardy of life or limb, or compelled to be witnesses against themselves; and therefore it might be said with much force that the word "person," there used in connection with the prohibition against the deprivation of life, liberty, and property without due process of law, is in like manner limited to a natural person. But such has not been the construction of the courts. A similar provision is found in nearly all of the State constitutions; and everywhere, and at all times, and in all courts, it has been held, either by tacit assent or express adjudication, to extend, so far as their property is concerned, to corporations. And this has been because the property of a corporation is in fact the property of the corporators. To deprive the corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value."

Railroad Tax Cases (1882), 13 Fed. Rep. 746. *See also* Santa Clara County *v.* Southern Pac. R. Co. (1883), 18 Fed. Rep. 389, affirmed on other grounds (1886), 118 U. S. 394.

> "This amendment contains a prohibition upon the Government of the United States, similar to the one in the Fourteenth Amendment against the action of the States, declaring that no person shall be deprived

> of life, liberty, or property, without due process of law; and it has been assumed, if not expressly held, that the provision protects the property of corporations against confiscation equally with that of individuals. San Mateo County *v.* Southern Pac. R. Co. (1882), 13 Fed. Rep., 151."
>
> 9 F. S. A., 290, VI.

The word "liberty" as defined in State law. The word "liberty" as an element in that famous trilogy of rights defined by the formula, "life, liberty and property," means far more than "the rights of the citizen to be free from the mere physical restraint of his person": it covers and protects many rights embraced within the guaranty given by the word "property" in the same formula. Turning to the States as the first source of interpretation we find that in State *v.* Goodwill, 33 West Virginia, 179, the Court said: "The vocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property under the provisions of the Constitution. People *v.* Otis, 90 N. Y., 48. The right to use, buy and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all contracts." In State *v.* Stewart, 59 Vermont 273, the Court said: "The principle upon which the cases, English and American, proceed, is, that every man has the right to employ his talents, industry and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer,

the equipment of the farmer, the investments of commerce, are all in equal sense property." In Braceville Coal Company *v.* People, 147 Illinois 66, the Court said: "the right of property preserved by the Constitution, is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt. Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage. And, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty." See also Matter of Jacobs, 98 New York 98, People *v.* Marx, 99 New York 377. In Young's Case *v.* Virginia, 101 Virginia 853, the Court said: "The word 'liberty', as used in the Constitution of the United States, and of the several States, is deemed to embrace the right of a citizen to be free in the employment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purpose above mentioned."

The word "liberty" as defined in Federal law. In his concurring opinion in Butchers' Union, etc., Co. *v.* Crescent City, etc. Co. 111 U. S. 746, Justice Field said: "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been

more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: 'We hold these truths to be self-evident,' that is, so plain that their truth is recognized upon their mere statement, 'that all men are endowed'; not by edicts of Emperors or decrees of Parliament or Acts of Congress, but 'by their Creator, with certain inalienable rights,' that is, rights which cannot be bartered away or given away or taken away except in punishment of crime, 'and that among these are life, liberty and the pursuit of happiness, and to secure these,' not grant them but secure them, 'governments are instituted among men deriving their just powers from the consent of the governed.'

Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment." The same great judge in his dissenting opinion in the Slaughter-House Cases, 16 Wall. 36, said that the Fourteenth Amendment "was intended to give practical effect to the Declaration of 1776 of inalienable rights, rights which are the gift of the Creator; which the law does not confer, but only recognizes." In his dissenting opinion in that case, Justice Swayne said: "Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty." In Allgeyer *v.* Louisiana, 165 U. S. 578, the Court said: The "liberty" mentioned in the Fourteenth Amendment "means not only the right of the citizen to be free from the mere physical restraint of his

person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned." In Adair *v.* United States, 208 U. S. 161, the Court said: "The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based, is repugnant to the Fifth Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor"; in Lochner *v.* New York, 198 U. S. 45, which involved the validity of a State enactment prescribing certain maximum hours for labor in bakeries, and which made it a misdemeanor for an employer to require or permit an employe in such an establishment to work in excess of a given number of hours each day, the Court said: "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. Allgeyer *v.* Louisiana, 165 U. S. 578. Under that provision no State can deprive any person of life, liberty or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this Amendment, unless there are circumstances which exclude the right"; and the Court

added "the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor."

Interference with that Contract Right.

Angle, plaintiff's intestate, was a railroad contractor, and had contracted to do certain work in constructing the line of the Chicago, Portage, and Superior Railway Company, which had certain land granted to it, said to be worth about $4,000,000. The Chicago, St. P., M. & O. R. Co. wanted to stop the construction of the Chicago, Portage, and Superior Railway Company and to acquire the land which had been granted. While Angle was prosecuting his work in building the line, and had 1,600 men employed, and the completion of the line on or before May 5, 1882, was an assured fact, unless Angle was interfered with, the defendant company conspired with other parties to wrest the land grant from the Chicago, Portage, and Superior Railway Company, and to that end prevent the completion of the contract by Angle and the construction of the road. The Chicago, St. P., M. & O. R. Co. got control of the stock of the Chicago, Portage, and Superior Railway Company, and then notified the engineers and Angle that the company had been sold out, and advised them to protect themselves, because the company could not pay or protect them. As a result the several engineering corps were broken up, the engineers left the work, all the tools, material, and other personal property belonging to the contractor and to the company were attached at suit of the merchant creditors, and the 1,600 laborers dispersed and went elsewhere for work.

Following that, the Chicago, St. P., M. & O. R. Co., and those it conspired with, succeeded in getting the Legislature of Wisconsin to pass an act forfeiting and

revoking the land grant to the Chicago, Portage, and Superior Railway Company and bestow it on the Chicago, St. P., M. & O. R. Co.

After the contract with Angle was thus broken, he commenced an action at law against the Chicago, Portage, and Superior Railway Company. He died while the suit was pending, and suit was revived in the name of his administratrix. The plaintiff recovered judgment in that suit for more than $200,000.00, an execution was issued and returned nulla bona, and thereupon the bill in this case was filed to reach the land grant in the hands of the Chicago, St. P., M. & O. R. Co.

This Court held:

> "If one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrong-doer."

And further held that the defendant company had wrongfully interfered and brought about a breach of the contract which Angle had with the Chicago, Portage, and Superior Railway Company, and that the land which the Portage Company first had, and which had been secured by the Omaha Company was liable for the judgment which had been obtained against the Chicago, Portage, and Superior Railway Company.

The Court, in announcing the above doctrine, based its conclusion in part upon the decisions in the cases of Lumley *v.* Gye, *supra*, Bowen *v.* Hall, *supra*, and Walker *v.* Cronin, 107 Mass. 555, in which latter case a manufacturer was held entitled to maintain an action against a third party, who, with the unlawful purpose of preventing him from carrying on his business, wilfully induced many of his employes to leave his employment, whereby

the manufacturer lost their services, and the profits and advantages which he would have derived therefrom.

> Angle *v.* Chicago, St. Paul, Minneapolis, and Omaha R. Co. (1894). 151 U. S. 1. 38 L. ed. 55. 14 S. C. 240.

Bitterman was engaged in the business of scalping railroad tickets. The Louisville & Nashville Railroad Company issued non-transferable excursion tickets at reduced rates. Bitterman, with knowledge of their non-transferability, bought up tickets and resold them. The purchaser, when required to identify himself, personated the original purchaser, and the Railroad Company was deprived of the additional revenue it would have obtained had the second purchaser purchased a full rate ticket, as he doubtless would have done had it not been for Bitterman's scalping business.

The railroad had given notice of its intention to issue a certain excursion reduced rate ticket, and in order to stop Bitterman from scalping those tickets it applied to the Circuit Court of the United States for the Eastern District of Louisiana for an injunction.

The Supreme Court of the United States held on appeal that, carrying on the business of purchasing and selling non-transferable reduced-rate excursion railroad tickets for profit, to the injury of the Railroad Company issuing such tickets, is an actionable wrong, although actual malice in the sense of personal ill will may not exist.

And Mr. Justice White, in deciding the case, referred to and approved the doctrine announced in the case of Angle *v.* Chicago, St. P., M. & O. R. Co., *supra*, that an actionable wrong is committed by one "who maliciously interferes in a contract between two parties, and induces one of them to break that contract, to the injury of the other."

Mr. Justice White said:

> "We deem it unnecessary to restate the grounds upon which the ruling in the Angle case was rested, or to trace the evolution of the principle in that case announced, because of the consideration given to the subject in the Angle case, and the full reference to the authorities which was made in the opinion in that case."

Bitterman *et al. v.* Louisville & Nashville Railroad Company, (1907). 207 U. S. 205. 52 L. ed. 171. 28 S. C. 91.

The West Virginia Transportation Company was engaged in transporting petroleum oil by means of pipe lines and tank cars from Volcano and vicinity to Parkersburg, and in storing oil, and had expended $300,000.00 in acquiring lands, rights of way, etc., and had built up a large business. The Standard Oil Company determined to force the West Virginia Transportation Company out of business, and thereupon conspired with the West Virginia Oil Company to prevent the West Virginia Transportation Company from continuing its business, and from transporting oil through its pipe lines by means of its tank cars and from storing oil. The West Virginia Oil Company was organized to purchase and operate what was known as the property of the West Virginia Oil and Land Company, a territory which was served by plaintiff's pipe lines, and from which it had transported oil for compensation for several years. The Standard Oil Company acquired stock in the West Virginia Oil Company and dictated its management. The Standard Oil Company caused the construction of the Eureka Pipe Line to serve the same territory. As a result the business of the plaintiff was ruined. In holding the Standard Oil Company liable for the damage, the Court held:

"If one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable."

West Virginia Transportation Company *v.* Standard Oil Company (1900). 50 W. Va. 611. 40 S. E. 491. 56 L. R. A. 804. 88 Am. St. Rep. 895.

The Thacker Coal & Coke Company, engaged in mining coal in West Virginia, brought suit in the Circuit Court of Mingo County against Burke and others, representing the United Mine Workers of America, for enticing the company's servants from the company's service. The Thacker Coal & Coke Company was running non-union, and the purpose of the defendants was to require the company to run its mine union. In the lower Court the declaration upon demurrer was dismissed, and the company sued out a writ of error. The Supreme Court reversed the lower Court, and held:

"(1) One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor; (2) If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person to the injury of that third person, it is actionable; (3) Persons who conspire to induce others to break a valid contract between other persons are liable to action therefor."

Thacker Coal & Coke Company *v.* Burke *et als.*, (1906). 59 W. Va. 253. 53 S. E. 161. 5 L. R. A. (N. S.) 1091. 8 A. & E. Ann. Cas. 885.

Freedom of contract denied by State law making it a crime for an employer to impose a certain condition on employe. In Coppage *v.* Kansas, 236 U. S. 1, it was held that the freedom of contract guaranteed by the 14th Amendment was denied by a law of that State, as construed and applied by its highest court, imposing criminal punish-

ment upon an employer or his agent for having prescribed as a condition upon which one might secure employment (terminable at will), under, or remain in the service of such employer that the employe (free to exercise a voluntary choice) should enter into an agreement not to become or remain a member of any labor organization while so employed. After carefully analyzing and comparing the judgment in Adair *v.* United States, 208 U. S. 161, the Court said:

> "When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employe. To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other: For 'it takes two to make a bargain.' Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the

thing, can be enjoyed only by being exercised, and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct.

"So much for the reason of the matter, let us turn again to the adjudicated cases.

"The decision in the Adair Case is in accord with the almost unbroken current of authorities in the State courts. * * *

"In Coffeyville Vitrified Brick & Tile Co. *v.* Perry, 69 Kan. 297, 66 L. R. A. 185, 76 Pac. 848, 1 Ann. Cas. 936, the Court had under consideration chapter 120 of the Laws of 1897 (Gen. Stat. 1901, §§ 2425, 2426), which declared it unlawful for any person, company, or corporation, or agent, officer, etc., to prevent employes from joining and belonging to any labor organization, and enacted that any such person, company, or corporation, etc., that coerced, or attempted to coerce employes by discharging or threatening to discharge them because of their connection with such labor organization should be deemed guilty of a misdemeanor, and upon conviction subjected to a fine, and should also be liable to the person injured in punitive damages. It was attacked as violative of the 14th Amendment, and also of the Bill of Rights of the State Constitution. The Court held it unconstitutional, saying: 'The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the

employer and employe are equal. Any act of the legislature that would undertake to impose on an employer the obligation of keeping in his service one whom, for any reason, he should not desire, would be a denial of his constitutional right to make and terminate contracts and to acquire and hold property. Equally so would be an act the provisions of which should be intended to require one to remain in the service of one whom he should not desire to serve. The business conducted by the defendant was its property, and in the exercise of this ownership it is protected by the Constitution. It could abandon or discontinue its operation at pleasure. It had the right, beyond the possibility of legislative interference, to make any contract with reference thereto not in violation of law. In the operation of its property it may employ such persons as are desirable, and discharge, without reason, those who are undesirable. It is at liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restrictions can be imposed upon the lawful exercise of these rights."

Coppage *v.* Kansas (1914), 236 U. S. 1, 59 L. ed. 441, *448*, *449*, *450*.

If the Legislature may not make such restrictions, much less may the United Mine Workers of America interfere with the lawful exercise of these rights by the plaintiff.

"In five other States the courts of last resort have had similar acts under consideration, and in each instance have held them unconstitutional. In State *v.* Julow (1895), 129 Mo. 163, 29 L. R. A. 257, 50 Am. St. Rep. 443, 31 S. W. 781, the Supreme Court of Missouri dealt with an act (Missouri Laws, 1893, p. 187) that forbade employers, on pain of fine or imprisonment, to enter into any agreement with an employe requiring him to withdraw from a labor union or other lawful organization, or to refrain from joining such an organization, or to 'by any means

attempt to compel or coerce any employe into withdrawal from any lawful organization or society.' In Gillespie *v.* People (1900), 188 Ill. 176, 52 L. R. A. 283, 80 Am. St. Rep. 176, 58 N. E. 1007, the Supreme Court of Illinois held unconstitutional an act (Hurd's Stat. 1899, p. 844) declaring it criminal for any individual or member of any firm, etc., to prevent or attempt to prevent employes from forming, joining, and belonging to any lawful labor organization, and that any such person 'that coerces or attempts to coerce employes by discharging or threatening to discharge them because of their connection with such lawful labor organization' should be guilty of a misdemeanor. In State *ex rel.* Zillmer *v.* Kreutzberg (1902), 114 Wis. 530, 58 L. R. A. 748, 91 Am. St. Rep. 934, 90 N. W. 1098, the Court had under consideration a statute (Wisconsin Laws, 1899, chap. 332) which, like the Kansas act now in question, prohibited the employer or his agent from coercing the employe to enter into an agreement not to become a member of a labor organization, as a condition of securing employment or continuing in the employment, and also rendered it unlawful to discharge an employe because of his being a member of any labor organization. The decision related to the latter prohibition, but this was denounced upon able and learned reasoning that has a much wider reach. In People *v.* Marcus (1906), 185 N. Y. 257, 7 L. R. A. (N. S.) 282, 113 Am. St. Rep. 902, 77 N. E. 1073, 7 Ann. Cas. 118, the statute dealt with (N. Y. Laws, 1887, chap. 688), as we have already said, was in substance identical with the Kansas act. These decisions anteuated Adair *v.* United States. They proceed upon broad and fundamental reasoning, the same in substance that was adopted by this Court in the Adair Case, and they are cited with approval in the opinion (208 U. S. 175). A like result was reached in State *ex rel.* Smith *v.* Daniels (1912), 118 Minn. 155, 136 N. W. 584, with respect to an act that, like the Kansas statute, forbade an employer to require an employe or person seeking employment, as a condition of such employment,

to make an agreement that the employe would not become or remain a member of a labor organization. This was held invalid upon the authority of the Adair Case. And see Goldfield Consol. Mines Co. *v.* Goldfield Miners' Union, 159 Fed. 500, 513."

Coppage *v.* Kansas (1914), 236 U. S. 1, 59 L. ed. 441, *450, 451.*

Thus sustained, both by reason and authority, the Court in Coppage *v.* Kansas, held:

"that the Kansas act of March 13, 1903, as construed and applied so as to punish with fine or imprisonment an employer or his agent for merely prescribing, as a condition upon which one may secure employment under or remain in the service of such employer, that the employe shall enter into an agreement not to become or remain a member of any labor organization while so employed, is repugnant to the 'due process' clause of the 14th Amendment, and therefore void."

Employment at the will of the parties does not make it employment at the will of others. The statement made in Coppage *v.* Kansas, 236 U. S. p. 21, that its principles apply to an employment terminable at will, suggests a reference by us to the later case of Truax, Sr. *et al.*, *v.* Raich, 239 U. S. 33.

In that case the Court said:

"It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. *The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority*

the unjustified interference of third persons is actionable although the employment is at will. Moran *v.* Dunphy, 177 Mass. 485, 487; Berry *v.* Donovan, 188 Mass. 353; Brennan *v.* United Hatters, 73 N. J. Law, 729, 743; Perkins *v.* Pendleton, 90 Me. 166; Lucke *v.* Clothing Cutters' & T. Assembly, 77 Md. 396; London Guar. & Acc. Co. *v.* Horn, 101 Ill. App. 355, 206 Ill. 493; Chipley *v.* Atkinson, 23 Fla. 300; Blumenthal *v.* Shaw, 23 C. C. A. 290, 77 Fed. 954."

In this connection reference should again be made to the very recent case of Larkin, *et al.*, *v.* Long (1915). A. C. 814–846, at pp. 829, 830. H. L. (I.), in which it was said:

> "Every person has a right under the law as between himself and his fellow subjects, to full freedom in disposing of his own labor or his own capital, according to his own will. It follows that every person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right, which can be made compatible with the exercise of similar rights by others. But it is equally true that the members of trade unions are bound to respect the right of other workmen to work for whom they please, on what terms and at what times they please, so long as they do nothing illegal, and are also bound to respect the right of an employer to undertake any work he pleases to undertake, and to employ what workmen he chooses, on whatever terms they both agree to, unless there is something unlawful in his action."

VIII.

RIGHT OF PETITIONER TO INJUNCTIVE RELIEF.

In the Flaccus case, heretofore cited, the Court stated the precise issue before it in these terms: "This is not a controversy between the employer and his employes, *but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor,*

and seeking to induce the apprentices of the employer to violate the terms of their indentures with him. No question is here raised by the employer as to what his employes may or may not do, and the complaint sets forth no misconduct by them for which relief is asked." In speaking of such "relief" the Court said: "that the interference was injurious to him (the employer), and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, *and justice demands that specific relief be furnished in a court of equity.*" So in this case the controversy is not "between the employer and his employes, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor," who are seeking to induce the employes of petitioner to violate the terms of their contract with petitioner. As the damages resulting from such an injury in this case, as in the Flaccus case, "are incapable of ascertainment at law, * * * justice demands that specific relief be furnished in a court of equity." And so in the Bitterman case, 207 U. S. 205, this Court said: "Concluding, as we do, that the commission of a legal wrong by the defendants was disclosed by the case as made, we are brought to consider the several contentions concerning the jurisdiction of the court and its right to afford relief. * * * Besides, the substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but by the value of the business to be protected and the rights of property, which the complainant sought to have recognized and enforced. * * * The contention that, though it be admitted, for the sake of argument, that the acts charged against the defendant 'were wrongful, tortious, or even fraudulent,' there was no right to resort to equity because

there was a complete and adequate remedy at law to redress the threatened wrongs when committed, is, we think, also devoid of merit. * * * The circuit court of appeals decided that error had been committed in refusing to grant an injunction against dealing in non-transferable tickets to be issued in the future, and directed that the decree below be enlarged in that particular. It is insisted that the circuit court of appeals erred in awarding an injunction as to dealings 'in non-transferable tickets that may be hereafter issued * * * since it thereby undertook to promulgate' a rule applicable to conditions and circumstances which have not yet arisen, and to prohibit 'the petitioners from dealing in tickets not *in esse* * * * and is, therefore, violative of the most fundamental principles of our government.' But when the broad nature of this proposition is considered, it but denies that there is power in a court of equity in any case to afford effective relief by injunction. Certain is it that every injunction, in the nature of things, contemplates the enforcement, as against the party enjoined, of a rule of conduct for the future as to the wrong to which the injunction relates. Take the case of trespasses upon land where the elements entitling to equitable relief exist. See Slater *v.* Gunn, 170 Mass. 509, and cases cited. It may not be doubted that the authority of a court would extend, not only to restraining a particular imminent trespass, *but also to prohibiting like acts for all future time.* The power exerted by the court below which is complained of, was in no wise different. * * * The action of the circuit court of appeals, therefore, in causing the injunction to apply not only to the illegal dealings as to the then outstanding tickets, but to like dealings as to similar tickets which might be issued in the future, was but the exertion by the court of its power to restrain the continued commission against the rights of the com-

plainant in the future of a definite character of acts adjudged to be wrongful."

An inspection of the record will show that the injunction issued in the case at bar conforms, in every particular, with the foregoing rule as this court has defined it.

We claim that defendants are not plaintiff's competitors. And we also claim that if they are in any sense competitors, they are not entitled to bring about breaches of contracts which plaintiff has with its employes. *Even competition does not admit of that.*

Illustrative of that branch of the law, we cite the case of—

> The American Law Book Company *v.* The Edward Thompson Company. (Supreme Court, New York, 1903). 41 Misc. 396.

Bischoff, J., in that case said:

> "By preliminary injunction, in an action for injunctive relief, the plaintiff seeks to restrain the defendant from making agreements with subscribers to the plaintiff's encyclopedia, whereby the defendant undertakes to indemnify these subscribers against claims for damages for their breach of contract in declining to receive and pay for the plaintiff's books, and from conducting and defraying the expenses of the defense to any action brought against the subscriber by the plaintiff.
>
> "The complaint alleges that these agreements have been systematically offered by the defendant to the plaintiff's subscribers for the purpose of causing them to subscribe to the defendant's encyclopedia and to repudiate their subscriptions for the work published by the plaintiff, and the allegations further disclose the making of intentional misrepresentations by the defendant to these subscribers, as to the relative merits of the encyclopedias, for the purpose of inducing the breach of contract.
>
> "**The defendant** admits the making of the agreements in question, but **asserts that the plaintiff has**

no remedy in equity upon the allegations of the complaint, the contention being that the plaintiff has his remedy at law for each contract broken; that the party to that contract has the right to break it and pay damages, and that, what the party can do, another person may ask him to do without restraint by injunction. It is also argued that the cases in which an injunction has been granted to prevent the solicitation of a breach of contract are found to have involved only contracts for personal services, and that there is no precedent for such an injunction as the plaintiff seeks. If there be no exact precedent for this injunction, none is needed. The complaint avers, and the affidavits support the averment, that the defendant is engaged in an attempt to obtain business which the plaintiff has secured, having no regard to fairness of competition, but with resort to trick and device.

"Whether the subscribers are in each instance actually led by the defendant's misrepresentations to break the particular contracts is not important, and is not an essential averment of the complaint. Intentional false statements, made with a view to obstruct the plaintiff's business and to divert it to the defendant, are charged, and the solicitation of the subscriber's breach of contract is but a more active step in the same scheme of unfair competition.

"The fraudulent intent followed to fruition in the actual inducement of persons dealing with the plaintiff to break their contracts for the intended benefit of the defendant and to the intended injury of the plaintiff is the basis of the defendant's wrong—a wrong which our system of remedial justice recognizes as the subject of relief. Rice *v.* Manley, 66 N. Y. 82; Rich *v.* N. Y. C. & H. R. R. Co., 87 Id. 392. And see Bowen *v.* Hall, 6 Q. B. Div. 333.

"That an action for damages would not afford an adequate remedy is obvious. The loss of business and the injury to business reputation resulting from the defendant's acts of obstruction, and from the consequent litigation between the plaintiff and its

delinquent subscribers, could not be estimated nor proven with any degree of certainty for the purposes of a recovery; nor could the plaintiff properly estimate the additional burden of the future litigation with subscribers, whose defense would (as is to be inferred from the past) be conducted by the defendant at great pains and expense, bearing no relation to the amount of the claim, but solely in the interest of obstruction and for advertising purposes.

"The invasion of a legal right being apparent and the inadequacy of relief at law being clear, a case for injunctive relief is made out, and, indeed, direct authority for an injunction upon a very similar state of facts is not wanting. Stoddard *v.* Key, 62 How. Pr. 137."

For an additional injunction labor case applicable to these defendants as intermeddlers, we cite—

The W. P. Davis Machine Company *v.* Harry Robinson, individually, and as President, etc., *et al.* (Supreme Court, New York, 1903). 41 Misc. 329. 84 N. Y. Supp. 837.

Nash, J., said (41 Misc. 330):

"This action is brought to restrain the defendant Robinson and the Rochester City Lodge No. 93, of the International Association of Machinists, its officers, agents, members and servants, from interfering with the business of the plaintiff."

And again on the same page 330, said:

"The allegations of the complaint supported by affidavits upon which the preliminary injunction was granted are to the effect that, in March last, the defendant union, through its executive committee and its business agent, presented to the plaintiff for signature a contract which, among other things, provided that the plaintiff would be permitted to employ only machinists in good standing with the International Association of Machinists; and that no piece

work or premium system, a system which was in vogue in the plaintiff's factory, should be allowed. The plaintiff refused to sign the proposed contract, and on the eleventh day of April the defendant union ordered a strike and ordered all members of its Lodge No. 93, who were in the employment of the plaintiff, to leave its factory in a body, and in obedience to such order the members of the defendant union on that day quit the plaintiff's employment. That at that time the plaintiff had in its employ over one hundred men, some sixty of whom were members of the defendant union. That the greater portion of the other employes of the plaintiff, who were not members of the union, left with the strikers. That the plaintiff thereafter, with such men as could be secured from Rochester and other places, and such of its employes as remained, has since attempted to continue its business."

Nash, J., further said (41 Misc. 332):

"The defendants concede that prior to the granting of the injunction members of the union were stationed in and about the plaintiff's factory, morning, noon and night, when men employed by the plaintiff were going and coming from their work, for the purpose of persuading, and that they did persuade and endeavor to get the persons employed by the plaintiff, who had taken the places of the strikers, to leave the employment of the plaintiff. And it is insisted upon this motion that defendants have that right, and that they may by advice and persuasion induce the plaintiff's employees to leave the employment of the plaintiff. In other words, deprive the plaintiff of the means of carrying on its business, unless it accedes to the demands of the defendant. There is no question of wages involved in the strike. The plaintiff was paying its employes full union wages. The strike was ordered because the plaintiff refused to sign an agreement that it would not employ any but members of the union, and refuse to discard the premium system in its factory.

"It has not yet been held by the Courts of our State and I am not prepared to hold, that a business carried on in a lawful way may be so interfered with, merely because its owner refuses the dictation of the labor union as to the method in which the business shall be conducted or carried on. What means when assembled and co-operating together persons employed in any calling, trade or handicraft, may adopt, for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, under the provisions of the Penal Code, has not been fully defined. In one respect it has been found necessary to modify the provisions of the Code as to the right impliedly given. An amendment has been enacted which provides that a person who, either by himself, or with another, obstructs or annoys a member of the National Guard, or his employer, in respect of his trade, business or employment, because said member of said National Guard is such member, is guilty of a misdemeanor.

"In the case of Curran *v.* Galen, 152 N. Y. 33, it is held that, 'The organization or co-operation of workingmen is not of itself against any public policy, and must be regarded as having the sanction of law, when it is for such legitimate purpose as that of obtaining an advance in the rate of wages or compensation, or of maintaining such rate.' "

The Court in rendering its decision there said:

" 'In the general consideration of the subject, it must be premised that the organization, or the co-operation, of workingmen, is not against any public policy. Indeed, it must be regarded as having the sanction of law, when it is for such legitimate purposes as that of obtaining an advance in the rate of wages or compensation, or of maintaining such rate. Penal Code, § 170. It is proper and praiseworthy, and, perhaps, falls within that general view of human society, which perceives an underlying law that men should unite to achieve that which each by himself

cannot achieve; or can achieve less readily. But the social principle which justifies such organizations is departed from, when they are so far extended in their operation as either to intend, or to accomplish, injury to others. Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict, that freedom, and, through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our government and the nature of our institutions.'

" 'In the course of its opinion the Court cited with approval the case of Regina *v.* Rowlands, 17 Ad. & El. (N. S.) 671, where the Court of Queen's Bench, upon motion for a new trial for misdirection of the jury by Mr. Justice Erle, below, approved of his charge, in which he instructed the jury that 'a combination for the purpose of injuring another is a combination of a different nature, directed personally against the party to be injured, and the law allowing them to combine * * * gives no sanction to combinations which have for their immediate purpose the hurt of another. The rights of workingmen are conceded; but the exercise of free will and freedom of action within the limits of the law is also secured equally to the masters. The intention of the law is, at present. to allow either of them to follow the dictates of their own will with respect to their own actions, and their own property, and either, I believe, has the right to study to promote his own advantage, or to combine with others to promote their mutual advantage.'

"The distinction is plain. The acts of persons combining and confederating for the purpose of increasing their wages may be lawful, while combinations and acts which have for their objects and purpose

injury merely to the business of another, without any pecuniary advantage to the persons so combining may be unlawful.

"The English case is in point. There the question involved was of the right by combination to prevent certain workingmen from working for their employers, and thereby to compel the latter to make an alteration in the mode of conducting their business, precisely the question here, the object of the defendant being to compel the plaintiff to change its method of business in such a manner as will conform to the requirements of the defendant union not in the matter of wages. It seems that the common-law right of action for enticing away from the master a servant has not been taken away, unless possibly for the purpose of obtaining an advance in or maintaining the rate of wages; hence when the rights of the master are unlawfully interfered with and there is not an adequate remedy at law, equity will take jurisdiction by injunction."

"The jurisdiction of a court of equity to enjoin interferences with property rights is not destroyed by the fact that they are accompanied by or are violations of the criminal law."

In re Debs *et al.* (1895). 158 U. S. 564. 39 L. ed. 1092. 15 S. C. 900.

Actions at law against the defendants for damages would be inadequate; a multiplicity of suits would be required.

Actions at law against employes who might break their contracts and join the Union would also be inadequate; and a multiplicity of suits against them would also be required.

IX.

WHEN IT IS THE DUTY OF A FEDERAL COURT SITTING IN A STATE TO ADOPT THE CONSTRUCTION BY THE HIGHEST COURT OF THAT STATE OF A CONTRACT MADE AND TO BE PERFORMED WITHIN IT.

Since its foundation it has been the settled law of this Court that a Federal Court sitting in a State must—in construing contracts made and to be performed within it, "when not controlled by the Constitution, laws, or treaties of the United States, or by the principles of the commercial or mercantile law or of general jurisprudence, of national or universal application"—adopt the construction put upon such contracts by the decisions of the highest court of such State. After redefining that doctrine in Hartford Fire Ins. Co. *v.* Chicago, M. & St. P. R. Co., 175 U. S. 91, 100, this Court rested it upon Elmendorf *v.* Taylor, 10 Wheat. 152, 159; Bank of Augusta *v.* Earle, 13 Pet. 519, 594; Vidal *v.* Philadelphia, 2 How. 127, 197; Bucher *v.* Cheshire R. Co., 125 U. S. 555, 581; Detroit *v.* Osborne, 135 U. S. 492, 498, 499; Union Nat. Bank *v.* Bank of Kansas City, 136 U. S. 223, 235; Etheridge *v.* Sperry, 139 U. S. 266, 276, 277; Gardner *v.* Michigan C. R. Co., 150 U. S. 349, 357; Bamberger *v.* Schoolfield, 160 U. S. 149, 159; Missouri, K. & T. Trust Co. *v.* Krumseig, 172 U. S. 351; Sioux City Terminal R. & Warehouse Co. *v.* Trust Co. of N. A., 173 U. S. 99. In Vidal *v.* Philadelphia, 2 How. 127, 197, this Court, in accepting the construction put upon a will by the Court of Pennsylvania, said: "But the very point of the positive existence of the law of charities in Pennsylvania has been (as already stated) fully recognized and enforced in the State courts of Pennsylvania, as far as their remedial process would enable these courts to act. This is abundantly established in the cases cited at the bar, and especially by the case of Witman *v.* Lex (17

Serg. & Rawle. 88), and that of Sarah Zane's will, before Mr. Justice Baldwin and Judge Hopkinson. In the former case, the Court said 'that it is immaterial whether the person to take be *in esse*, or not. * * *' *The case, then, according to our judgment, is completely closed in by the principles and authorities already mentioned, and is that of a valid charity in Pennsylvania, unless it is rendered void by the remaining objection which has been taken to it.*" That case came here by appeal from the Circuit Court of the United States, sitting as a court of equity, for the Eastern District of Pennsylvania. Under the certiorari granted in this case, this Court has the same control over this record that it had in Vidal *v.* Girard, and the same obligation to enforce the construction of the contract invoked *as fixed by the decision of the highest court of West Virginia.*

In Burgess *v.* Seligman, 107 U. S. 20, this Court, in announcing the same principle, said: "Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and Statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is." This Court then added that "When contracts and transactions have been entered into and rights have accrued thereon, under a particular state of the decisions, *or when there has been no decision of the State tribunals*," the Federal Courts, "even in such cases, for the sake of harmony and to avoid confusion * * * will lean towards an agreement of views with the State courts if the question seems

to them balanced with doubt." In Bucher *v.* Cheshire R. Co., 125 U. S. 555, this Court said: "It may be said generally that whenever the decisions of the State courts relate to some law of a local character, which may have become established by those courts, or has always been a part of the law of the State, *that the decisions upon the subject are usually conclusive*, and always entitled to the highest respect of the Federal Courts. The whole of this subject has recently been very ably reviewed in the case of Burgess *v.* Seligman, 107 U. S. 20. *Where such local law or custom has been established by repeated decisions of the highest courts of a State it becomes also the law governing the courts of the United States sitting in that State.*" In Union National Bank *v.* Bank of Kansas City, 136 U. S 223, involving the construction of a deed of trust made under the law of Missouri, it was said: "The question of the construction and effect of a statute of a State, regulating assignments for the benefit of creditors, is a question upon which the decisions of the highest court of the State, establishing a rule of property, are of controlling authority in the courts of the United States. Brashear *v.* West, 7 Pet. 608, 615; Allen *v.* Massey, 17 Wall. 351; Lloyd *v.* Fulton, 91 U. S. 479, 485; Sumner *v.* Hicks, 2 Black. 532, 534; Jaffray *v.* McGhee, 107 U. S. 361, 365; Peters *v.* Bain, 133 U. S. 670, 686; Jencks *v.* Quidnick Co. 135 U. S. 457. * * * In the present case there can be no doubt that the deed of trust, conveying the personal property of the partnership to secure the payment of its debts therein named and reserving in the clearest terms a right of redemption to the grantors, by providing that if they shall pay those debts the deed shall be void, as well as by authorizing the trustee to sell the property only in case of their failing to pay those debts or any part thereof for five days after they become payable, was, according to the settled course of decision in the courts

of the State of Missouri, a mortgage only, and not an assignment under the Statute relied on; and therefore, according to the decisions in Missouri, cited at the beginning of this opinion (no fraud being proved or suggested), an instrument which one partner had the inherent authority to bind the partnership by, although his co-partners did not join it." That case came to this Court by appeal from a decree of the Circuit Court of the United States for the Western District of Missouri; and because that Circuit Court followed the decisions of the highest court of that State, *as to the construction of the contract in question*, its decree was affirmed.

In Etheridge *v.* Sperry, Watt and Garver, 139 U. S. 266, it was held that each State has the right to determine for itself the validity and construction of a chattel mortgage executed therein, and this Court will accept the settled law of each State as decisive on that subject. In its opinion in that case, this Court said:

> "From these decisions and others running through a period of thirty years, there can be no doubt as to the settled law of the State, and as to the law established, as was said by the Supreme Court, in Meyer *v.* Gage, *supra*, mainly at least from a construction of the State statutes. Can such a settled construction be ignored by this Court, and the judgment of the highest court of the State be reversed on error in a matter depending partially at least upon the construction of State statutes? It would be strange, indeed, if this Court should adjudge that there was error on the part of the Supreme Court of a State in following its own rulings, uniform and undisturbed for a quarter of a century. *The matter is not one of purely general commercial law.*"

In Bamberger, Bloom & Co. *v.* Schoolfield, 160 U. S. 149, was involved the validity of a certain contract of sale of personal property; and the Court charged that

"the mere intention of the vendor to defraud his other creditors by giving a preference to one would not render the sale invalid."

This Court said:

> "The correctness of these instructions depends necessarily upon the law of Alabama as interpreted and construed by the Supreme Court of that State, whose rulings in this regard will be followed here. Union Nat. Bank *v.* Bank of Kansas City, 136 U. S. 233; Peters *v.* Bain, 133 U. S. 670. It was in consonance with this rule that in a given case we enforced the law of the State of Illinois (White *v.* Cotzhausen, 129 U. S. 329), and in another, that of the State of Iowa (Etheridge *v.* Sperry, 139 U. S. 267). The instructions given as above recited were in direct accord with the settled law of Alabama."

In Missouri, Kansas & Texas Trust Co. *v.* Krumseig, 172 U. S. 351, this Court said:

> "The question in Brine *v.* Hartford F. Insurance Co., 96 U. S. 627, was whether a State statute which allowed to the mortgagor twelve months to redeem, after a sale under a decree of foreclosure, and to his creditor three months after that, conferred a substantial right; and it was so held, and that such right of redemption after sale was as obligatory on the Federal Courts sitting in equity as on the State courts; and that their rules of practice must be made to conform to the law of the State so far as may be necessary to give full effect to the right. The opinion of the Court was delivered by Mr. Justice Miller, who said: * * *
>
> "'*And that all the laws of a State existing at the time a mortgage or any other contract is made, which affect the rights of the parties to the contract, enter into and become a part of it, and are obligatory on all courts which assume to give remedy on such contracts.*'"

In Sioux City Terminal R. & W. Co. *v.* Trust Company of North America, 173 U. S. 99 this Court said:

> "As the claim that the bonds were void is based on the statutory provisions above referred to, it

follows that we are compelled to primarily ascertain the meaning and operation of the State law. In making this inquiry we are constrained in that first place to inquire what construction has been placed upon the Iowa statute by the Supreme Court of the State; for it is an elementary principle that this Court in interpreting a State statute, will construe and apply it as settled by the Court of last resort of the State, and will, hence, only form an independent judgment as to the meaning of the State law when there was no binding construction of such State statute by the Court of last resort of the State. Nobles *v.* Georgia, 168 U. S. 398; First National Bank *v.* Chehalis County, 166 U. S. 440; Morley *v.* Lake Shore & M. S. Railway Co. 146 U. S. 166, and authorities there cited.

" * * * Whether, as an independent question, if we were enforcing the Iowa statute, we would decide that the issue of bonds by a corporation in excess of a statutory inhibition was not void, but merely voidable, need not be considered, since, as we have said, in applying an Iowa law, we follow the settled construction given to it by the Supreme Court of that State."

And in the case of the Baltimore & Ohio Southwestern Railway Company *v.* Voight (1900), 176 U. S. 498, *505*, 44 L. Ed. 560, *565*, 20 S. C. 385, Mr. Justice Shiras, in delivering the opinion of the Supreme Court, said:

"It must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare. It was well said by Sir George Jessel, M. R., in Printing & N. Registering Co. *v.* Sampson, L. R. 19 Eq. 465: 'It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void

> as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.'"

Prior to the execution of the contracts with its employees, upon which the rights of Petitioner depend, the highest Court of the State of West Virginia had settled, in the cases of State *v.* Goodwill, 33 W. Va. 179, and Thacker Coal & Coke Co. *v.* Burke *et als.*, 59 W. Va. 253, the rules of law governing the construction and enforcement of such contracts. Such contracts were made upon the basis of the rules of law explicitly settled in those cases, which rules, in the language of this Court, speaking through Mr. Justice Miller, in Brine *v.* Hartford F. Insurance Co., 96 U. S. 627, "affect the rights of the parties to the contract, enter into and become a part of it, and are obligatory on all courts which assume to give remedy on such contracts."

In obedience to the rule, regulating *the application of State law*, Mr. Justice Dayton, sitting in the District Court of the United States for the Northern District of West Virginia, applied the law as settled by the highest court of West Virginia to the contracts in question

In its effort to keep in position to be able to run a non-union mine, the Hitchman Company had contracted with each of its employes along certain lines, and the net result was embodied in the following memorandum card:

> "I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America and will not become so while

> an employe of the Hitchman Coal & Coke Company, and that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any effort amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above, or heard same read."
>
> Hitchman Coal & Coke Co. *v.* Mitchell, 202 Fed. 512, 553.

The District Court of the United States for the Northern District of West Virginia held that this was a lawful contract.

> "An employer and its employes may lawfully contract with respect to the terms of the employment, and as incidental thereto that the employes shall not join a labor union and the employer shall not employ union men; and, when such a contract has been made, a combination between officers or members of the labor union to induce either party to violate the contract, with which they have no rightful concern, constitutes an unlawful conspiracy, to restrain the carrying out of which the other party is entitled to an injunction."
>
> Hitchman Coal & Coke Co. *v.* Mitchell *et al.* (Circuit Court, N. D. West Virginia. September 21, 1909.) 172 Fed. 963, Syl. 2.

The decree thus rendered by the District Court of the United States for the Northern District of West Virginia is in perfect harmony with the local law of West Virginia as settled by its highest court; and is in perfect harmony with the general law as settled by the judgments of this court. We, therefore, respectfully insist that this Court,

with the full record before it, should now make such an order or decree as will enforce the final decree perpetuating the injunction, rendered by said District Court for the Northern District of West Virginia on January 18, 1913.

X.

THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT DEPRIVES PETITIONER OF THE FREEDOM OF CONTRACT GUARANTEED TO IT BY THE FIFTH AMENDMENT.

Petitioner's Rights.

In considering how far the rights of the Hitchman Company can be said to be protected by the due process clause of the Fifth Amendment, the following language taken from 9 F. S. A. page 303, and the case cited there as authority for the proposition there advanced, show that it is correct to claim on behalf of the Hitchman Company that the decision of the Circuit Court of Appeals for the Fourth Circuit professing to state and to apply the common law of West Virginia upon the subject of contract [but really misapplying West Virginia law, as that law is declared to be by the Supreme Court of Appeals of that State in the case of Thacker Coal & Coke Company *v.* Burke (1906), 59 W. Va. 253; 53 S. E. 161; 8 A. & E. Ann. Cas. 885] violates the rights of the Hitchman Coal & Coke Company as guaranteed to it by the due process clause of the Fifth Amendment of the Constitution of the United States.

> "14. Giving Unwarranted Effect to Decision of State Court.—A judgment of the Circuit Court of the United States claiming to give such unwarranted effect to a decision of a State court as to wrongfully deprive a party of his property, may be considered as presenting a question how far it can be sustained in view of the prohibitory language of this clause."
>
> **Fayerweather** *v.* **Ritch (1904), 195 U. S. 208.**

A later discussion of the doctrine announced in Fayerweather *v.* Ritch will be found in the case of Hannah O'Callaghan *et al. v.* Terence O'Brien, admr., etc. *et als.* (1905), 199 U. S. 89, 50 L. ed. 101, 25 S. C. 727. (Officially reported under the title of "Farrell *v.* O'Brien.")

The case of Hovey against Elliott, decided by the Supreme Court of the United States (1897), 167 U. S. 409, 42 L. ed. 215, disposes of the question as to whether the decision of the Federal Court can be said to violate rights of a citizen guaranteed to him by the due process clause of Amendment Five to the Constitution of the United States.

Mr. Justice White delivering the opinion of the Court, in speaking on that particular point, says:

> "If the legislative department of the Government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent."
>
> Hovey *v.* Elliott, (Decided May 24, 1897), 167 U. S. 409, *417*, 42 L. ed. 215, *221*.

It seems perfectly clear, therefore, that the due process clause of Amendment Five *restrains the judicial* as well as the executive branches of the Federal Government, and,

therefore, the rights of the Hitchman Company may be said to have been violated by the decision of the Circuit Court of Appeals for the Fourth Circuit, which takes away from petitioner a property right vested in it by contract as construed by the highest court of the State of West Virginia.

Plaintiff's contention upon this point is stated under three heads:

1. *Chicago Agreement of 1898 and the efforts of defendants to carry it out.*

(*a*) By the Chicago Agreement of 1898 the defendants conspired with Union operators, competitors of West Virginia operators and of operators of other States, to substantially restrain or suppress coal mining in West Virginia, and in the fulfillment of that contract caused the plaintiff to suffer loss and damage by reason of the unionizing of its mine April 1, 1903, and by reason of its operations under coerced contracts with the Union to June 12, 1906, whereby in operating time the plaintiff lost 164 days and $48,742 in money.

(*b*) Through the adoption of Resolution No. 8 by the 1907 Convention of Sub-District 5 of District No. 6 of the United Mine Workers of America the defendants caused loss and damage to the plaintiff by reason of its inability, owing to organizing efforts, to fulfill its contracts for lake coal in the summer and fall of 1907, and are about to cause the plaintiff to suffer incalculable loss and damage by reason of their announced intention to proceed again to unionize the Hitchman mine, if the injunction now forbidding it were out of the way.

(*c*) Through induced breaches of contracts, existing between the plaintiff and its employees, known to the defendants, and with which they have no concern, defendants have caused plaintiff to suffer great loss and damage through its inability to comply with its contracts for lake

coal during the summer and fall of 1907, and are about to cause plaintiff to suffer incalculable loss and damage through their efforts to unionize plaintiff's mine, which they propose to again attempt, providing the injunction now restraining them can be gotten out of the way.

2. *The United Mine Workers are an oppressive monopoly and seek absolute control of all labor in the coal mining industry.*

(*a*) Owing to this purpose the United Mine Workers entered into the Chicago Agreement of 1898.

(*b*) In pursuit of the same purpose they passed Resolution No. 8 at the 1907 Convention of Sub-District 5 of District 6.

(*c*) And likewise they undertook to induce breaches of contracts of employment between plaintiff and plaintiff's employees, which were known to them, and with which they had no concern, and they propose to continue to breach these contracts until plaintiff shall submit to them and unionize its mine, provided the injunction now preventing that course of action on their part can be gotten rid of.

3. *If the effort of the United Mine Workers to get all men working in and about each mine to join their Union is lawful, still they may not exercise that right in such a way as will be inconsistent with, or as will destroy the constitutional right, of equal dignity, of the employer, and in this case the right of the Hitchman Company, to contract with its employees upon such terms as may be agreed upon between it and its employees. Neither may they make use of their right to organize in such a manner as will be inconsistent with, or as will interfere with or destroy such contracts between the employer and employee, and in this case between the Hitchman Company and its employees, with which contracts the defendants have no concern.*

"Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.

"*But the very fact that it is lawful to form these bodies with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.*"

Gompers *v.* Buck's Stove & Range Co. (1911), 221 U. S., 418–452, 55 L. Ed. 797, *805*, 31 S. C. 492.

ERRORS IN THE DECREE OF THE CIRCUIT COURT OF APPEALS.

First.

As to the Organization, the Circuit Court of Appeals says:

"A consideration of the purposes of this organization as set forth in its constitution impels us to the conclusion that there is nothing contained therein to justify the contention that its purposes are unlawful."

Record, p. 733, l. 40–43.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

(*a*) *Proved purposes and practices of the Union.*

(1) It aims to organize every mine on the American Continent.

Record, p. 569, l. 48–52.
Record, pp. 570, 571, l. 1–15.
Record, p. 619, l. 12–14.

(2) All men are eligible and must be members of the U. M. W. of A. who work in and around the mine.

Article 1, Section 3, Constitution of Sub-District 5 of District 6.

(3) Largest larbor organization in the world.

Record, p. 569, l. 40–43.

(4) About 300,000 members now.

Record, p. 559, l. 31–33.
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

(5) Enforces the closed shop.

Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 538, l. 33–49.
Record, p. 618, l. 1–25.

(6) It has spent more than $8,000,000.00 since 1900 in support of strikes.

Excerpt 430 (*c*).

(7) Is a secret organization. Has pass-word.

Article I, section 2.
Article XIII, section 3.
Constitution of International Union.
Excerpts 377, 382.
See also Constitution of Sub-District 5 of District 6.
Excerpt 400.

(8) None but members admitted to meetings of.

Manual. Constitution of District No. 6. United Mine Workers of America.
Excerpt 382.

Manual. Constitution Sub-District 5 of District 6. Excerpt 400.

(9) Put men in the field to boycott the coal coming from West Virginia.

Excerpt 336.

(10) Constantly aims and plans to involve West Virginia and other non-union fields in local or national strikes.

Excerpts 347, 348, 349.

(11) Officers may close down mines whenever they deem it to be for the best interests of the Union.

Excerpts 373, 374, 389, 390, 406.

(12) The rule prohibiting men from working on idle days should be enforced.

Watkins Report to 1907 Convention.
Excerpt 359, 395, 410.

(13) Day men may work on idle days when necessary, but such work must be distributed equally amongst the employees.

Excerpts 149, 179.

(14) If cars are not at mine within thirty minutes after starting time in the morning the miners are to go home and not work that day.

Excerpts 150, 167, 178, 187, 217, 257, 258, 259, 290.

(15) If the operator shall so manage his business that four of his employees are out of cutting or drilling when work time comes in the morning, the mine committee may shut the mine down for the next day.

Excerpts 151, 165.

(16) If miner receives a car in time to load it before quitting time he shall load it provided he has enough coal mined to do so; but if as a result the car is derailed the operator must take charge of that car.

Excerpts 158, 162.

(17) Sons of members of United Mine Workers are to be given the preference of going into mines, when becoming of proper age.

Excerpts 152, 186, 394.

(18) Each two men shall have two working places in the mine and the operator is not allowed to employ more men until each two men have two working places.

Excerpts 164, 176, 216, 412, 422, 426.

(19) The Union regulates the speed with which the operator may drive entries by providing that the turn shall be uniform throughout the mine, and the same rule operates to control the operator in mining the coal in rooms.

Excerpts 174, 183, 196, 201, 207, 219, 220, 223, 230, 413, 422, 426.

(20) If operator insists on machine men cutting places, the operator shall pay for all coal lost by places falling in.

Excerpts 170, 177, 185.

(21) Members of the mine committee are not required to remain at their working places in the mine if while away from their work they are looking after the proper interests of the Union.

Excerpts 197, 414, 422.

(22) A minimum pay for two hours is exacted whether the mine works two hours or not.

Excerpts 147, 157, 161, 193, 421, 426.
Excerpt 232—Columbus Day Wage Scale—See Resolution IV.

(23) Membership of engineers, firemen, electricians, and machinists in U. M. W. of A., considered, and solidarity of Union insisted on.

Excerpts 199, 313, 422, 428 (*a*).

(24) Engineers, firemen, pumpers and other necessary men may work during suspension of work—otherwise during a strike—provided that the operator does not produce coal by non-union labor, and if in addition the operator pays the rate of wages which may subsequently be agreed upon.

Excerpts 153, 159, 163, 168, 180, 188, 198, 206, 214, 228, 422, 426, 428 (*a*).

(25) Operator must have water out of working place at starting time and keep it out during working hours. Where loaders bail water the operator shall furnish sufficient barrels and pay loader ten cents per barrel for water bailed.

Excerpts 202, 422, 426.

(26) Spike team drivers shall harness but one mule.

Excerpt 203.

(27) There shall be but one loader in each entry.

Excerpts 204, 209.

(28) Operator is given permission to close down his mine if miners fail to observe contract to produce clean coal.

Excerpts 148, 215.

(29) Miner may not be transferred from his place inside to outside the mine unless he consents and in addition unless he is paid inside scale wages.

Excerpts 166, 181, 194, 422.

(30) Work day is eight hours of forty-eight hours a week of six days of eight hours per day.

Excerpt 192.
Excerpt 231—Chicago Agreement 1898—Rule 5.
Excerpt 232—Columbus Day Wage Scale—Resolution III.

(31) Day laborers working at the mine must be members of the Union.

Excerpt 213.

(32) Operators must keep people out of engine room.

Excerpt 229.

(33) Where any company operates more than one mine on the same line of road in the same vein of coal, the work between the respective mines shall be as nearly as business conditions will permit equally divided.

Excerpt 218.

(34) In case of emergency work, if the mine committee approve of the work being done on overtime, the men engaged thereon shall not be required to lay off until their time is equalized with the others working in such mine.

Excerpt 227.

(35) If for any grievance, real or supposed, any of the workmen shut down the mine, each employee shall pay the Company one dollar per day during shut down; and if because of any grievance with any employee, real or supposed, the Company shuts down its mine, it shall pay one dollar per day to each workman in and about the mine during such shut down.

Excerpts 226, 238.

(b) *The test of the lawfulness of a voluntary organization under the common law, and under the law of West Virginia,* is to ascertain:

(1) *Whether any of the rules of the organization are unlawful in character.*

(2) *If there are any unlawful ones, then whether the unlawful ones dominate the actions and purposes of the organization.*

(3) *Or, whether the purposes contemplated by the unlawful ones are so intermingled with those designed by the lawful ones as to render separation impracticable.*

Record, p. 688, l. 19–25.

(c) *If such domination of the unlawful prevails, or such separation cannot be made, then, under the law, the organization becomes unlawful.*

Record, p. 688, l. 25–27.

Russell *v.* Amalgamated Society of Carpenters and Joiners [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 433; 56 S. J. 342; 28 T. L. R. 276; H. L. (E).

(d) *Labor unions may be unlawful.*

In the case of Coppage *v.* Kansas, decided January 25, 1915, 236 U. S. 1, this Court said:

> "Of course we do not intend to say, nor to intimate, anything inconsistent with the right of individuals to join labor unions, nor do we question the legitimacy of such organizations so long as they conform to the laws of the land as others are required to do."

But even as to this, the Court added this significant qualification:

> "And we have no reference to questions of monopoly, or interference with the rights of third parties or the general public. These involve other considerations, respecting which we intend to intimate no opinion. See Curran *v.* Galen, 152 N. Y. 33, 37 L. R. A. 802, 57 Am. St. Rep. 496; 46 N. E. 297; Jacobs *v.* Cohen, 183 N. Y. 207, 213, 214; 2 L. R. A. (N. S.) 292; 111 Am. St. Rep. 730; 76 N. E. 5; 5 Ann. Cas. 280; Plant *v.* Woods, 176 Mass. 492; 51 L. R. A. 339; 79 Am. St. Rep. 330; 57 N. E. 1011; Berry *v.* Donovan, 188 Mass. 353; 5 L. R. A. (N. S.) 899; 108 Am. St. Rep. 499; 74 N. E. 603; 3 Ann. Cas. 738; Brennan *v.* United Hatters, 73 N. J. L. 729, 738; 9 L. R. A. (N. S.) 254; 118 Am. St. Rep. 727; 65 Atl. 165, 169; 9 Ann. Cas. 698, 702."

The cases referred to in this last quotation from Coppage v. Kansas hold, as follows:

"An agreement between a labor association and an employers' association, that all employees of the members of the latter association shall be members of the former association, and that no employee shall work for a longer period than four weeks without becoming a member, is illegal and constitutes no defense to an action for conspiracy by an employee who is discharged in pursuance of such agreement because of his refusal to become a member of the labor association."

Curran v. Galen (1897), 152 N. Y. 33; 37 L. R. A. 802.

"A contract by a manufacturer to employ as laborers none but members of a particular labor union is not void as against public policy."

Jacobs v. Cohen (1905), 183 N. Y. 207; 2 L. R. A. (N. S.) 292.

"Members of a labor union are entitled to an injunction restraining the members of another union from which they have withdrawn from doing acts in pursuance of a conspiracy to compel their reinstatement, by appeals to their employers to induce them to rejoin and to discharge them in case of refusal, accompanied by threats intimating results detrimental to the employer's business and property in case of a failure to comply, coercive in effect upon the will, although they committed no acts of personal violence or physical injury to property, where complainants have been injured by such acts, and there is reason to believe that further proceedings of the same kind are contemplated which will result in still more injury to them."

Plant v. Woods (1900), 176 Mass. 492; 51 L. R. A. 339.

"A contract between an employer and a labor union obligating the employer to retain in his employ no

one objectionable to the union for any cause does not of itself justify interference with a workman's employment by the one who secured the contract on behalf of the union.

"Whether or not interference with a laborer's employment under a contract between a labor union and an employer, obligating the employer to retain no one in his employ who was objectionable to the union, was for a justifiable cause, is a question for the jury.

"Interference by a combination of persons to obtain the discharge of a workman because he refuses to comply with their wishes and join a union for their advantage cannot be justified as a part of the competition of workmen with one another.

"The purpose of strengthening itself in future contests with the employer will not justify a labor union in interfering with the contracts of non-union workmen for the purpose of compelling them to join the union.

"The attempt to force all laborers to combine in unions is against the policy of the law because aiming at monopoly.

"The right of a laborer to recover damages for wrongful interference with his contract of employment is not affected by the fact that it was terminable at will, instead of ending at a stated time."

Berry *v.* Donovan (1905), 188 Mass. 353; 5 L. R. A. (N. S.) 899.

"Plaintiff was a member of a trade union (a voluntary association), whose rules provided for fining and otherwise punishing any member violating the laws of the association or the rules of trade. The rules provided for a trial of the accused member before a tribunal established within the association, at the same time providing that he should be entitled to 'due notice and a fair trial,' and should not be put on trial unless charges were submitted in writing by a member of the association. Plaintiff, having been put on trial without the submission of written charges and without due notice, was sentenced to pay a fine

and to give up his place of employment for one year. Held, that this course of procedure, unless consented to by plaintiff, furnished no justification for the subsequent action of the association and its officers in procuring his discharge from employment.

"Whether plaintiff did consent to be put on trial without charges or notice was, under the evidence in this case, a question for the jury.

"*The Constitution of this State (article 1, par. 1) establishes the inalienable right of all men to acquire property and pursue and obtain safety and happiness. Included in this is the right of making contracts for personal service as a means of acquiring property. It is therefore the right of every man to engage in such lawful business or occupation as he may choose, free from hindrance or obstruction by his fellow men, saving such as may result from the exercise of equal or superior rights on their part.*

"*Whoever intentionally and without legal justification or excuse procures an employer to discharge his employee, to the damage of the latter, is liable to an action for damages at the suit of the employee; and this, although there was no binding contract of employment.*

"*Malice, in the law, is the intentional doing of a wrongful act, without justification or excuse. A 'wrongful act,' within the meaning of this definition, is any act which in the ordinary course will infringe upon the rights of another, to his damage, except it be done in the exercise of an equal or superior right.*"

Brennan *v.* United Hatters (1906), 73 N. J. L. 729; 9 L. R. A. (N. S.) 254.

Second.

Upon the subject of the Chicago Agreement of 1898, the Circuit Court of Appeals says:

"A fair interpretation of the evidence shows that it was the purpose of the defendants to induce the miners of West Virginia to become members of the organization, and thereby secure as high wages as possible, compatible with the successful operation of

the mines of that State by the respective owners. They had a perfect right to form a combination to accomplish such purposes by peaceable and lawful methods, and so long as they refrained from resorting to unlawful measures to effectuate the same they could not be said to be engaged in a conspiracy to unionize plaintiff's mine.

"As we have already stated, the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance. Therefore, the court erred in holding the organization to be unlawful upon the theory that it was guilty of a conspiracy."

Record, p. 736, l. 21–34.

IN REACHING THIS CONCLUSION, THE CIRCUIT COURT OF APPEALS ERRED AGAIN, IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

The Chicago Agreement of 1898 turned out in practice to be what it was intended to be when made. It was an oppressive combination entered into between the United Mine Workers organization and the Union operators of the Central Competitive States, for a consideration passing between them, whereby the United Mine Workers were to unionize the State of West Virginia, for the purpose of substantially restraining or suppressing coal mining in West Virginia, to the end that the competition, theretofore existing between the non-union operators of West Virginia and the Union operators, the other parties to the Chicago Agreement of 1898, might be brought to an end.

That continuous efforts were made by the United Mine Workers' organization to carry out its part of the Chicago Agreement, and to unionize all the mines of West Virginia, is admitted by William Green, one of the defendants, now Secretary-Treasurer of the National Organization, in a statement made by him in the 1910 Joint Convention of the United Mine Workers and Union Operators of the Central Competitive States.

We quote Mr. Green's language as it appears on page 668 of the Record, beginning with line 12:

> "Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia."
>
> Record, p. 668, l. 12–25.

Third.

As to Resolution No. 8 the Circuit Court of Appeals is silent.

We quote from Record, page 742, beginning with line 39:

> "While it is not denied by the defendants that they sought by peaceable methods to induce those employed by the plaintiff to join the union, yet they stoutly contend that at no time since the mine has been operated as a non-union mine have they employed unlawful methods. We fail to find that there is sufficient legal evidence to show that the defendants entered into a conspiracy or combination for the purpose of unionizing the plaintiff's mine. While there was evidence admitted by the Court below as to statements made by certain officials of the United Mine Workers of America, and the coal operators of Pennsylvania and other States, bearing upon this

question, yet there is no evidence to show that the United Mine Workers of America combined, or formed themselves into a conspiracy for the purpose of unionizing plaintiff's mines after it started to run its mine non-union in June, 1906."

Record, p. 742, l. 39–50.
Record, p. 743, l. 1, 2.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED AGAIN IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

We quote from the report of the Secretary-Treasurer Lee Rankin, one of the defendants, in his report to the 1907 Convention of Sub-District 5 of District 6:

"We have one mine at Bellaire, Ohio, and five mines in the Pan Handle District which I believe should be organized. I believe those mines can be organized and in my opinion this convention should adopt some plan to organize those mines."

Report of Secretary-Treasurer Lee Rankin, p. 10, l. 34–38.
(Original document transmitted to U. S. Supreme Court.)

Record, p. 414, l. 21–30.

"RESOLUTION NO. 8.

"Whereas, there are mines in the Panhandle District and Ohio that are not organized, and believing every mine should be organized; be it

"*Resolved*, by this ninth annual convention that the sub-district officers together with the district officers be authorized to take up the work of organizing every mine in the sub-district as quickly as it can be done."

Record, p. 414, l. 35–42.

Fourth.

In holding that the defendants have a lawful right to induce plaintiff's employees to join their Union, provided that in

inducing them to join they do not use coercion, threats, intimidation or violence for the purpose, the Circuit Court of Appeals for *one ground,* says:

> "If the plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment at its mines, and such conduct be sanctioned by the law, by what process of reasoning can it be held that the defendants may not adopt the same method in order to protect their interests?"
>
> Record, p. 731, l. 21–26.

IN REACHING THIS CONCLUSION, THE CIRCUIT COURT OF APPEALS ERRED AGAIN IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

The plaintiff has a right to protect itself against the United Mine Workers by refusing to employ or to keep in its employ any member of that Union.

> Howard *v.* Danner, 17 T. L. R., p. 548.

That is a reasonable rule which plaintiff finds necessary for the protection of its business.

In Howard *v.* Danner, the signed agreement was for the purpose of protecting that plaintiff against a competitor. Danner had been in the employ of the plaintiff, and, in breach of a contract he had made with the plaintiff, was then working for plaintiff's competitor. The agreement, which he broke, read as follows:

> "In consideration of your retaining my services as waiter at 4s. per week under the new management, with a week's notice on either side, I hereby agree that in case I should leave your service or be dismissed, I will not, during the year 1901, enter into the service of the new restaurant shortly to be opened at 62 Regent Street, and I further agree to pay for any breach of this agreement the sum of one pound for

every day I may remain in the service of the new restaurant, as liquidated damages."

"A labor organization seeking to compel a manufacturer to unionize his plant is not such a competitor in the labor market as to justify it in enticing employes to leave the service of their master, or to induce persons seeking employment with him from so doing, when the enticer does not employ labor. The competition which the law upholds must be honest competition, and not a malicious attempt to injure another."

Geo. Jonas Glass Company *v.* Glass Bottle Blowers' Association of United States and Canada, *et al.* (1907) N. J. Eq. 66 Atl. 953.

It is not to the point to say that the United Mine Workers have absorbed all other labor organizations for the mining of coal.

Record, p. 542, l. 13–44.

Nor that it is the largest labor organization in the world.

Record, p. 569, l. 40–43.

Nor that it aims to organize every mine on the American Continent.

Record, p. 569, l. 48–52.
Record, pp. 570, 571, l. 1–15.
Record, p. 619, l. 12–14.

"The attempt to force all laborers to combine in unions is against the policy of the law because aiming at monopoly."

Berry *v.* Donovan (1905), 188 Mass. 353; 74 N. E. 603; 5 L. R. A. (N. S.) 899; 3 A. & E. Ann. Cas. 738.

THEREFORE—

THE FACT THAT THE UNITED MINE WORKERS HAVE MADE THEMSELVES AN EXCLUSIVE, AGGRESSIVE, AND POWERFUL MONOPOLY CANNOT BE TURNED INTO A SHIELD TO PROTECT THEM. WRONGDOERS CANNOT PROFIT BY THEIR OWN WRONGS.

Fifth.

In holding that the defendants have a lawful right to induce plaintiff's employes to join their union provided that in inducing them to join they do not use coercion, threats, intimidation, or violence for the purpose, the Circuit Court of Appeals for *another ground,* says:

> "While it is true that the plaintiff has a perfect right to refuse to employ union labor, is it not equally true that union labor, as we have stated, may by the employment of legitimate means, do that which is necessary to keep its forces together?
>
> "Surely we have not reached the point when capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law when they are attempting to assert rights that are just as important to their well-being as are the rights of those who have been more fortunate in accumulating wealth. He who 'seeks equity must do equity.' In other words he 'must come into court with clean hands.' If the courts of this country should by injunctive relief protect the mine owner in the enjoyment of his property rights, and restrain the laboring people from organizing their forces by declaring such organization unlawful, would not the mine owner then be in a position to control the situation so that he who has to toil for his daily bread would be placed in a position where if he exists at all, he must do so at such wages, and upon such terms as organized capital may see fit to dictate."
>
> Record, p. 731, l. 48–51.
> Record, p. 732, l. 1–15.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED AGAIN IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

The injunction in the Hitchman case does not restrain the laboring people from organizing their forces, but simply requires them in so doing to conform to the laws of the land as others are required to do.

Coppage *v.* Kansas, 236 U. S. 1.

There is no strike and this is not a strike case.

The Hitchman Company has no dispute with its employes nor have they any dispute with it.

The Hitchman Company has no contractual or other business relations with the Union.

And there is no dispute between the Hitchman Company and the defendants, except what they themselves have intentionally brought about.

THIS DISPUTE, FORGED BY THEM AS A WEAPON TO STRIKE IN ILLEGITIMATE ATTACK, CANNOT BE TURNED INTO A SCREEN TO CONCEAL THE NATURE AND OBJECT OF THEIR COMBINATION.

Long *v.* Larkin, *et als.* (1914), 2 I. R. 285, 302, 303, 306.

In Adair *v.* United States, quoting from Mr. Cooley in his treatise on Torts, page 278, this Court says:

> "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress."
>
> 208 U. S. 161–192 at p. 173; 52 L. Ed. 436–450, p. 442.

And again in reaffirming the Adair case, this Court says:

> "The constitutional right of the employer to discharge an employee because of his membership in a labor union being granted, can the employer be compelled to resort to this extreme measure? May he not offer to the employe an option, such as was offered in the instant case, to remain in the employment if he will retire from the union; to sever the former relationship only if he prefers the latter? Granted the equal freedom of both parties to the contract of employment, has not each party the right to stipulate upon what terms only he will consent to the inception, or to the continuance, of that relationship? And may he not insist upon an express agreement, instead of leaving the terms of the employment to be implied? Can the legislature in effect require either party at the beginning to act covertly; concealing essential terms of the employment—terms to which, perhaps, the other would not willingly consent —and revealing them only when it is proposed to insist upon them as a ground for terminating the relationship? Supposing an employer is unwilling to have in his employ one holding membership in a labor union, and has reason to suppose that the man may prefer membership in the union to the given employment without it—we ask, can the legislature oblige the employer in such case to refrain from dealing frankly at the outset? And is not the employer entitled to insist upon equal frankness in return? Approaching the matter from a somewhat different standpoint, is the employee's right to be free to join a labor union any more sacred, or more securely founded upon the Constitution, than his right to work for whom he will, or to be idle if he will? And does not the ordinary contract of employment include an insistence by the employer that the employe shall agree, as a condition of the employment, that he will not be idle and will not work for whom he pleases, but will serve his present employer, and him only, so long as the relation between them shall continue? Can

the right of making contracts be enjoyed at all, except by parties coming together in an agreement that requires each party to forego, during the time and for the purpose covered by the agreement, any inconsistent exercise of his constitutional rights?

"These queries answer themselves. The answers, as we think, lead to a single conclusion: Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if it be terminable at will."

Coppage *v.* Kansas, 236 U. S. 1, at page 13.

Sixth.

In holding that the defendants have a lawful right to induce plaintiff's employes to join their union, regardless of their contract with the plaintiff not to do so, provided that in inducing them to join, defendants do not use coercion, threats, intimidation or violence for the purpose, the Circuit Court of Appeals says:

"The contract in question is in the following language:

"'I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said Company, and agree that while I am in the employ of that company that I will not make any effort amongst its employees to bring about the

unionizing of that mine against the company's wish. I have either read the above or heard the same read.'

"It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employee continues to work for the plaintiff he shall not join this organization, nevertheless, there is nothing in the contract which requires such employees to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employes under this contract may, if they deem proper, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the non-union men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the non-union miners to become members of their organization.

"Under these circumstances we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization."

Record, p. 744, l. 35–50.
Record, p. 745, l. 1–26.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED AGAIN IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

"When a man is called upon to agree not to become or remain a member of the Union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employe.

"To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for 'it takes two to make a bargain.' Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

Coppage *v.* Kansas, 236 U. S. 1 at pages 20, 21.

EMPLOYMENT AT THE WILL OF THE PARTIES DOES NOT MAKE IT EMPLOYMENT AT THE WILL OF OTHERS.

"It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. *The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority the unjustified interference of third persons is actionable although the employment is at will.* Moran *v.* Dunphy, 177 Mass. 485, 487; Berry *v.* Donovan, 188 Mass. 353; Brennan *v.* United Hatters, 73 N. J. Law, 729, 743; Perkins *v.* Pendleton, 90 Me. 166; Lucke *v.* Clothing Cutters' & T. Assembly, 77 Md. 396; London Guar. & Acc. Co. *v.* Horn, 101 Ill. App. 355, 206 Ill. 493; Chipley *v.* Atkinson, 23 Fla. 300; Blumenthal *v.* Shaw, 23 C. C. A. 290, 77 Fed. 954."

Truax, Sr., *et al. v.* Raich (1915), 239 U. S., p. 33.

XI.

IS THE LABOR ORGANIZATION KNOWN AS THE "UNITED MINE WORKERS OF AMERICA" AN UNLAWFUL ORGANIZATION?

Are the defendants engaged in a legitimate business?

Petitioner's bill has two objects, each of which is plainly expressed:

First.—To raise the point that the United Mine Workers of America is an unlawful organization, and as a corollary that all acts done by it or its representatives in pursuit of its objects are unlawful.

Second.—That specific acts charged as committed, and to be intended to be continued to be committed, unless restrained, violate plaintiff's constitutional rights.

Having disposed, in what precedes, of the second contention, an attempt will now be made to maintain the first.

In this case, the real point at issue is, may the defendants, as officers of the United Mine Workers of America, organize plaintiff's non-union mine, and for the purpose of getting in position to organize that mine, may they send organizers amongst plaintiff's men and induce them to become members of the Union where it appears that the men employed by plaintiff are employed with an express agreement that they shall not join the United Mine Workers of America while in plaintiff's employ, and where it further appears that these defendants, as officers of the Union, have knowledge of these contracts plaintiff's men have made with it, and have knowledge of the additional fact alleged in the bill that plaintiff has contracted with each of its employes that while so employed the plaintiff will continue to run its mine non-union.

Section 2 of Article 1 of the Constitution of District No. 6, United Mine Workers of America, in defining the objects of the United Mine Workers, says: "One of the objects of this organization is to unite **ALL** employes in and around the coal mines of Ohio and the Panhandle District of West Virginia."

And Section 3 of Article 1 of the Constitution of Sub-District 5 of District No. 6, United Mine Workers of America, says: "*All men* are eligible and *must be members* of the United Mine Workers of America who work in and around the mines." (*Italics* in this and in quotations following are ours.)

The proceedings of the National Convention of the United Mine Workers held at Indianapolis, January 15–22, 1907, show that the organization had a membership of 230,667 in 1906; that its income for the fiscal year ending November 30, 1906, was $1,081,408.32; its expenditures

for the same period were $1,232,994.01, and that its balance on hand December 1, 1906, was $337,960.71.

The same proceedings of that Convention show that it is claimed for the United Mine Workers of America, that it is the largest labor organization in America.

From the proceedings of the Convention of Sub-District 5 of District 6, United Mine Workers of America, which was held at Wheeling, March 14–19, 1907, it appears that the paid up membership of District No. 6, United Mine Workers of America, was in 1906, 36,372, and that on March 1, 1907, Sub-District 5 of District 6, United Mine Workers of America, had 108 locals in good standing and a paid up membership of 12,500.

Indicative of the purpose of the Union are the following declarations of officials or delegates at the National Convention held at Indianapolis, January 15–22, 1907.

Speaking of organizing West Virginia and the unorganized sections of Pennsylvania, the defendant, Lewis, said: "We will organize them by a strike movement." Another delegate in his address at the same Convention, at the same time, said: "I agree with President Green and Vice-President Lewis that you never can get those men organized except at the end of a general strike, but I warn you not to go into it until you are thoroughly prepared." Another delegate, in addressing the Convention, at the same time, in the same discussion, while recommending and explaining organization, said: "If we are able at a colliery to force all the men to become members of the Union we do so. If we are too weak, we do not attempt it, but keep gradually working among the men until we are able to accomplish our end." The defendant, John Mitchell, in addressing the Convention, as President, said: "I believe it is possible, indeed I believe it is probable, that in the not distant future we will be able to inaugurate a movement in West Virginia and the other

unorganized fields that will involve them in a strike, and then we will expect you to furnish the sinews of war, as you have done in the past, to keep these men in idleness." And he added, "If one year hence it is my judgment that a suspension of mining throughout the United States would be best, I will favor that policy."

Consider these Convention declarations in the light of the obligation of membership which is "As the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so."

The United Mine Workers of America have been before the courts, State and Federal, many times, in one way or another. But the lawfulness of the entire organization, described on the membership card "*United Mine Workers of America—one and indissoluble*," has not been so specifically attacked, nor have that Union's unlawful purposes, its unlawful by-laws and its unlawful acts been so specifically shown as in this case now at the bar of this Court.

The Union's contentions and practices have, to a limited extent, from time to time, during some years past, been the subject of public discussion and condemnation, judicial and otherwise. But the case of United States *v.* Weber *et al.*, 114 Fed. 950, is the only case which has come to our notice in which the United Mine Workers, as an organization, have been held to be unlawful *because they are organized for an unlawful purpose*—that is to say, to control all mining operations; hence to become and to be a monopoly in the supplying of labor in the coal mining industry. And this purpose has not been and is not now confined to bituminous coal, but embraces anthracite and all other kinds. Coal is one of the necessaries of life. With the enormous power which this organization has and wields in the enforcement of its varied and con-

stantly enlarging demands, it periodically takes the operators by the throat, and to coerce them, it takes the country by the throat as well. The anthracite strike of 1902 is a sample. The contention then was for "recognition" of the Union, and inasmuch as the cause of controversy in this case now at the bar of this Court has for an underlying motive the same purpose, we will ask the Court to take judicial notice of the Anthracite Commission's Report, "Bulletin of the Department of Labor. No. 46. May, 1903."

That this Court may take judicial notice of that Report, we cite and rely upon Brown *et al. v.* Piper (1875), 1 Otto 37, 23 L. ed. 200, *201*, *202*, in which it was held—

> "Among the things of which judicial notice is taken, are:
>
> "The law of nations; the general customs and usages of merchants; the notary's seal; things which must happen according to the laws of nature; the coincidences of the days of the week with those of the month; the meaning of words in the vernacular language; the customary abbreviations of Christian names; the accession of the Chief Magistrate to office and his leaving it. In this country, such notice is taken of the appointment of members of the cabinet, the election and resignation of senators," etc. The case of Hoyt *et al. v.* Russell (1886), 117 U. S. 401, 29 L. ed. *914*, *915*, holds: "It is undoubtedly true that judicial notice is not taken of purely private concerns, when they are not connected with or necessarily involved in a matter of a public nature; but it is otherwise when they are so connected or involved."

In Ames *et al. v.* Union Pacific Railway Company *et al.*, 62 Fed., on page 13, Judge Caldwell took judicial notice of facts disclosed by the report of the "Commission of the United States Pacific Railway Company," 1887.

While the Anthracite Commission held that the question of the recognition of the United Mine Workers of

America was not within the scope of the jurisdiction conferred upon it by the submission, it is said in the Report on page 487:

> "The Commission feels, however, that it is incumbent upon it to give some expression to its views on the general question. From the correspondence which passed between the coal operators and the officers of the United Mine Workers prior to the strike, and which has been cited under the heading, 'History and causes of the strike,' from the voluminous testimony presented during the hearing before the Commission, and from the arguments of counsel and others, with which the public hearings closed, the Commission is led to the conviction that the question of the recognition of the union and of dealing with the mine workers through their union was considered by both operators and miners to be one of the most important involved in the controversy which culminated in the strike."

The Report then deals in a general way with the purposes of the United Mine Workers.

> "The order, as its name implies, is an organization to membership in which all workers who 'produce or handle coal or coke in or around the mines' are eligible. It claims a jurisdiction co-extensive with the coal producing industry in America. Its purposes, as stated in its Constitution (which is printed in full on pages 629 to 640) is to unite the mine workers and 'ameliorate' their condition by methods of conciliation, arbitration or strikes."

The Commission disapproved of the Constitution of the United Mine Workers, and said (page 491):

> "The present constitution of the United Mine Workers of America does not present the most inviting inducements to the operators to enter into contractual relations with it."

And, with respect to the settlement of grievances, which might be passed upon arbitrarily, and be finally

disposed of by the Union's side, regardless of the other side, or of real justice, and with respect to strikes, which by similar arbitrary action, regardless of the other side of the controversy, and of real justice, might be declared by the Union, to the great and unnecessary damage of the employer, the Commission held that the principle of Article X of the Union's Constitution was wrong, as its application violated reasonable rules for the adjustment of difficulties between employers and employes wherein the grievance should be considered by the parties immediately concerned, to-wit, by the employer and his employe; while if the matter involved happened to be of great scope and too large to be so settled and adjusted by immediate dealings between the employes and employer, that such grievance should be then referred to a higher power in the shape of one body to be made up of two other bodies representing the entire mining region affected by the decision of the question, the two bodies to be equally divided in numbers, representative of the employes on the one hand, and of the employers on the other hand, with a proviso that, upon their failing to agree, the question to be decided should then be referred to an umpire, whose decision should be final and binding in the premises.

Article X contained four sections, and sections 1, 3 and 4 of Article X of the present Constitution are quoted in the bill. On comparison they are found to be the same in 1907 as the Commission found and condemned them in 1902. Meanwhile, however, the United Mine Workers had reached out for more power and had created out of themselves a new and higher body, the International Union, and the word "International" therefore displaces the word "National" in those sections as they now exist. But the United Mine Workers stuck to their iniquitous provisions, and did not mend their ways.

The Commission, in making its decision, did not say whether the United Mine Workers were a lawful or an unlawful organization. All the Commission had before it on the question of the purpose of the Union to control all mining operations was embraced in Section 2 of Article 1, Constitution U. M. W. of A. Appendix F. Report, page 630. "The objects of this Union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes." But that language being equivocal, the intended monopoly could only be gathered, if at all, from a reading and due consideration of the Constitution, in its entirety, interpreted in the light of the Union's acts.

Section 2 of Article 1 of the present Constitution is the same as it was in 1902, but the question whether the United Mine Workers seek to be and are a monopoly is no longer debatable. The following constitutional provisions are before this Court:

> "One of the objects of this organization is to unite **all** employes in and around the coal mines of Ohio and the Panhandle District of West Virginia." Sec. 2, Art. 1, Const. Dist. No. 6, U. M. W. of A.
>
> "The object of this organization is to unite *the* mine employes of Belmont, Jefferson, Tuscarawas, Harrison, and Carroll counties in Ohio, and that part of Stark County, south of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio, and Marshall counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike." Sec. 2, Art. 1, Const. Sub-Dist. 5 of Dist. 6, U. M. W. of A.
>
> **"All** men are eligible and **must be members** of the U. M. W. of A. who work in and around the mines." Sec. 3, Art. I, Const. Sub-Dist. 5 of Dist. 6, U. M. W. of A.

Transposed, this last constitutional provision thus says:

> **"All men who work in and around the mines are eligible and must be members of the U. M. W. of A."**

The Commission, while not saying whether the Union was a lawful or an unlawful organization, did say, however, on page 490:

> "The Union must not undertake to assume, or to interfere with, the management of the business of the employer."

Yet read these constitutional provisions:

> "When it becomes necessary for a District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated." Sec. 2, Art. VIII, Const. Dist. 6, U. M. W. of A.
>
> "Any member of our organization working in or around the mine, working on idle days, or extra time, in violation of our Constitution, or agreements, shall be fined $2.50 for each offense." Sec. 15, Art. IX, Const. Dist. No. 6, U. M. W. of A., Sec. 3, Art. IX, Const. Sub-Dist. 5 of Dist. 6, U. M. W. of A.

Strong light is thrown on these provisions and on the general design of the Union by the declaration as to the objects of the United Mine Workers of America contained in the excerpt from the proceedings of their Eighteenth Annual Convention held at Indianapolis, Indiana, January 15 to 22, 1907, which appears in the bill, and reads as follows:

> "Organized labor contends that as industry cannot exist without labor, labor has the right to say under what conditions it shall be employed, thereby

dictating the management of the productive end of the business."

In connection with the thus openly acknowledged intention of the United Mine Workers of America as a national organization to dictate the management of the productive end of the coal business in this entire country, the provisions of the constitutions above quoted are living elements of, and confirm that Union's existence as, a monopoly at common law.

If the record thus made does not show an intention on the part of the national organization to control all coal mining in this country and to put into effect a "closed shop" in that industry, we are unable to comprehend the force of the English language.

At the foundation of the right of labor unions to exist there is the old common law which allowed the formation of guilds. But even guilds were regulated by statute in the early history of England. This was because they abused their power. And it came to pass that "combinations of laborers not connected with guilds were early made illegal, and the duty to labor and the settlement of the price of labor were made matters of public concern." 14 Ency. Laws of England, 2d Ed., London and Edinburgh, March, 1909, page 191, "Trades Unions." Hence, while it is correct to say that labor unions have the right to exist under the common law in West Virginia, they may exist for lawful purposes only, and they must not design, neither may they do, anything unlawful. In other words, *no labor union in West Virginia has any privilege over any other body of men or over any person, natural or corporate.* It is not every labor union that violates the law, either in its purposes or in its practices. And the contention in *the case now at the bar of this Court is not one whereby the right of labor unions to exist is questioned* or will be determined. The ques-

tion is, *Are not the United Mine Workers of America* an unlawful organization? Their sphere of action is national. They aim to be and are a monopoly. And this monopoly they exercise in connection with the mining of coal, and coal is a necessity. It is true that coal is not, *per se*, a necessity in the same sense that air is, but to people living in the United States, situated as the United States are, in the North Temperate Zone, coal *is* a necessity. As much so as grain is. And it is not material whether coal is or is not a necessity in the Torrid Zone. Hence, the United Mine Workers of America have given a public interest to their occupation and to their organization. So true is this that for years the United Mine Workers of America as an organization and their aims and practices have been matters of grave public concern. As witness the anthracite strike of 1902, the appointment of a national commission by President Roosevelt and its report. The periodical adjustment of the national scale and the public's consequent unrest at each recurring period are matters of common knowledge and of common dread. And *so long as this organization exists, as it now exists, and so long as its field of endeavor is national and exclusive of all other organizations for the mining of coal, and so long as the exercise of its unlawful power remains uncurtailed and unrebuked, just so long will the welfare of this country, the industry of its people and their comfort in life be and remain under a standing menace.*

The case of Lohse Patent Door Co. *v.* Fuelle *et al.* (Supreme Court of Missouri, Nov. 25, 1908, rehearing denied Dec. 23, 1908), 114 S. W. Rep. 997, is an interesting case on a number of points, not the least of which is the one holding that at common law personal service—an occupation—could not be the subject of a monopoly. Baldly put, that statement would seem to hold that labor unions by combining and becoming national, or if not a

combination of many into one, then one organization, national in character, would be lawful.

Judge Woodson says, 114 S. W. 1002, 1003: "According to the allegations of the petition and admissions of the demurrer, the United Brotherhood of Carpenters and Joiners of the city of St. Louis, and the various other associations with which it affiliates, are composed of carpenters, joiners and other persons who do carpenter work and other labor in the construction of houses and other buildings in the city of St. Louis and throughout the country. It is alleged and admitted that the object and purpose of these associations is to shorten the hours of work and to increase the pay they are to receive for their labor. While it might be conceded that labor organizations might be proper subjects for legislative control and regulation, yet the legislature has not in its wisdom seen proper to do so; and at common law personal service—an occupation—could not be the subject of a monopoly. In discussing that question in the case of State ex rel. *v.* Associated Press, 159 Mo. loc. cit. 456, 60 S. W. 91, 104, 51 L. R. A. 151, 81 Am. St. Rep. 368, this court used this language: 'But there is nothing here on which a monopoly can attach. The business is one of mere personal service—an occupation. Unless there is "property" to be "affected with a public interest," there is no basis laid for the fact or the charge of a monopoly.' The authorities seem to be uniform in holding that individuals have a perfect legal right to form labor organizations for the protection and promotion of the interests of the laboring classes and deny the power to enjoin the members of such organizations from peaceably withdrawing from the service of the employer. Wabash R. Co. *v.* Hannahan (C. C.), 121 Fed. 563; National Protective Asso. *v.* Cummings, 170 N. Y. 315, 63 N. E. 369, 58 L. R. A. 135, 88 Am. St. Rep. 648; Bowen *v.* Matheson, 14 Allen (Mass.), 499; Gray *v.*

Building Trades Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477; Thomas *v.* Cin., etc., Ry. Co. (C. C.), 62 Fed. 803; Ames *v.* U. P. Ry. Co. (C. C.), 62 Fed. 7; Atchison, T. & St. F. Ry. Co. *v.* Gee (C. C.), 140 Fed. 153; Arthur *v.* Oakes, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414. Many more adjudications of the same nature exist and might be cited, but as there is no conflict between the modern decisions upon this question, it would be a useless waste of time and labor to cite more. These decisions are based upon the law which permits every one to enter into any kind of a contract which has for its object and purpose the protection and promotion of the interest of the parties thereto, as well as the betterment of their condition in life, and that right to so contract is not curtailed or abridged if, perchance, the contract indirectly or incidentally operates in restraint of trade. We must therefore hold that the United Brotherhood of Carpenters and Joiners and their allied associations whom the defendants represent, are not unlawful combinations made and entered into in restraint of trade, but are legal and highly laudable *when confined within proper bounds.*"

Professor Stimson, in his recent work on Federal and State Constitutions of the United States, 1908, says on page 30: "Coming last to the liberty of labor or trade, it is the more important to trace the appearance of the great principles falling under this head, for the reason that they have been largely lost sight of in American jurisprudence. The frequent enactment of acts against trusts, monopolies or contracts in restraint of trade, both state and federal, show that our legislatures, if not our Bench and Bar, must have substantially forgotten the body of the common law, to say nothing of the course of English constitutional history upon these matters.

"For the broader understanding of the liberty right involves as well as the liberty of life and person, the liberty to support life and family. That is, to exercise one's labor freely and without control, to acquire possessions, to earn wages and to exercise one's faculties in any lawful way, without competition by the State or any organism of the State and without restraint or hindrance by the Government or by individuals. The extent of this right is the matter most discussed today, and therefore it is far the most important one to be considered. Closely connected with it is the right to private property, at least in so far as such property is the result of a man's labor, and the right to freedom of contract for such labor or in the exercise of such trade both as to reward or profits and conditions. There is probably no constitutional principle more often invaded by modern statutes than is this."

On page 38 Professor Stimson says: "The principle against monopoly or restraint of trade, though not expressed in any constitutional document, is quite as old as many that are, and may fairly be considered as part of the law of the land."

And on page 18 he says: "The right of liberty in trade or industry involves the notion of protection from any monopoly or any privilege even if granted by the State, as well as from any combination of guilds or other workmen."

Reverting to the case of Lohse Patent Door Co. v. Fuelle *et al.*, 114 S. W. 997, we ask attention to two points. One of them is, that to be lawful at common law a labor union must be "confined within proper bounds." This principle applied prevents the lawful existence of a national organization which has for its purpose the suppressing of all competition in any given trade. That doctrine is the same that was applied in the case of

Berry *v.* Donovan, 188 Mass. 353, and it is the same doctrine that was applied in the case of Jacobs, as President of the Protective Coat Tailors' and Presser's Union, *v.* Cohen *et al.*, 183 N. Y. 207. The other point to which we call attention is Judge Woodson's reference to the doctrine of the Supreme Court of the United States announced in the case of Munn *et al. v.* The People of the State of Illinois (1876), 4 Otto 113 (94 U. S.), 24 L. Ed. 77. Judge Woodson held in Lohse Patent Door Co. *v.* Fuelle *et al.*, that Munn's case did not apply to the United Brotherhood of Carpenters and Joiners and its allied similar associations, composed of carpenters, joiners, and other persons, who do carpenter work and other labor in the construction of houses and other buildings in the city of St. Louis and throughout the country. A house is a convenience, but coal is a necessity. And a moment's consideration of the facts of this case now at the bar of this Court will show that the doctrine in the Munn case does apply to the United Mine Workers of America, the defendants in this case.

Mr. Chief Justice Waite, in rendering the opinion of the Court in the Munn case, held that a public interest may attach where property is put to a public use, and that the employer is then held to regulation by law. And the same opinion recognized that an employment may be of such a character as to be likewise invested with a public interest. *For example, suppose a combination of all the growers of grain in this country. Will any one question that such a combination would be unlawful if, as a result, no one was allowed to raise grain unless he belonged to that union? And yet the United Mine Workers of America aim to let no one work in the mining of coal unless he belongs to their Union, and to let no operator mine coal unless under their jurisdiction and control.*

Applying this to the case at bar the Court will take judicial notice of the fact that coal is a necessity; that it exists in different localities throughout the United States, and that from climatic conditions it is essential that coal be mined and be furnished, not only with regularity, but at reasonable prices, and be obtainable, freely and at all times, in the common markets throughout our entire land. *The Court will also take judicial notice of the frequent national strikes which have been called and enforced by this national organization. It will take judicial notice of the widespread discomfort and distress which these strikes have brought about and which they must of necessity continue to bring about so long as that power of that Union is permitted to exist and to be exercised in that way.* It will be admitted that it would not be obnoxious to the rule in the Munn case for men engaged in mining coal to unite and form a labor union in any given locality for proper purposes and to conduct their union in a proper way. But a combination of all such unions into a national one to aim and do as the United Mine Workers of America aim and do would be obnoxious to the doctrine in the Munn case.

If all the coal operators in this country were to combine and say that no one could mine coal unless he worked for their combination, and that no one could buy coal unless he paid their price, how long would such a thing be tolerated? Yet the United Mine Workers of America have not only openly organized themselves into a monopoly to control the entire coal mining industry of this country, but they have undertaken to establish the "closed shop" and to deny a man the right to work at that occupation unless he is a member of their Union, and to deny the right of an employer to operate a coal mine unless he runs it Union, and they have gone further and said to the coal consuming public that the mining of coal shall be suspended throughout the entire land until they have their way.

And it is their claim that not only have they the right to form such an organization, not only have they the right when and as they will to declare national strikes, which bring about national suffering, but that that right to exist and that right to bring about that suffering and to paralyze the industries of this country are rights guaranteed to them as citizens of the United States. Why? How?

What Rights Have the Defendants in the Conduct of Their Business?

We will sub-divide this into two heads:

1. If the United Mine Workers are an unlawful body.
2. If the United Mine Workers are a lawful body.

1. If the United Mine Workers are an Unlawful Body?

If the United Mine Workers are an unlawful organization in professed design or in fact, then no act done in carrying out an unlawful design or in doing an unlawful act can be held to be lawful.

2. If the United Mine Workers are a Lawful Body.

We will sub-divide this into two heads:

2 x. Defendants' permissive rights.

2 y. Plaintiff's affirmative rights which explain, limit, or modify defendants' rights.

2x. Defendants' Permissive Rights.

We premise discussion of this point by calling attention to the fact that the defendants are officers of a Labor Union, and that they claim the right to organize plaintiff's non-union mine. Unlike organizations which exist for religious and social advancement, many Labor Unions, and amongst them the United Mine Workers of America,

while professing laudable purposes, have in fact purposes which are unlawful. In carrying out the various purposes of the Union some of which are lawful and others of which are unlawful, the defendants, as officers of the Union, do acts, some of which are entirely proper and others of which are entirely wrong. Imbued with the idea that certain of their acts are right, they affect to believe all of their acts are right. They forget or ignore the fact that a lawful act under one set of circumstances may become an unlawful act under a different set of circumstances. In such case, the motive is the controlling factor and determines the lawfulness or the unlawfulness of the act done.

The propagation of the doctrines of religious and social bodies is in the main along the line of public meetings, to which the individual may resort on his own initiative and of his own free will. In some instances, personal appeal by personal visitation is made. Labor Unions, while, under ordinary circumstances, entitled to use both methods, resort chiefly to organizers. The United Mine Workers of America depend upon organizers. Hughes is one of their organizers, and it was over his efforts, as such organizer, to unionize plaintiff's non-union mine, that the controversy in this case arose.

It is unusual to find Labor Unions insisting, in Court, upon their right to organize non-union men in breach of contracts the non-union men have with their employer. Yet such a case is presented here. Generally, organization is effected in a different way. A boycott of the employer's output is instituted, and, by that means, the non-union employer is brought to his knees through failure of the consumer to handle his product. But to boycott a certain manufacturer of hats is one thing, and to boycott the product of a certain coal mine is another thing. In the case of the boycotted hat, success is com-

paratively easy. In the case of the boycotted coal mine, success is well-nigh impossible. The reason is obvious. Men are markets for hats; railroads and manufactories are markets for coal. So, inasmuch as boycotting, in the customary phase of its application, is not available to defendants as a ready means of unionizing plaintiff's non-union mine, *they make the claim that they should be given the right to send organizers amongst plaintiff's men and induce a breach of the contracts the men have with plaintiff, and compel plaintiff to breach its contracts with such of its employees as the defendants and their organizers may, after effort, have been unable to induce to join the Union.* We claim that such a course is wrong for two reasons. It involves an intentional breach of contracts existing between third persons, with whom defendants have no business or contractual relations whatever. And it really means to boycott the plaintiff, although in another form, by getting all men to refuse to work for plaintiff.

Therefore, in discussing the permissive rights of these defendants, engaged in running the United Mine Workers of America, in their efforts to increase the membership of the Union, and, particularly, in their efforts, in this case, to increase the membership of the Union through organizers, who undertake to bring about breaches of contracts existing between the employes and plaintiff, on the one side, and between the plaintiff and its employes on the other side, the permissive rights will not be interpreted to include the application of such rights to legitimating induced or enforced breaches of contract. Neither will the permissive rights herein spoken of be held to include the application of such rights in aid of the accomplishment of any unlawful purpose. Subject to the foregoing, now let us see what are the permissive rights of these defendants.

In the case of In re Higgins (C. C., N. D. Texas, 1886), 27 Fed. 443, 445, Judge Pardee said: "*Labor organizations* are lawful and generally laudable associations, but they have no legal *status* or authority, and *stand before men and the law on no better footing than other social organizations.*"

The Texas & Pacific Railway Company was in the hands of receivers appointed by Judge Pardee. The receivers had agents. These agents had discharged as incompetent, and for absence without leave, a certain employe, and refused to reinstate him at the demand of a secret labor organization which claimed that this discharge was in violation of an agreement forced upon the managers of the road prior to the receivership. There was no complaint made to the receivers, or to the Court, by any employe, of bad treatment or insufficient wages or other grievances; and yet orders were issued from the secret organization to all their employes to quit work, to strike, to cripple the operations of the road; and many of the employes did quit, and induced and forced others to quit, and hindered and delayed the operation of the railway, and damaged the property in possession of the Court many thousands of dollars. Judge Pardee said of the reason assigned for the strike, that, if true, the reason was impertinent and that such demands could not be tolerated. He said further that the alleged reason was a mere scheme and pretense, and that the real motive for the order to strike was to compel a recognition of a certain secret labor organization (which, by evidence, had been shown to be about as arbitrary and autocratic in dealing with labor as the famous Six Companies of China) as an existing power, so that its officers should be consulted in the operation and management of railroads in which they do not own any interest, and of which they do not even pretend to be employes.

Along the same line of thought, Judge Brown in Old Dominion Steam-Ship Co. *v.* McKenna (C. C., S. D. New York, 1887), 30 Fed. 48, *50*, said: "*Associations have no more right to inflict injury upon others than individuals have. All combinations and associations designed to coerce workmen to become members, or to interfere with,* obstruct, vex, or annoy *them* in working, *or in obtaining work, because they are not members, or in order to induce them to become members;* or designed to prevent employers from making a just discrimination in the rate of wages paid to the skillful and to the unskillful; to the diligent and to the lazy; to the efficient and to the inefficient; and all associations designed to interfere with the perfect freedom of employers in the proper management and control of their lawful business, or to dictate in any particular the terms upon which their business shall be conducted, by means of threats of injury or loss, by interference with their property or traffic, or with their lawful employment of other persons, or designed to abridge any of these rights—*are pro tanto illegal combinations or associations;* and all acts done in furtherance of such intentions by such means, and accompanied by damage, are actionable." He cited many authorities.

In the case of Thomas *v.* Cincinnati, New Orleans & Texas Pacific Railway Company, *In re* Phelan (C. C., S. D. Ohio, W. D. 1894), 62 Fed. 803, *817*, Judge Taft said: "Now, it may be conceded in the outset that the employes of the receiver had the right to organize into or to join a labor union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together, they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities

of the single employe may compel him to accept any terms offered him. The accumulation of a fund for the support of those who feel that the wages offered are below market prices is one of the legitimate objects of such an organization. They have the right to appoint officers who shall advise them as to the course to be taken by them in their relations with their employer. They may unite with other unions. The officers they appoint, or any other person to whom they choose to listen, may advise them as to the proper course to be taken by them in regard to their employment, or, if they choose to repose such authority in any one, may order them on pain of expulsion from their union, peaceably to leave the employ of their employer because any of the terms of their employment are unsatisfactory."

In that case, Phelan was before the Court for contempt as a result of a conspiracy between himself and Debs and others to tie up the Cincinnati, New Orleans & Texas Pacific Railway which was in the hands of a receiver appointed by Judge Taft. The conspiracy consisted of an effort of the American Railway Union to compel the Pullman Company to comply with certain demands of the Pullman Company's employes, and in aid thereof to compel the receiver to abandon the hauling of Pullman cars, the Union going so far as to urge all of the members of the American Railway Union throughout the United States to make similar demands of the different railways throughout the country, or else leave the service of their employer. Phelan urged the employes to quit the service of the receiver and the other railroads of Cincinnati, and to tie them all up, and to prevent other persons from taking their places, by persuasion if possible, by clubbing if necessary.

The Pullman Company's employes were not members of the American Railway Union, and when the Pullman

Company closed its works, rather than grant an increase of wages which the employes had demanded, the American Railway Union, which met in general convention shortly thereafter, took up the cudgel on behalf of the employes of the Pullman Company. The motive actuating the American Railway Union may have been sympathy, or it may have been to exhibit and magnify the power of the American Railway Union itself. Suffice it to say, the controversy was not between the employes and the receiver of the Cincinnati, New Orleans & Texas Pacific Railway, except so far as these employes, after being incited to do so, adopted the quarrel of the Pullman Railway Company's employes as their own.

In restraining Phelan and others from inducing the receiver's employes to quit work and tie up the Cincinnati, New Orleans & Texas Pacific Railway until the receiver would agree not to carry Pullman cars in their trains, Judge Taft held that the action of the American Railway Union was wrong for two reasons; first, the American Railway Union was interfering with the contractual relations existing between the receiver and the Pullman Company for the hauling of Pullman cars, to which contractual relations the American Railway Union was a stranger. Hence, the Railway Union was an intermeddler. And second, by its course of action, the American Railway Union was engaged in a boycott. It was seeking to drive the Pullman Company out of business, unless that Company would accede to the demands of its employes. The American Railway Union had no contractual or other relations with the Pullman Company. The employes of the Pullman Company and the Pullman Company made their own contracts governing their own mutual relations. And to such contracts, the Railway Union was likewise a stranger.

Judge Taft further held: "*A malicious or unlawful interference with the business of another by inducing his employes to leave his service is an actionable wrong and subjects the offender to liability for the loss sustained.*" 62 Fed. 816.

In the case of Wabash Railroad Company v. Hannahan and others (C. C., E. D. Missouri, E. D. 1903), 121 Fed. 563, *568, 569*, Judge Adams said:

> "An employee has an unquestionable right to place a price and impose conditions upon his labor at the outset of his employment, or, unless restrained by contract obligations, upon the continuance of his labor at any time thereafter; and, if the terms and conditions are not complied with by the employer he has a clear right either not to engage or having engaged in his service to cease from work. What one may do all may do.
>
> "They may seek and obtain counsel and advice concerning their rights, duties, and obligations in relation to their employer, and persons interested in their welfare may advise, aid, and assist them in securing such terms and conditions of service as will best subserve their interests, and what they may lawfully do singly or together they may organize and combine to accomplish.
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> "In like manner, as capital is combined for legitimate purposes, so labor may combine for legitimate purposes, but this right of combination, and the resulting right to strike or quit their employment, is *a weapon for the defense and protection of employes, and not a weapon of attack.* They may, by peaceful and lawful combination and concert of action, be able to so control the supply of labor as to compel the employer to come to their terms, *but they are not at liberty to make use of this weapon to otherwise interfere with or injure the employer or co-employe.* The clear line of demarkation, recognized by all the authorities, is that the lawful and permissible strike must not be attended by violence to or destruction of property or by other coercive measures intended

to prevent the employer from securing other employes or otherwise carrying on his business according to his own judgment."

In that case, the Wabash Railroad Company sought to enjoin Hannahan, grand master of the Brotherhood of Locomotive Firemen, W. G. Lee, vice grand master of the Brotherhood of Railroad Trainmen, and officers and members of the joint protective board of the first-mentioned and of the general grievance committee of the second-named order. The plaintiff claimed that the defendants were trying to unionize the Wabash road. The defendants denied this, and said that as officers they were acting at the request and by the authority of a large majority of plaintiff's employes, who were members of the two Brotherhoods, and they further said they were in good faith making an effort to better the condition of the men's service and to secure a higher rate of wages therefor; and that any strike which they were about to sanction was intended only for the purpose of peaceably asserting the rights which they demanded. Upon the bill, answers and affidavits, Judge Adams found that plaintiff had not proved that the defendants were engaged in trying to unionize the Wabash road, and further found that the defendants were representing employes of the Wabash road and that these employes were members of the orders, which were represented by the defendants, and further found that at the time there was a very general demand for an increase of wages and change in rules and conditions of service by employes of the Wabash road, and that this demand had been brought to the attention of the railroad company. Under those circumstances, Judge Adams refused to enjoin the defendants from ordering a strike of the members of their Brotherhoods who were then working for the Wabash road.

In his opinion, above quoted, Judge Adams gives expression to—"What one may do all may do," and "what they may lawfully do singly or together they may organize and combine to accomplish." This doctrine is taken from the case of Arthur *v.* Oakes (C. C. A., Seventh Circuit), 11 C. C. A. 209, 63 Fed. 310. And while the use Judge Adams makes of that doctrine in the sentences quoted was entirely proper in view of the facts of the case he was deciding and to the extent of his decision, that doctrine as expressed in that and similar language has unfortunately been taken by Labor Unions to mean a *carte blanche*.

In the case of United States *v.* Debs *et al.*, Union Trust Company *v.* Atchison, Topeka & Santa Fe Railroad Company (C. C., N. D. Illinois, 1894), 64 Fed. 724, 763, Judge Woods said:

> "In the recent case of Arthur *v.* Oakes (C. C. A., 7th Circuit), 63 Fed. 310, it was decided, with my full concurrence in the opinion, that a court of equity will not, 'under any circumstances, by injunction, prevent one individual from quitting the personal service of another'; *and in respect to the right of employes, singly or in concert, to quit work, and of others to advise them on the subject*, there is no present necessity for adding to what was said in that case, further than to observe that *neither expressly nor by implication does the opinion there delivered lend the remotest sanction to the proposition asserted by one of the counsel for the defendants, that in free America every man has a right to abandon his position, for a good or a bad reason, and that another, for good or bad reason, may advise or persuade him to do so. Manifestly that is not true.* If it were, a servant might quit his place, and another might advise him to quit, in order to make way for the entry of thieves or burglars into the employer's house—a suggestion at which simple minds revolt, and for which the acutest can invent neither justification nor apology. The rule is familiar in criminal jurisprudence that any

act, however innocent in itself, becomes wrongful or criminal when done in furtherance of an unlawful design. But whether or not, in a particular case, an injunction will be appropriate, and to what extent it shall go if granted, will depend on other considerations than the mere wrongfulness or illegality of the act or conduct proposed to be enjoined. The right of men to strike peaceably, and the right to advise a peaceable strike, which the law does not presume to be impossible, is not questioned. But if men enter into a conspiracy to do an unlawful thing, and, in order to accomplish their purpose, advise workmen to go upon a strike, knowing that violence and wrong will be the probable outcome, neither in law nor in morals can they escape responsibility."

In the case of Delaware, Lackawanna & Western Railroad Company *v.* Switchmen's Union of North America and others (C. C., W. D. New York, 1907), 158 Fed. 541, *543*, the rights of workmen are defined by Judge Hazel in the following language:

"That workmen may strike or quit their employment *ad libitum* is well recognized by all the authorities, and that they may do so singly or in concert, even though it be in violation of their service contract, has also been held. In Hopkins *v.* Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99, the principle is thus stated: 'The courts have invariably upheld the right of individuals to form labor organizations for the protection of the interests of the laboring classes, and have denied the power to enjoin the members of such associations from withdrawing peaceably from any service, either singly or in a body, even where such withdrawal involves a breach of contract.' And in Arthur *v.* Oakes, 63 Fed. 310, 11 C. C. A. 209, 25 L. R. A. 414, an earlier case, Mr. Justice Harlan, sitting in the Circuit Court of Appeals for the Seventh Circuit, and writing the opinion of the Court, says: 'Those employes having taken service, first with the company, and afterwards with

the receivers, under a general contract of employment, which did not limit the exercise of the right to quit the service, their peaceable co-operation as the result of friendly argument, persuasion, or conference among themselves, in asserting the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal and criminal, although they may have so acted in the firm belief and expectation that a simultaneous quitting without notice would temporarily inconvenience the receivers and the public.' The Court broadly held that the employes in good faith and peaceably had the right to leave the service of their employer, but *without injuring or interfering with the free action of others.* It follows, therefore, whenever a conspiracy is alleged that it must be shown that the intention of the conspirators was to inflict wrong upon the complainant, and *if the defendants* herein acting together *tried to have the employes break their contract, or urged them to leave the employ of the complainant, the court has power to interfere.*"

In the case of United States *ex rel.* Guaranty Trust Company of New York *v.* Haggerty *et al.* (C. C., N. D. West Virginia, 1902), 116 Fed. 510, *515*, *516*, *517*, Judge Jackson said:

"I do not question the right of the employes of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the same time I do not recognize the right of an employer to coerce the employes to continue their work when they desire to quit."

And again he said:

"While I recognize the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employes who are not dissatisfied with their work in the mines to lay down

their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people."

And again he said:

"Their mission here is to foment trouble, create dissatisfaction among the employes in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers."

And again he said:

"The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

In that case the defendants, Haggerty and others, all non-residents of West Virginia, came into the State as organizers for the United Mine Workers of America, and undertook to organize the mines of the Clarksburg Fuel Company. Their method was to induce employes who were not dissatisfied with the terms of their employment to strike, and the Court enjoined such methods on the ground that these organizers were actuated by a desire to inflict injury and damage upon the employers.

In the case of United States *v.* Weber *et al.* (C. C., W. D. Virginia, 1902), 114 Fed. 950, 953, Judge McDowell said:

"The right of the employes of the receivers to voluntarily join a union that has only legal purposes

> in view cannot be denied. Moreover, the right to induce, by legal methods and fair moral suasion, the employes of the receivers to join such an organization is not denied. But if the object of the union is illegal, or if the methods employed by it, either to induce acquisitions to its ranks or to accomplish its ulterior purposes, are illegal, it appears to be well settled that the persons who combine in such efforts are conspirators."

In that case, Judge McDowell, in treating of the legality of the motive actuating the United Mine Workers of America, who were at the time trying to organize certain mines in Virginia, which were in the hands of receivers appointed by the Federal Court, said:

> "In the first place, *it is hardly open to serious question that the ultimate purpose of the union is not legal.* This purpose is to secure control of mining operations, including those under the management of the receivers of this Court. Confessedly, control is desired for this purpose: If the union miners in some other State make complaint of grievance — the justness of the complaint to be judged solely by the union—the union will be in a position to enforce compliance with their demands by ordering and carrying into effect a general strike.
>
> "Can this Court rightfully surrender control of the works under its charge to the United Mine Workers? On authority it is clear that it cannot. See In re Higgins (C. C.) 27 Fed. 445; In re Wabash R. Co. (C. C.) 24 Fed. 217; In re Doolittle (C. C.) 23 Fed. 544; Thomas *v.* Railroad Co. (C. C.) 62 Fed. 803. On reason, also, it is equally clear."

In the case of In re Wabash Railroad Company (C. C., W. D. Missouri, 1885), 24 Fed. 217, *220*, Judge Krekel said:

> "Courts do not interfere between employer and employes, except to declare what the rights of the parties are, and to keep order. Men may work or

cease working as they choose, provided they violate no contract. They may combine and peaceably seek to forward their interest in any manner, provided they do no violence to others' rights, or commit no violation of law."

In the case of Curran v. Galen, President of Brewery Workingmen's Local Assembly *et al.* (1897), 152 N. Y. 33, 37 L. R. A. 802, 46 N. E. 297, the Court said (37 L. R. A. 804) Per Curiam—

> "It is proper and praiseworthy, and perhaps falls within that general view of human society which perceives an underlying law that men should unite to achieve that which each by himself cannot achieve, or can achieve less readily. But *the social principle which justifies such organizations is departed from when they are so extended in their operations as either to intend or to accomplish injury to others.* Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper or to restrict that freedom, and, through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their positions and of deprivation of employment, then that purpose seems clearly unlawful, and militates against the spirit of our government and the nature of our institutions. The effectuation of such a purpose would conflict with that principle of public policy which prohibits monopolies and exclusive privileges."

In that case, Curran, who was an engineer by trade, was employed from day to day by the Miller Brewing Company and was earning a good income, and had constant employment. There was a voluntary association in the City of Rochester, where he lived, called the Brewery Workingmen's Local Assembly, 1,796. It was

composed of workingmen employed in the brewery business in Rochester, and was a branch of a national organization known as the Knights of Labor. Curran was solicited to join the union, but declined. He was then threatened that unless he joined and paid his initiation fee and subjected himself to the rules and regulations of the Union, the union would obtain Curran's discharge from the employment he then had, and would make it impossible for him to obtain employment in Rochester or elsewhere. He still refused; then he was discharged. The Miller Brewing Company belonged to the Ale Brewers' Association of Rochester, and that association had an agreement with the union that no employe should work for a longer period than four weeks without becoming a member of the union. The defense put up was, that Curran was retained in the employ of the Miller Brewing Company for more than four weeks after he was notified of the provisions of the agreement, which required him to become a member of the union, and that upon his continued refusal to join the union, the defendants had simply notified the Miller Brewing Company of its contract, and thereupon Curran had been discharged.

In the opinion of the Court, this language appears—

> "The candid mind should shrink from the results of the operation of the principle contended for here; for there would certainly be a compulsion or a fettering of the individual glaringly at variance with that freedom in the pursuit of happiness which is believed to be guaranteed to all by the provisions of the fundamental law of the State. *The sympathies or the fellow feeling which, as a social principle, underlies the association of workingmen for their common benefit, are not consistent with a purpose to oppress the individual who prefers by single effort to gain his livelihood. If organization of workingmen is in line with good government, it is because it is intended as a legitimate instrumentality to promote the common good of its*

members. If it militates against the general public interest, if its powers are directed towards the repression of individual freedom, upon what principle shall it be justified?"

In the case of Iron Molders' Union No. 125, of Milwaukee, Wisconsin, *et al. v.* Allis-Chalmers Company (C. C. A. Seventh Circuit, 1908), 166 Fed. 45, the correlative rights and the correlative obligations of employer and employes when engaged in a strike or lockout are in the language of Judge Grosscup clearly and compactly set forth. That case was a strike case. The Allis-Chalmers Company employed foundrymen and other persons who were members of the Iron Molders' Union No. 125, and of the other defendant unions. Certain demands, including increased wages, were made by the employes through these unions, acting through a conference committee. The Allis-Chalmers Company increased the wages to an amount exceeding the sums demanded, but refused the other demands. Thereupon the employes struck. The bill states that the object of the strike was to control the employment of the molders' apprentices, handy men, superintendents, and assistant superintendents, and to prevent any such mechanics from working at their trade without first becoming members of the union. The bill averred that those apprentices were learning the molder's trade and that some of them had a long time and others had a short time to work. Section 16 of the decree (166 Fed. 48) relates solely to apprentices, and by the bill these apprentices had unfulfilled time contracts. But the language of the Appellate Court (166 Fed. 49, 50) in including "others" with apprentices would seem to indicate that that Court intended to extend to the Allis-Chalmers Company the protection of the Court's prohibition against persuasion to all persons employed by it to serve for a definite time, whether in

fact such persons were, or were not, apprentices. The Allis-Chalmers Company then undertook to get other persons to take the place of the strikers, and the defendants alleged that in so doing the Allis-Chalmers Company was endeavoring to coerce the defendants to return to work, and that it had given out that it would not employ any of the defendants so long as they were members of the union. In this contest, the defendants resorted to persuasion to induce the new men to quit work and to induce men not to go to work. They also resorted to persuasion to induce persons under contract for a specific length of time to quit work, and they resorted to picketing. Having been enjoined by the lower court from doing these amongst other things (150 Fed. 155, *161*) an appeal was taken.

The Circuit Court of Appeals held that there was in that case a genuine struggle of labor by the employes of the Allis-Chalmers Company to obtain better terms and conditions from their employer,and that in such a struggle the rights of the contending sides were not only equal but mutual. The Court accordingly held that inasmuch as the Company was allowed to persuade men to take the places of their striking employes, therefore the striking employes had the right to persuade these men to quit working or to persuade others not to take the places of the strikers. This was on the ground of equality of rights. But the Court held that the strikers were not entitled to use persuasion to induce the Company's apprentices and others to break their contract to serve for definite times. And with reference to the last mentioned holding, the Court said:

> "And the reason, we believe, is quite plain. *Each party to such a contract has a property interest in it. If either breaks it, he does a wrong, for which the other is entitled to a remedy. And whoever knowingly makes himself a party to a wrongful and injurious act becomes equally liable.*"

So that the Court adhered to the general doctrine that even in the case of a strike the strikers are not justified in bringing about a breach of contracts existing between their employer and third persons.

And owing to the fact that that suit was brought to protect the property rights of the Allis-Chalmers Company and that these property rights were alleged to be simply employments at will without other stipulation or agreement, save in the case of the apprentices who had unfulfilled terms of service, and save also as to any other employes with whom the Company had contracts to serve for definite times, the Court drew a distinction between the Company's rights with regard to its men who were employed at will and the Company's rights with regard to its men who were employed to serve for definite times, and held that contracts of service at will were not property rights superior to the rights of employes of the Company on strike for legitimate purposes, who had also been employes at will, where there still existed between the striking employe and his employer the peculiar relationship created by the existence of a strike or lockout, a strike or lockout, as to the employes who have not finally and in good faith abandoned their employment, being held by the Court not to completely terminate the relationship between the parties. It will be noticed that the Appellate Court does not say that the *only* kind of a contract which will be protected is one for a definite length of time. The holding is, that a contract for a definite length of time *will be protected*. It will be borne in mind that *an employer and an employe may contract with each other on any terms, in any way, and on any subject-matter they please, so long as not contrary to law*. And inasmuch as the making of the contract would create a property right in which each party has an interest, strikers would be precluded from bringing about a breach

of such contracts. *A fortiori* would such contracts be protected against intermeddlers. It will not be forgotten that the Appellate Court, in that case, was dealing with a genuine labor struggle for lawful purposes, and that it was defining the rights of quasi employes. The defendants in that case were not simply intermeddlers. So for the purpose of defining the rights of strikers in such a case in the use of persuasion, the Appellate Court held that the incorporeal value of a going business, based upon the right to the continuing services of those who accepted employment at will until such services were terminated by the free act of one or the other party to the employment, does not constitute property for the purpose of injunctive relief. But it is nowhere suggested that *as against an intermeddler* an employer does not have a property right sufficient for injunctive relief, where he bases his right upon the *incorporeal value of a going business* and the further right to the continuing services of those who accept employment at will until such services are terminated by the free act of one or the other party to the employment. *A fortiori* where the value of the going business is further based on a successful struggle against a labor union, where the labor union interferes with the business of the employer by inducing its employes to join the union and break contracts, which forbid them joining, and *where the Union is trying to resume its sway over the recalcitrant employer.*

Judge Grosscup recognized that there was some liability of misconstruction of the Court's opinion, and while concurring, said:

> "The foregoing opinion so compactly and clearly sets forth the correlative rights and the correlative obligations of employer and employes when engaged in a strike or lockout, that it is with hesitation that I add this word; and I only add it that nothing that is contained in the opinion may be construed to

relate to the correlative rights and the correlative obligations of employer and employes in any relationship other than their somewhat anomalous relationship pending a strike or lockout.

"A strike is cessation of work by employes in an effort to get for the employes more desirable terms. A lockout is a cessation of the furnishing of work to employes in an effort to get for the employer more desirable terms. Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties. The employes who remain to take part in the strike or weather the lockout do so that they may be ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree. Manifestly, then, pending a strike or lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employe that is neither that of the general relation of employer and employe, nor again that of employer looking among strangers for employes, or employes seeking from strangers employment. And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, neither strike nor lockout pending, persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employes not to take employment with given employers, upon which questions we do not, as I understand it, express any opinion."

Judge Grosscup's warning that the opinion of the Court in Iron Molders' Union *v.* Allis-Chalmers Company, 166 Fed. 45, is not to be construed to relate to the correlative rights and the correlative obligations of employer and employes in any relationship other than their somewhat anomalous relationship pending a strike

or lockout, has manifest reference to the work of an intermeddler. And in this connection we want to call attention to Judge Grosscup's language In re Charge to Grand Jury (D. C., N. D. Illinois, 1894), 62 Fed. 828, *831*, *832*, *833*:

> "I recognize, however, the right of labor to organize. Each man in America is a freeman, and, so long as he does not interfere with the rights of others, has the right to do with that which is his what he pleases. In the highest sense, a man's arm is his own, and, aside from contract relations, no one but he can direct when it shall be raised to work, or shall be dropped to rest. The individual option to work or to quit is the imperishable right of a freeman. But the raising and dropping of the arm is the result of a will that resides in the brain, and, much as we may desire that such wills should remain entirely independent, there is no mandate of law which prevents their association with others, and response to a higher will. The individual may feel himself, alone, unequal to cope with the conditions that confront him, or unable to comprehend the myraid of considerations that ought to control his conduct. He is entitled to the highest wage that the strategy of work or cessation of work may bring, and the limitations upon his intelligence and opportunities may be such that he does not choose to stand upon his own perception of strategic or other conditions. His right to choose a leader, one who observes, thinks, and wills for him—a brain skilled to observe his interest—is no greater pretension than that which is recognized in every other department of industry. So far, and within reasonable limits, associations of this character are not only not unlawful, but are, in my judgment, beneficial, *when they do not restrain individual liberty*, and are under enlightened and conscientious leadership.
>
> "*But they are subject to the same laws as other associations.* The leaders to whom are given the vast power of judging and acting for the members are

simply, in that respect, their trustees. Their conduct must be judged, like that of other trustees, by the extent of their lawful authority, and the good faith with which they have executed it. *No man, in his individual right, can lawfully demand and insist upon conduct by others which will lead to an injury to a third person's lawful rights.* The railroads carrying the mails and interstate commerce have a right to the service of each of their employes until each lawfully chooses to quit; and any concerted action upon the part of others to demand or insist, under any effective penalty or threat, upon their quitting, to the injury of the mail service or the prompt transportation of interstate commerce, is a conspiracy, unless such demand or insistence is in pursuance of a lawful authority conferred upon them by the employes themselves, and is made in good faith in the execution of such authority. The demand and insistence under effective penalty or threat, and injury to the transportation of the mails or interstate commerce being proven, the burden falls upon those making the demand or insistence to show lawful authority and good faith in its execution.

"Let me illustrate: Twelve carpenters are engaged in building a house. Aside from contract regulations, they each can quit at pleasure. A thirteenth and fourteenth man, strangers to them, by concerted threats of holding them up to public odium or private malice, induce them to quit, and leave the house unfinished. The latter in no sense represent the former or their wishes, but are simply interlopers for mischief, and are guilty of conspiracy against the employers of the carpenters. But if, upon a trial for such, it results that, instead of being strangers, they are the trustees, agents or leaders of the twelve, with full power to determine for them whether their wage is such that they ought to continue or quit, and that they have in good faith determined that question, they are not then, so far as the law goes, conspirators. But if it should further appear that the supposed authority was used, not in the interests of the twelve, but to further a personal ambition or

> malice of the two, it would no longer justify their conduct. Doing a thing under cloak of authority is not doing it with authority. The injury of the two to the employer, in such an instance, would only be aggravated by their treachery to the associated twelve, and both the employer and employes should, with equal insistence, ask for the visitation of the law."

That *a distinction is to be and is made between* the mutual *rights* of employer and employe *where a strike or lockout exists*, on the one hand, *and where neither strike nor lockout exists*, on the other hand, is evidenced not only by the language of Judge Grosscup in the case of Iron Moulders' Union No. 125, *et al. v.* Allis-Chalmers Company, 166 Fed. 52, 53, and from his language in his Charge to the Grand Jury, hereinbefore referred to (62 Fed. 831, 832, 833), but *in Illinois by legislative enactment* it was sought to divide employers arbitrarily into two classes, *one class* where a strike or lockout exists, and *another class where no* strike or lockout exists. Section 8 of the Act that was then in question before the Supreme Court of Illinois read—"In no case shall the superintendent of any free employment office created by this act furnish, or cause to be furnished, workmen or other employes to any applicant for help whose employes are at that time on strike, or locked out; nor shall any list of names and addresses of applicants for employment be shown to any employer whose employes are on strike or locked out; nor shall such list be exposed where it can be copied or used by an employer whose employes are on strike or locked out."

And in deciding the Act invalid, the Court said that that section was a provision—

> "in aid of strikes and strikers, whether right or wrong, and regardless of the justice or the propriety of the strike or lockout." See Mathews *v.* People (1903), 202 Ill. 389, 63 L. R. A. 73, *76*, *78*, *79*.

Without undertaking to assign the reason for the difference as was done by the Court and by Judge Grosscup in deciding the case of Iron Moulders' Union No. 125, *et al. v.* Allis-Chalmers Company, 166 Fed. 45, Judge Goff in deciding the case of Mackall *v.* Ratchford *et al.* (C. C., D. West Virginia, 1897), 82 Fed. 41, *42*, said with respect to the right of persuasion:

> "The *strikers* had the right to quit work themselves, and *they* had the right to induce *other miners*, by peaceable means, by the persuasive force of public or private argument exerted in a lawful way, to also *quit work* and *join them.*"

In the case of Union Pacific Railway Company *v.* Ruef *et al.* (C. C., D. Nebraska, 1902), 120 Fed. 102, *114*, Judge McPherson said:

> "Defendants have the right to argue or discuss with the new employes the question whether the new employes should work for the company. They have the right to persuade them if they can. But in presenting the matter they have no right to use force or violence. They have no right to terrorize or intimidate the new employes. The new employes have the right to come and go as they please, without fear or molestation, and without being compelled to discuss this or any other question, and without being guarded or picketed; and *persistent* and *continued* and *objectionable persuasion* by numbers *is* of itself *intimidating* and *not allowable.*"

And *it is to be remembered that persistent, continued, and objectionable persuasion by one or by many as the United Mine Workers think best is what is sought to be legalized by these defendants.*

In the same case, speaking of the right of freedom of contract between employer and employe, Judge McPherson held:

> "The law upholds and will protect the right of freedom of contract between employer and em-

ployе; the right of every person or corporation to hire and discharge men at pleasure, subject to liability for damages for breach of contract, and the right of every man to work or to quit work at his pleasure, subject to the same liability, making no distinction between union and non-union workmen."

In the same case (120 Fed. 113) Judge McPherson said:

"*The fifth amendment* to the Constitution of the United States *provides that 'no person shall be deprived of* life, liberty, or *property without due process of law;'* thereby *meaning that neither Congress nor any other governmental agency shall* ever *deprive any person of* either liberty or *property excepting by due process of law.* And the fourteenth amendment to the Constitution of the United States provides that 'no State shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' *And the word 'person' means also a corporation,* as many times decided by the United States Supreme Court.

"And that one's business is his or its property is likewise elementary, and is conceded by all. And that liberty means the right to do as he pleases, when he interferes with the rights of no other person, and *the right to make contracts with all persons upon all subjects-matter, save and excepting with reference to immoral and unlawful matters, is also conceded by all who know anything of the propositions.* And as to what the rights of property mean, and of what liberty of contract consists, of all that has been written upon these all-important and most vital questions there is no paper of greater ability, evidencing more learning, than the very recent opinion of the Supreme Court of Wisconsin in the case of State *v.* Kreutzberg, 90 N. W., 1098."

In Goldfield Consolidated Mines Company *v.* Goldfield Miners' Union No. 220, *et al.* (C. C., D. Nevada, 1908), 159 Fed. 500, *514*, Judge Farrington said:

"*It is a constitutional right of an employer to refuse to have business relations with any person or with any*

labor organization, and it is immaterial what his reasons are, whether good or bad, well or ill founded, or entirely trivial and whimsical."

On page 515, he further said:

"The right of master and servant to enter into contracts, to agree upon the terms and conditions under which the one will employ and the other will labor, is property."

And again on the same page, he said:

"The right of an employer to refuse to employ any particular individual, or any class of individuals, is neither greater nor less than the right of a man to refuse to work for any particular individual, or class of individuals. The reason for the refusal can in no wise control, enlarge, or diminish the legal right of refusal, the right to employ, or the right to refuse to be employed."

And he quotes approvingly. 2 Cooley on Torts, p. 587, as follows:

"It is a part of every man's civil right that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. *It is also his right to have business relations with any one with whom he can make contracts.*"

And on the subject of persuasion, Judge Farrington said (page 519):

"Each party has the right to enter into lawful competition for the support of the non-union miners, and to endeavor by peaceful argument or persuasion to secure their co-operation, *provided*, the persuasion is of such a character as to leave the person solicited feeling free to do as he pleases, *and he is not persuaded*

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to do that which in him would be unlawful. This is so, because workmen, when free from contract obligations, have a legal right, singly, collectively, or as a union, to quit work; that is, to strike, and, having this right, they have the further right to use such lawful means to make the strike effective as are not inconsistent with the rights of others. Karges Furniture Co. *v.* Amalgamated Woodworkers' Union, 165 Ind., 421; 75 N. E., 877; 2 L. R. A. (N. S.), 788; 18 Am. & Eng. Ency. L. (2d Ed.), 88. The mining company has the right to employ non-union men to take the places vacated by those who quit work. The latter have no legal interest or concern in the contract between the company and its new employes. The places which they vacated to strike are no longer theirs, and never again will be theirs unless they are re-employed. It is difficult to see, when a man has voluntarily given up a job, how he can maintain that he has a shadow of claim or right to the vacated place. Union Pac. R. Co. *v.* Ruef (C. C.), 120 Fed., 102, 128."

We call attention to Judge Farrington's language that where the relationship of employer and employe has been finally terminated, the striker has nothing to do with the contract the employer may make with his new employe. The Allis-Chalmers Company case (166 Fed., 45) deals with the rights of strikers, and the right of the strikers to use persuasion is permitted by Judge Grosscup owing to the anomalous relationship still existing between the employer and the employe, resultant upon a pending strike. Judge Grosscup himself, however, recognizes that the striker's right to persuade ceases when the striker finally terminates his relationship with his employer.

In Adams *v.* Brenan *et al.* (1898), 177 Ill., 194; 42 L. R. A., 718, the Supreme Court of Illinois held:

> "A provision that none but union labor shall be employed cannot be lawfully made in a contract by a public corporation, such as a board of education, as it constitutes a discrimination between different

> classes of citizens, and is of such a nature as to restrict competition and to increase the cost of the work."

Per contra: Only non-union labor could not be so employed.

And Judge Cartwright, in delivering the opinion of the Court in that case, said:

> "No question concerning the merits of labor or trades unions is in any way involved in this case. The right of organization for mutual benefit in all lawful ways is not denied. The question is whether the board of education has a right to enter into a combination with such an organization for the expenditure of the taxpayers' money for the benefit of members of the organization, and to exclude any portion of the citizens following lawful trades and occupations from the right to labor. It has no such right."

In the case of Jacobs, as President of the Protective Coat Tailors' & Pressers' Union, *v.* Cohen *et al.* (1905), 183 N. Y. 207, 76 N. E. 5, 2 L. R. A. (N. S.) 292, the New York Court of Appeals held that a contract by a manufacturer to employ as laborers none but members of a particular labor union is not void as against public policy.

Per contra: A like contract to employ only non-union men is lawful.

But the labor union itself would be unlawful if as a combination it extends so far as to inflict injury upon others, or to oppress and crush them by excluding them from all employment, unless gained through joining the labor organization or trades union. Id. 2. L. R. A. (N. S.) 294. And if such a labor union, rendered unlawful for such reasons, were to become subject to the Anti-Trust Law owing to its interference with interstate commerce engaged in by employers with whom the union

might be strong enough to compel a contract for the employment of necessary labor whereby to enable the employer to embark in business, or if already in business, then to enable him to continue therein, any such contract to employ only members of that particular union would be unlawful and could not be enforced under the authority of the case of Continental Wall Paper Company *v.* Louis Voight & Sons Company, decided by the Supreme Court of the United States, February 1, 1909, 212 U. S., 227, 53 L. Ed., 486, 29 S. C. 280.

In the case of State of Missouri *v.* Julow (1895), 129 Mo., 163, 31 S. W. 781, 29 L. R. A. 257, the Supreme Court of Missouri decided that a right to insist that employes shall withdraw from or refrain from joining any trade union or labor union as a condition of employment or continued employment, *is within the constitutional rights of an employer.*

In the case of Gillespie *v.* People of the State of Illinois (1900), 188 Ill. 176, 52 L. R. A. 283, the Supreme Court held a statute void which made it unlawful to prevent, or attempt to prevent, an employe from joining any lawful labor organization, or to discharge an employe because of his connection with such an organization, and providing a penalty therefor, since the right to terminate a contract, subject to liability to respond in a civil action for an unwarranted termination, is within the protection of the provisions of the State and Federal Constitutions, which guarantee that no person shall be deprived of life, liberty, or property without due process of law. The Court held that there was an unconstitutional discrimination in favor of union workmen.

In the case of State *v.* Kreutzberg (1902), 114 Wis. 530, 90 N. W. 1098, 58 L. R. A. 748, the Supreme Court of Wisconsin held that a statute forbidding, under penalty, an employer from discharging an employe because he

is a member of a labor organization, violates the constitutional guaranty of liberty.

Speaking of the constitutional rights of life, liberty, and property, Judge Dodge, delivering the opinion of the Court, said (58 L. R. A. 753, 754):

> "Free will in making private contracts and even in greater degree in refusing to make them, is one of the most important and sacred of the individual rights intended to be protected. That the present act curtails it directly, seriously, and prejudicially, cannot be doubted. The success in life of the employer depends on the efficiency, fidelity, and loyalty of his employes. Without enlarging upon or debating the relative advantages or disadvantages of the labor union, either to its members or to the community at large, *it is axiomatic that an employer cannot have undivided fidelity, loyalty, and devotion to his interests from an employe who has given to an association right to control his conduct.* He may by its decisions be required to limit the amount of his daily product. He may be restrained from teaching his art to others. He may be forbidden to work in association with other men whose service the employer desires. He may not be at liberty to work with such machines or upon such materials or products as the employer deems essential to his success. In all these respects he may be disabled from the full degree of usefulness attributable to the same abilities in another who had not yielded up to an association any right to restrain his freedom of will and exertion in his employer's behalf according to the latter's wishes. Such considerations an employer has a right to deem valid reasons for preferring not to jeopardize his success by employing members of organizations. A man who has by agreement or otherwise shackled any of his faculties—even his freedom of will—may well be considered less useful or less desirable by some employers than if free and untrammeled. Whether the workman can find in his membership in such organizations advantages and compensations

to offset his lessened desirability in the industrial market is a question each must decide for himself. His right to freedom in so doing is of the same grade and sacredness as that of the employer to consent or refuse to employ him according to the decision he makes. We must not forget that *our government is founded on the idea of equality of all individuals before the law*. Such restraints as may be placed on one may be placed on another. If the liberty of the employer to contract or refuse to contract may be denied, so may that of the employe. In answering the question now before us, we may not forget the possibility of being called on to answer whether the legislature may make a criminal of the employe who quits, for example, because his employer joins a blacklisting association; because non-union men or members of some other union are employed, or non-union or forbidden machines or materials are used; because of an obnoxious foreman; because excessive hours of work are required; because compelled to trade at employer's store or board at his boarding house; or because of any other fact or conduct now considered entirely adequate reason for refusing or leaving a particular service. It must not be forgotten, if, as counsel for the State argues, the laborer is too weak to meet the employer on equal terms in the field of contract, that he will be far more subject to the latter's control and oppression in the field of politics, and that laws of the above character will surely come, if within the proper province of the legislature, unless, as we have faith to believe, *the character and the individuality of the wage earners of the country are sufficient to maintain their independence—both contractual and political—in a field of equal rights under the law, and of full liberty to each to sell and buy labor to and from whom he will.*"

In the case of Coffeyville Vitrified Brick & Tile Company *v.* Perry (1904), 69 Kan. 297, 76 Pac. 848, 66 L. R. A. 185, 187, 188, the Supreme Court of Kansas held that a statute which makes it unlawful to discharge

an employe because he belongs to a lawful labor organization, and which provides for the recovery of damages for such discharge, is void. The right to terminate a contract is within the protection of the State and Federal Constitutions, which guarantee to every citizen the protection of life, liberty, and property.

The Coffeyville Vitrified Brick & Tile Company was a corporation engaged in manufacturing brick. It discharged Perry, one of its employes, and he brought suit under the statute. He claimed he had been discharged because he was a member of a labor organization. In holding the statute unconstitutional, Judge Greene, who delivered the opinion of the Court, said:

> "The right to follow any lawful vocation, and to make contracts, is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will; he may not only select his employer, but his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the employer and the employe are equal. Any act of the legislature that would undertake to impose on an employer the obligation of keeping one in his service whom, for any reason, he does not desire, would be a denial of his constitutional right to make and terminate contracts and to acquire and hold property. Equally so would be an act the provisions of which were intended to require one to remain in the service of another whom he did not desire to serve."

Judge Greene also said:

> "The business conducted by the defendant was its property, and in the exercise of this ownership it is protected by the Constitution. It could abandon or discontinue its operation at pleasure. It had the right, beyond the possibility of legislative interference, to make any contract with reference thereto not in violation of law. In the operation of its property it may employ such persons as are desirable, and discharge without reason those who are undesirable. It is at liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restrictions can be imposed upon the lawful exercise of these rights."

In the case of People of the State of New York *v.* Marcus (1906), 185 N. Y. 257, 77 N. E. 1073, 7 L. R. A. (N. S.) 282, the New York Court of Appeals decided that a statute forbidding an employer to exact an agreement from an employe not to join a labor union infringes his constitutional rights of liberty.

Per contra: To exact an agreement not to join a union is lawful.

And *a fortiori*, to join a particular union which is hostile to the employer.

In the case of Delz *v.* Winfree (1891), 80 Texas 400, 26 Am. St. Rep. 755, the Supreme Court of Texas held:

> "The absolute right of a person to refuse to have business relations with any person whomsoever, whether the refusal is based upon reason or is the result of whim, caprice, prejudice, or malice, must be limited to the individual action of the party who asserts the right. *It is not equally true that one person may from such motives influence another person to do the same thing.*"

In the case of State *v.* Glidden (1887), 55 Conn. 46, 8 Atl. 890, 3 Am. St. Rep. 23, "An information alleged

that the defendants conspired to threaten and use means (the boycott) to intimidate the Carrington Publishing Company, to compel it, against its will, to abstain from doing an act (to keep in its employ workmen of its own choice) which it had a legal right to do, and to do an act (employ the defendants and such persons as they should name) which it had a legal right to abstain from doing: held, that, looking at the transaction as it appeared on the face of the information, the defendants' purpose was to deprive the publishing company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendants; the motive was to gain an advantage unjustly and at the expense of others, and therefore the act was legally corrupt; and as a means of accomplishing the purpose, the parties intended to harm the publishing company, and therefore it was malicious."

In the case of O'Brien *v.* People (1905), 216 Ill. 354, 75 N. E. 108, 3 A. & E. Ann. Cas. 966, 108 Am. St. Rep. 219, 220, 221, the Supreme Court of Illinois held that:

> "*No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business*, and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his business through certain agencies, or by a particular class of employes is not only unlawful and actionable, but is also an interference with the exercise of the highest civil right."

And it was also held in that case that "An attempt to coerce a person to sign an agreement to conduct his business by employing only members of a labor union, under a threat of ordering a strike, is unlawful, and such an agreement is voidable for duress, and is violative of the legal rights of both the employer and the non-union employe." And "*The right to enter into contracts for labor, or to labor, is both a liberty, and a property right.*"

IN THE HITCHMAN CASE BOTH A LIBERTY AND A PROPERTY RIGHT ARE BEING INTERFERED WITH.

A labor union may force itself upon a non-union employer in several ways. It may resort to the primary boycott, or to the secondary boycott. And either the primary or the secondary boycott may be of the non-union product. If, of a coal operator, the primary boycott of the product is attempted, it would be of little avail as a coercive measure because the individual consumer of coal is a small factor. For like reason, a secondary boycott of the coal would be ineffective. But the primary boycott through the coal operator's labor supply is entirely possible if all men can be gotten to join the union. Much more so may the secondary boycott be made effective through the coal operator's labor supply, for in such case, while the Union's membership and power may not be at high tide throughout the entire country, or in its greatest field of its endeavor, it might be all powerful in the particular locality where the recalcitrant operator is located. Therefore, the United Mine Workers of America seek to have, and to require, all men working in or around *every* mine to join their Union, for a monopoly of supply makes the primary as well as the secondary boycott possible, inasmuch as the scale must then be signed with the Union. So, inducing non-union men to join the Union illustrates that situation in the creation of monopolies where the doing of an act, otherwise lawful, becomes unlawful because done to promote an unlawful end. Note the significance of the following provisions:

> "One of the objects of this organization is to unite *all* employes in and around the coal mines of Ohio and the Pan Handle District of West Virginia."—Section 2 of Article I, Constitution of District No. 6, United Mine Workers of America.
>
> "*All* men are eligible and *must be members* of the United Mine Workers of America who work in and

around the mines."—Section 3 of Article I, Constitution of Sub-District 5 of District 6, United Mine Workers of America.

"As the mine workers of the entire country are competitors in the labor world, *I promise to cease work at any time I am called upon by the organization to do so.*"—Obligation of Membership, United Mine Workers of America.

But to effectuate the secondary boycott through plaintiff's labor supply, the United Mine Workers must get, not only **all** men to join the Union, but *with all men must be included plaintiff's employes.* In getting plaintiff's employes to join the Union, the defendants *must interfere* with the contractual relations existing between plaintiff and its employes, which forbid the men joining that Union. Hence, a double wrong is done in the present effort of the United Mine Workers to force themselves into contractual relations with plaintiff, which does not want, and has repeatedly refused to have, anything whatever to do with them.

In the case of Martell *v.* White *et al.* (1904), 185 Mass. 255, 69 N. E. 1085, 64 L. R. A. 260, *262*, the Supreme Judicial Court of Massachusetts held that an action will lie on behalf of a quarry owner against members of a voluntary association of dealers in stone of which he is not a member who enforce a by-law of the association imposing a fine upon members who deal with those who are not members, so that members who desire to deal with non-members are coerced from doing so, to the ruination of the business of the quarry owner.

In deciding this case, Judge Hammond, who delivered the opinion of the Court, said:

"It is elemental that the unlawfulness of a conspiracy may be found either in the end sought, or the means to be used. If either is unlawful, within the meaning of the term as applied to the subject,

then the conspiracy is unlawful. It becomes necessary, therefore, to examine into the nature of the conspiracy in this case, both as to the object sought and the means used.

"The case presents one phase of a general subject which gravely concerns the interests of the business world, and, indeed, those of all organized society, and which in recent years has demanded and received great consideration in the Courts and elsewhere. Much remains to be done to clear the atmosphere, but some things, at least, appear to have been settled; and certainly at this stage of the judicial inquiry *it cannot be necessary to enter upon a course of reasoning or to cite authorities in support of the proposition that, while a person must submit to competition, he has the right to be protected from malicious interference with his business.*"

In another place, Judge Hammond said:

"The justification must be as broad as the act, and must cover, not only the motive and the purpose, or, in other words, the object sought, but also the means used.

"The defendants contend that, both as to object and means, they are justified by the law applicable to business competition. In considering this defense it is to be remembered, as was said by Bowen, L. J., in Mogul S. S. Co. *v.* McGregor, L. R. 23 Q. B. Div. 598, 611, that there is presented 'an apparent conflict or antinomy between two rights that are equally regarded by the law—the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of the defendants to carry on their business as seems best to them, provided they commit no wrong to others.' Here, as in most cases where there is a conflict between two important principles, either of which is sound, and to be sustained within proper bounds, but each of which must finally yield, to some extent, to the other, it frequently is not possible by a general formula to mark out the dividing line with reference to every conceivable case,

and it is not wise to attempt it. The best and only practicable course is to consider the cases as they arise, and, bearing in mind the grounds upon which the soundness of each principle is supposed to rest, by a process of elimination and comparison to establish points through which, at least, the line must run, and beyond which the party charged with trespass shall not be allowed to go."

The case of Swift & Company *et al. v.* United States (1905), 196 U. S. 375, 49 L. ed. 518, *524*, 25 S. C. 276, illustrates the use of expedients lawful in themselves, which become unlawful by reason of the thing to be accomplished. Swift & Company *et al.* controlled about six-tenths of the whole trade and commerce in fresh meats among the States, Territories, and District of Columbia, and, but for the acts charged would have been in free competition with one another. In order to restrain competition among themselves as to the purchase of live stock, defendants required their respective purchasing agents at the stock yards to refrain from bidding against each other, except perfunctorily and without good faith. By this means they compelled the owners of stock to sell at less prices than they would have received if the bidding had been really competitive. And to induce stock owners in other states to make large shipments to the stock yards, they, the defendants, combined to bid up, through their agents, the prices of live stock for a few days at a time, so that the market reports would show prices much higher than the state of the trade would warrant. Following such a manoeuver, the stock owners would send in their stock and then the defendants would apply the other rule and the buyers would bid only perfunctorily and without good faith, and the stock would then be bought in at much less prices than it would otherwise have brought had the bidding really been competitive.

The act of the bidding whether high or low was within the right of each defendant, but the wrongfulness consisted in the use to which that right was put. It was contended that such a scheme was within the law against unlawful restraints of trade and monopolies, and Mr. Justice Holmes, delivering the opinion of the Court, said:

> "The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. Aiken *v.* Wisconsin, 195 U. S. 194, 206, ante, 154, 25 Sup. Ct. Rep. 3. The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize the same. Intent is almost essential to such a combination, and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent—for instance, the monopoly—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. Com. *v.* Peaslee, 177 Mass. 267, 272, 59 N. E. 55. But when that intent and the consequent dangerous probability exist, *this statute*, like many others, and *like the common law* in some cases, *directs itself against that dangerous probability as well as against the completed result.*"

In petitioner's case now at the bar of this Court, **the bill has been framed so as to allege successive elements of a single connected scheme, and the collective effect of all of these facts is there set**

forth. It is further then alleged in the bill that the effort of these defendants and of the United Mine Workers of America, over which the present controversy between the plaintiff and the defendants exists, is "to compel all miners and mine workers to join the Union, establish a monopoly and force employers of that kind of labor, and especially to force your orator, to yield to the Union's demands, or else to give up its business."

In deciding the case of Swift & Company *v.* United States, above referred to, Mr. Justice Holmes said (196 U. S. 396):

> "Intent is almost essential to such a combination, and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent,—for instance, the monopoly,—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen."

The case of Aikens *v.* Wisconsin (1904), 195 U. S. 194, 49 L. ed. 154, 25 S. C. 3, is instructive and to the point.

In that case there were two other cases of similar character, and they were all heard together, being on writs of error to the Supreme Court of Wisconsin, brought to set aside convictions and sentences of the plaintiffs in error, the defendants below, upon informations filed by the district attorney, which informations had been brought under the Wisconsin statutes, which impose imprisonment or fine on "any two or more persons who shall combine * * * for the purpose of wilfully or maliciously injuring another in his reputation, trade, business, or profession, by any means whatever," etc.

Mr. Justice Holmes, in delivering the opinion of the Court, said:

> "The plaintiffs in error were severally charged with unlawfully combining together with the intent of wilfully and maliciously injuring The Journal Company, a corporation, and certain persons named, stockholders and officers of the company, in their trade and business. It was alleged that the company was publisher of a newspaper in Milwaukee, and had notified an increase of about 25 per cent in its charges for advertising, and that thereupon the plaintiffs in error, who were managers of other newspapers in the same place, in pursuance of their combination, and with the intent of wilfully, maliciously, and unlawfully injuring The Journal Company and the others named, agreed as follows: If any person should agree to pay the increased rate to The Journal Company, then he should not be permitted to advertise in any of the other three newspapers except at a corresponding increase of rate; but if he should refuse to pay The Journal Company the increased rate, then he should be allowed to advertise in any of the other three papers at the rate previously charged. It was alleged that this conspiracy was carried out, and that much damage to the business of The Journal Company ensued."

The defendants admitted the combination, the intent to injure The Journal Company and the resulting damage, but alleged that the combination was entered into in trade competition, and that the parties had the right to make it under the 14th Amendment to the Constitution of the United States.

In affirming the judgment of the Supreme Court of Wisconsin, in each of those three cases, the Supreme Court of the United States, in an opinion delivered by Mr. Justice Holmes, said (195 U. S. 205, 206):

> "It would be impossible to hold that the liberty to combine to inflict such mischief, even upon such

> intangibles as business or reputation, was among the rights which the 14th Amendment was intended to preserve." And again: "*Where the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously, cannot be denied because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.*"

The case of the United States *ex rel.* Guaranty Trust Company of New York *v.* Haggerty *et al.*, 116 Fed. 510, is pertinent. In that case, the United Mine Workers were endeavoring to organize non-union mines of the Clarksburg Fuel Company, and having been restrained in that work, *the defendants pleaded that freedom of speech was being denied to them.* That same idea is advanced by counsel for the defendants in the case at bar. Judge Jackson disposed of that point when raised in the Haggerty case in language which, we think, will appeal to the Court in this case. Judge Jackson said (116 Fed. 517):

> "It is idle for this class of people to attempt to shield themselves, from not only a just criticism of their principles, but from their violations of law and order, by citing and relying upon the principles contained in our immortal Declaration of Independence, inspired by the pen of Thomas Jefferson, and also the first article to the amendment of the Constitution of the United States protecting 'freedom of speech.' *The rightful exercise of freedom of speech is not denied, but the abuse of it.* Its unrestricted license has always been open to the animadversion and condemnation of the law."

And again on the point that the Court in the case at bar should consider the motive of the defendants, and whether the acts which they claim the right to do, would, if allowed, bring about a dangerous probability that the defendants will finally effect their unlawful purpose, Judge Jackson's language in the Haggerty case (116 Fed. 516, 517) is likewise in point:

> "It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines," &c.

In the case of Moran *v.* Dunphy (1901), 177 Mass. 485, 59 N. E. 125, 52 L. R. A. 115, Mr. Justice Holmes, of this Court, but then Chief Justice of the Massachusetts Supreme Judicial Court, rendering the opinion of the Court, said (52 L. R. A. 116, 117):

> "We apprehend that there no longer is any difficulty in recognizing that a right to be protected from malicious interference may be incident to a right arising out of a contract, although a contract, so far as performance is concerned, imposes a duty only on the promisor. Again, in the case of a contract of employment, even when the employment is at will, the fact that the employer is free from liability for discharging the plaintiff does not carry with it immunity to the defendant who has controlled the employer's action to the plaintiff's harm. The notion that the employer's immunity must be a non-conductor, so far as any remoter liability was concerned, troubled some of the judges in Allen *v.* Flood (1898), A. C. 1, but is disposed of for this commonwealth by the cases cited. See, also, May *v.* Wood, 172 Mass. 11, 14, 15, 51 N. E. 191. So again, it may be taken to be settled by Plant *v.* Woods, 176

Mass. 492, 501, 502, 51 L. R. A. 339, 57 N. E. 1011, that motives may determine the question of liability; that while intentional interference of the kind supposed may be privileged if for certain purposes, yet, if due only to malevolence, it must be answered for. On that point the judges were of one mind. See 176 Mass. 504, 51 L. R. A. 344, 57 N. E. 1011. Finally, we see no sound distinction between persuading by malevolent advice and accomplishing the same result by falsehood or putting in fear. In all cases the employer is controlled through motives created by the defendant for the unprivileged purpose. It appears to us not to matter which motive is relied upon. If accomplishing the end by one of them is a wrong to the plaintiff, accomplishing it by either of the others must be equally a wrong."

And right here, we want to emphasize the point of view of Chief Justice Holmes that persuading by malevolent advice is equivalent to force or fraud. 6 Current Law, 1708. We want further to call the attention of the Court to the fact that this case of Moran *v.* Dunphy is cited favorably and relied upon by the Supreme Court of Appeals of West Virginia in the case of Thacker Coal & Coke Company *v.* Burke *et als.*

TO INDUCE PLAINTIFF'S EMPLOYES TO JOIN THE UNION IS TO INDUCE THEM TO PLACE THEMSELVES IN A POSITION WHERE THEY CANNOT PERFORM THEIR CONTRACT. HENCE, TO INDUCE THEM TO JOIN IS TO INDUCE THEM TO QUIT THE PLAINTIFF'S EMPLOYMENT.

And if defendants are permitted to persuade plaintiff's employes to join their Union, then plaintiff is deprived of the services of its men as fast as it can employ them.

Both a liberty and a property right are, therefore, at stake.

XII.

ANTI-TRUST LAW.

Judge Dayton said:

> "All the evidence in this voluminous record goes to show pretty conclusively that the fourteen years' struggle of this labor organization since it entered into the compact with the operators of Ohio, western Pennsylvania, Indiana and Illinois in 1898 to unionize the operations in West Virginia has not been in the interest either of the betterment of mine labor in the State or of upholding that free commerce in coal between the States guaranteed by Federal law, but to restrain and even destroy it in West Virginia for the benefit of these unionized competitive States. It may be unfortunate for those States that nature has favored West Virginia, Kentucky and other southern States by giving them better coal and less expensive mining conditions, but this does not warrant the operators and miners there to combine and confederate for the purpose of depriving the consuming public of the right to purchase the better coal at the lower cost, if desired. Such a combination is clearly a common law conspiracy, too far reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust Law."
>
> Record p. 680.
> Hitchman Coal & Coke Co. *v.* Mitchell *et als.*
> 202 Fed. 512, *545, 546.*

The Circuit Court of Appeals reached an opposite conclusion, and held that there was no conspiracy, and in addition said:

> "We do not understand that a private person can question the validity of a combination or conspiracy under the Sherman Anti-Trust Law for the purpose of having the same declared to be unlawful."
>
> Record, p. 744.
> Hitchman Coal & Coke Co. *v.* Mitchell *et als.*
> 214 Fed. 685, *714.*

"It is now provided by the Clayton Act that any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any Federal Court having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws when and under the same principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of a proper bond and showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue. Equity suits, however, against common carriers subject to the Interstate Commerce Act, except on behalf of the Government, are not authorized. Clayton Act (Act of October 15, 1914), Sect. 16.

"Prior to the date of the Clayton Act, it was, however, decided in a number of cases, that except in cases involving general equity jurisdiction, a private person had no right to bring a bill in equity under the Sherman Law, the Government at that time being the only party who could obtain injunctive relief under its provisions. See Blindell *v.* Hagan, 54 Fed. 40; Pidcock *v.* Harrington, 64 Fed. 821; Gulf, C. & S. F. Ry. Co. *v.* Miami S. D. Co., 86 Fed. 407, 421; Southern Ind. Exp. Co. *v.* U. S. Exp. Co., 88 Fed. 659, 663, Metcalf *v.* Am. School Furniture Co., 122 Fed. 115, 126; National Fireproofing Co. *v.* Mason Builders Assn., 169 Fed. 259; Corey *v.* Independent Ice Co., 207 Fed. 459, 461; Irving *v.* Neal, 209 Fed. 471, 477.

"*But the present statute has superseded the doctrine laid down in such cases.*"

Curtis' Manual of the Sherman Law and Federal Anti-Trust Acts, § 367.

INJUNCTION IS A PRESENT TENSE REMEDY.

"'We do not doubt the general jurisdiction of the Circuit Court as a Court of equity to afford preventive relief in a proper case against threatened injury about to result to an individual from any unlawful agreement, combination, or conspiracy in restraint of trade.' (McCormick, Circuit Judge). Gulf, C. & S. F. Ry. Co. *v.* Miami S. S. Co., 86 Fed. 407, 421 (C. C. A. Fifth Circuit, 1898); Leonard *v.* Abner-Drury Brewing Co., 25 Appeal (D. C.) Cases, 161, 176–177 (Court of Appeals, D. C. 1905); Bigelow *v.* Calumet & Hecla Mining Co., 155 Fed. 869, 876–879 (C. C.—W. D. Michigan, N. D. 1907); De Koven *v.* Lake Shore & M. S. Ry. Co., 216 Fed. 955, 957. (D. C.—S. D. New York, 1914)."

Curtis' Manual of the Sherman Law and Federal Anti-Trust Acts, § 370.

The defendants are not immune under the Clayton Act. Sec. 20 relates to cases between an employer and employes, or between employers and employes, or between employes, or between persons employed and persons seeking employment. The case at bar is not any one of those.

And the case must be one involving, or growing out of, a dispute concerning terms or conditions of employment. The case at bar does not involve, or grow out of, any dispute concerning terms or conditions of employment between the plaintiff and the defendants. It is not in any sense a labor controversy. The Hitchman Company has no dispute with its employes, and the suit does not arise out of any dispute concerning terms or conditions of employment with any one.

But if it were within Sec. 20 of the Clayton Act, this suit would still come within the exception because it is an injunction suit, brought to prevent irreparable injury to property or to a property right. It is not overlooked that Sec. 6 of the Act says that "the labor of a human being is not a commodity or article of commerce." If that language

means that labor is not property, Congress has undertaken to legislate in the teeth of decisions by this Court. In the Slaughter House Cases, 16 Wall. 36, 127 (21 L. ed. 394), in the dissenting opinion of Mr. Justice Swayne, but respecting a subject as to which there was no controversy, occur these words:

> "Labor is property and as such merits protection. The right to make it available is next in importance to the rights of life and liberty."

It was settled that the right to labor and to make contracts to work is a property right by Adair *v.* U. S., 208 U. S. 161, 173–175, 28 Sup. Ct. 277, 52 L. ed. 436, 13 Ann. Cas. 764, and Coppage *v.* Kansas, 236 U. S. 1, 10, 35 Sup. Ct. 240, L. R. A. 1915C, 960, 59 L. ed. 441. Controversy on that subject before this court must be regarded as put at rest by those decisions. The right to work, therefore, is property. It is protected by the Fourteenth Amendment to the Constitution of the United States. It is as much property as the more obvious forms of goods and merchandise, stocks and bonds. That it may be also a part of the liberty of the citizen does not affect its character as property. It was said in Coppage *v.* Kansas, 236 U. S. 1, at page 14, 35 Sup. Ct. 240, at page 243:

> "Included in the right of personal liberty and the right of private property—partaking of the nature of each— is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

The Legislature of the State of Massachusetts passed an Act to make lawful certain agreements between employes

and laborers, and to limit the issuing of injunctions in certain cases. By Section 1, it was provided:

> "It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the commonwealth or by any judge thereof in any case between an employer and employes, or between employers and employes, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application for which there is no adequate remedy at law; and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney."

And by Section 2, it was provided:

> "In construing this act, the right to enter the relation of employer and employe, to change that relation, and to assume and create a new relation for employer and employe, and to perform and carry on business in such relation with any person in any place, or to do work and labor as an employe, shall be held and construed to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employe or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted but the parties shall be left to their remedy at law."

A contest arose between two labor unions seeking similar employment as laborers in the building trades, and the defendants sought to justify their conduct as legal under that Act.

In disposing of that contention May 19, 1916, the Supreme Judicial Court of Massachusetts, in the case of Bogni *et al. v.* Perotti *et al.*, 112 N. E. Rep. 853, *855*, said:

> "That the right to work is property cannot be regarded longer an open question. It was held in in Cornellier *v.* Haverhill Shoe Mfrs.' Ass'n., 221 Mass. 554, at page 560, 109 N. E. 643, at page 645, that:
>
> "'The right to labor and to its protection from unlawful interference is a constitutional as well as a common law right.'"

And again—

> "No discussion is required to show that it is beyond the power of the Legislature under Constitutions which guard the individual against being deprived of property without due process of law, to declare without any process at all that a well recognized kind of property shall no longer be property. 'Lawful property cannot be confiscated' under the guise of a statute. Durgin *v.* Minot, 203 Mass. 26–28, 89 N. E. 144, 24 L. R. A. (N. S.) 241, 133 Am. St. Rep. 276. When legislative attempts to compel the deprivation of certain comparatively small sums of money without due process of law invariably fail (see, for example, Northern Pacific Ry. Co. *v.* No. Dakota, 236 U. S. 585, 35 Sup. Ct. 429, 59 L. ed. 735; Great Northern Ry. Co. *v.* Minnesota, 238 U. S. 340, 35 Sup. Ct. 753, 59 L. ed. 1337; Chicago, Milwaukee & St. Paul Ry. *v.* Wisconsin, 238 U. S. 491, 35 Sup. Ct. 869, 59 L. ed. 1423, L. R. A. 1916A, 133; Louisville & Nashville Rd. *v.* Central Stockyards Co., 212 U. S. 132, 29 Sup. Ct. 246, 53 L. ed. 441), it is manifest that something recognized as property by the law of the land cannot be extinguished utterly."

And again—

> "A further effect of the present statute is to deprive the plaintiffs of the equal protection of the laws. The statute provides in substance that the property

right to labor of any individual or number of individuals associated together shall not be recognized in equity as property when assailed by a labor combination, unless irreparable damage is about to be committed and that no relief by injunction shall be granted save in like cases for which there is no relief at law. That a man cannot resort to equity respecting his property right to work in the ordinary case simply because he is a laboring man, and that he cannot have the benefit of an injunction when such remedies are open freely to owners of other kinds of property, needs scarcely more than a statement to demonstrate that such man is not guarded in his property rights under the law to the same extent as others."

And again—

"It has been argued that since the equitable jurisdiction of the court is largely statutory (Parker *v.* Simpson, 180 Mass. 334, 350, 62 N. E. 401), it may be curtailed by the Legislature in respect of the power to grant injunctions. It is one thing to affect the scope of equity by extending or restricting the branches of that jurisprudence which courts may administer; it is a quite different matter to enact that some citizens may resort to it, while others may not. Without discussing other aspects of this proposition, it is enough to say that the power of courts to afford injunctive relief cannot be impaired by the Legislature in such a way as to prevent its use in favor of one property owner, when it is preserved for the benefit of other property owners."

The Clayton Act cannot be interpreted as to make no longer property that which this Court has decided is both property and a property right protected by the Fourteenth Amendment to the Constitution of the United States; neither may Congress enact laws whereby the Federal Courts shall be open to some and shall not be open to others of its citizens upon the same terms; and the

jurisdiction of the Federal Courts may not be so curtailed as that some citizens may resort to those courts while others may not.

XIII.

IT IS WRONG TO FORWARD YOUR OWN ENDS BY DESTROYING THE RIGHTS OF OTHERS.

Lord Halsbury in Trollope's Case, 72 L. T. (N. S.) 342, *344*.

This rational and just doctrine is applied in Temperton *v.* Russell [1893], 1 Q. B. 715, *727, 728;* Angle *v.* Chicago, St. P., M. & O. R. Co., (1894) 151 U. S. 1; Bitterman *et al. v.* Louisville & Nashville R. Co., (1907) 207 U. S. 205; West Virginia Transportation Co. *v.* Standard Oil Co., (1900) 50 W. Va. 611; and Thacker Coal & Coke Co. *v.* Burke *et als.*, (1906) 59 W. Va. 253.

THERE WAS NO DUTY OF ANY KIND ON THE DEFENDANTS TO COMMIT THE ACTS CHARGED AGAINST THEM, AND IN THIS ABSENCE OF DUTY OF SOME KIND IT IS DIFFICULT TO SEE HOW JUSTIFICATION IS POSSIBLE. THE HIGHEST POINT TO WHICH THE ARGUMENT CAN BE CARRIED IN FAVOR OF THE DEFENDANTS IS THAT THE DEFENDANTS ACTED WITHOUT SINISTER MOTIVES IN THE SUPPOSED INTERESTS OF THE MEN AND WITHOUT ILL WILL TO THE PLAINTIFF, BUT THESE ARE CONSIDERATIONS WHICH DO NOT ALTER THE WRONGFUL NATURE OF THE ACTS CHARGED AGAINST THESE DEFENDANTS, AND CANNOT BE SUCCESSFULLY URGED AS AN EXCUSE OR JUSTIFICATION.

South Wales Miners' Federation *v.* Glamorgan Coal Co. [1905] A. C. 239; H. L. (E.).

Larkin, *et al. v.* Long [1915] A. C. 814–846, at p. 843; H. L. (I.).

The right of free speech is not involved. It is the abuse, not the use, of free speech.

XIV.

SUMMARY.

Right of this Court to render the decree which the Circuit Court of Appeals for the Fourth Circuit should have rendered.

By § 240 of the Judicial Code it is provided that when a case is brought to this Court by certiorari it is here for "review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." In Harriman *v.* Northern Securities Co., 197 U. S. 244, it was held that this Court will, by its direction to the Circuit Court, finally dispose of a cause brought before it on writ of certiorari to a Circuit Court of Appeals, where the record presented the whole case to that Court so that it might properly have been finally disposed of by its decree, although it did nothing more than to reverse the decree of the Circuit Court granting a preliminary injunction. In that case, this Court said: "In our opinion the record presented the whole case to that Court in such wise that it might properly have been finally disposed of in terms by its decree, in accordance with the well-settled rule upon that subject. Mast. F. & Co. *v.* Stover Mfg. Co. 177 U. S. 495; Castner *v.* Coffman, 178 U. S. 183; Knoxville *v.* Africa, 77 Fed. 501. * * * In the present case we granted the certiorari, at the instance of complainants before the case had gone back to the Circuit Court, and shall do what the Circuit Court of Appeals might have done—that is, finally dispose of the case by our direction to the Circuit Court."

As it clearly appears from the record of the District Court of the United States for the Northern District of West Virginia, which stands before this Court as a return to the certiorari, that the Judge of said District Court, in the final decree rendered in favor of the plaintiff,

sustained and enforced its constitutional contractual rights, according to the construction given to the contract in question by the highest Court of West Virginia, we respectfully insist that said final decree of said District Court should be in all things affirmed by this Court.

Respectfully submitted.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Counsel for Petitioner.

GEORGE R. E. GILCHRIST,
Of Counsel.

WHEELING, W. VA.,
November 15, 1916.

Supreme Court of the United States

OCTOBER TERM, 1916

No. [redacted]

[redacted] COAL AND COKE COMPANY, A CORPORATION,

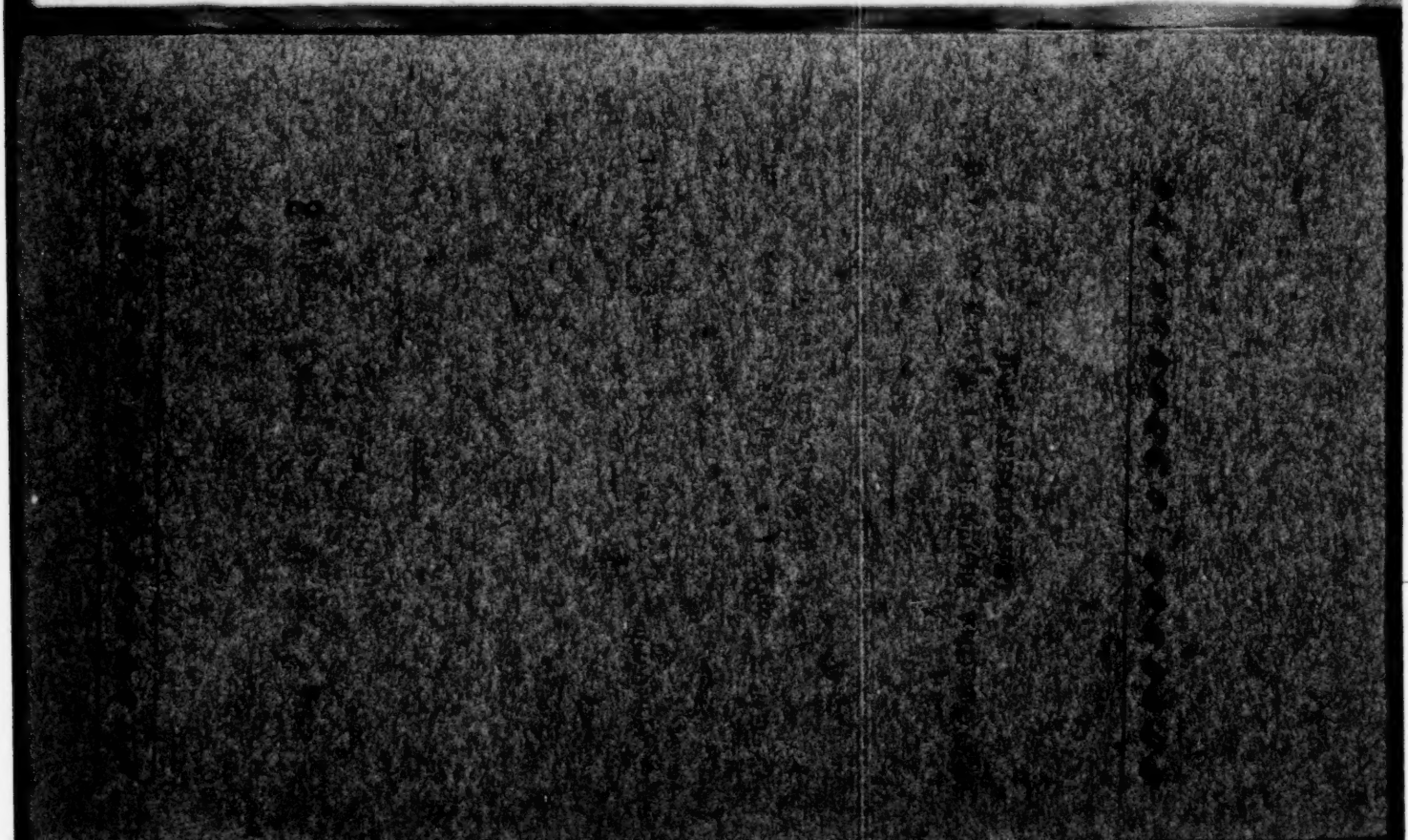
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*,

Respondents.

BRIEF IN REPLY TO PETITION AND MOTION FOR CERTIORARI.



Supreme Court of the United States

OCTOBER TERM, 1914.

NO. 617

HITCHMAN COAL AND COKE COMPANY, A CORPORATION,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*,
Respondents.

BRIEF IN REPLY TO PETITION AND MOTION FOR CERTIORARI.

Statement.

This Court, upon application for a writ of *certiorari* to review a decision of the United States Circuit Court of Appeals, will examine such application in the light of all the pleadings in the cause, and the competent evidence adduced in support of the issues created by these pleadings. There is a clear statement in the opinion rendering the decision complained of, of the essential allegations of the bill, and the denial thereof contained in the answers of the defendants in the cause.

These issues thus raised by the pleadings may be summarized as follows:

(1.) Is the organization known as "The United Mine Workers of America" unlawful under the Constitution, common and statutory laws of the State of West Virginia?

(2.) Was this organization, at the time of the institution of this suit, engaged in an attempt, by the use of any unlawful means, to induce the petitioner's employes to become members of that organization?

(3.) Was the organization, at the time of the institution of the suit, engaged in an attempt, by the use of unlawful means, to induce the petitioner's employes to cease their employment?

(4.) Was the organization, at the time of the institution of this suit, engaged in an attempt to close down the petitioner's mine without its consent?

No other issues were before the District Court, and no other issues were passed upon in the Circuit Court of Appeals. A great mass of testimony, some relevent, some not, was introduced in the District Court, and brought into the record in the Circuit Court of Appeals in narrative form. The case was treated in the Circuit Court of Appeals as one involving questions of local West Virginia law; and while the District Court based his decision in part upon certain provisions of the Federal Constitution and upon the Sherman Anti-Trust Law (26 Stat. 209), neither of these questions was noticed in the appellate court, further than to observe that there must be a specific allegation of violation of that statute in the pleadings, before its provisions can be bought to bear upon the circumstances of a case; and that, further, that statute cannot be made the basis of an injunction by a private person.

In Mitchell v. Hitchman Coal and Coke Co., 214 Fed. 685, in the opinion at pages 713, 714, it is said:

> "The court below, among other things, expressed the view that the United Mine Workers of America constituted a combination or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, under what is known as the Sherman Anti-Trust Law (Act July 2, 1890, c. 647, 26 Stat. 209).
>
> We do not deem it necessary to discuss this

> proposition at any great length. In the first place, there is nothing in the pleadings to raise the question as to whether the United Mine Workers of America are liable under the statute question, and any evidence that may have been introduced bearing upon this point was therefore immaterial and should have been rejected. There is another reason why we think that this question cannot under any view of the case arise in this controversy, to-wit, we do not understand that a private person can question the validity of a combination or conspiracy under the Sherman Anti-Trust Law for the purpose of having the same declared to be unlawful "

Then take the concluding paragraph of the *stating part* of the bill, quoted at length in the petition at page 2, and found in the record accompanying the same at page 31, the last clause of which is as follows:

> "and thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the state of West Virginia."

The petioner is a resident and citizen of the State of West Virginia, and was at the time of the institution of the suit, engaged in mining and selling and shipping coal, from mines owned by it near the City of Wheeling, in that State; interference with the operation of these mines by the respondents is the foundation of this suit. Therefore, it is alleged that the acts charged against the respondents are in violation of the constitution and laws of the State of West Virginia.

Then at page 696 of 214 Fed., the Circuit Court of Appeals makes use of this language:

> "The most important and far-reaching question is raised by the assignment of error wherein it is insisted that the Court below errored in holding that the United Mine Workers of America and its subordinate branches constitute an unlawful organization under the Constitution, the common law and the statutory law of the State of West Virginia."

From this it is clear that the principal legal question before the Circuit Court of Appeals was one to be determined by the laws of the State of West Virginia, and that the subject matter of this suit is personal to the petitioner and other coal operators of that State. And however this cause may be decided, or however it has been decided, whatever view the courts may take as to existing laws of that State on the subject; the whole effect of these decisions, and the whole tenor of these existing laws, could apply only to coal operators doing business in that State; so that the questions decided by the Circuit Court of Appeals as matters of law are not of such general importance as either require or warrant a review of that decision by this Court. And certainly there is no possibility of there ever being a conflict between this decision, and any decisions rendered or which may hereafter be rendered by the other Circuit Courts of Appeals.

This principle applies with peculiar force to the case at bar, because the decision in the Circuit Court of Appeals was based largely upon certain statutory provisions of the State, as shown by the opinion filed with the petition.

As to this feature of the case, at page 706 of 214 Fed., after quoting from the West Virginia Code of 1913, c. 151H, sec. 28, the Court says:

> "As amended it went into effect May 22, 1907, prior to the beginning of the institution of this suit, and this statute was enacted in 1890, the year in which the United Mine Workers of America were organized.
>
> To say nothing of the legislative intent, the word of the foregoing statute by implication at least recognized labor unions."

Again, upon the same page, after quoting another statute designed to protect "any person, firm or corporation, or any association or union of working men" in the use of a device or trade-mark, "for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor," the Court further says:

> "The fact that the legislature of that state enacted this statute, which had for its purpose the protection of labor unions in the use of what is known as a trademark, clearly indicates that the legislature recognized labor unions as lawful."

The other questions decided upon appeal in this case were purely ones of fact, turning upon the weight to be given to the conflicting testimony of the various witnesses, and upon the proper construction to be placed upon the relevant evidence before the Court.

Argument.

It seems to us that the granting or refusal of the writ of certiorari involves a consideration of the following questions and no others: Is this a case of such gravity and importance as calls for an exercise of the power of the Court to issue the writ? If this be answered affirmatively, Is the organization known as the United Mine Workers of America contrary to the constitution, common and statutory law of West Virginia? Will this Court review a decision of the Circuit Court of Appeals upon a disputed question of fact?

Is this a case of such gravity and importance as calls for an exercise of the power of the Court to issue the writ?

> "So it has been that this court, while not doubting its power, has been chary of its action in respect to certioraris. It has been said: "It is evident that it is solely questions of gravity and importance that the circuit courts of appeals should certify to us for instruction; and that it is only when such questions are involved that the power of this court to require a case in which the judgment and decree of the court of appeals is made final, to be certified, can be properly invoked."
>
> * * * * * * * * * *
>
> We reaffirm in this case the propositions heretofore announced, to-wit, that the power of this

court in certiorari extends to every case pending in the circuit courts of appeal, and may be exercised at any time during such pendency, provided the case is one which but for this provision of the statute would be finally determined in that court. And further, that while this power is co-extensive with all possible necessities and sufficient to secure to this court a final control over the litigation in all the courts of appeal, it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a state, or some matter affecting the interests of this nation in its internal or external relations, demands such exercise."

Forsyth v. Hammond, 166 U. S. 506, 41 L. ed. 1095.

"But we do not regard the inquiry as to whether it was settled law in the State of Minnesota that a judgment of dismissal in a former suit, such as pleaded here, was not a bar to a second suit upon the same cause of action, or whether the law in respect of recovery by a servant against his master for injuries received in the course of his employment was properly applied on the trial of this case, as falling within the category of questions of such gravity and general importance as to require the review of the conclusions of the Circuit Court of Appeals in reference to them."

Ex parte Woods, 143 U. S. 202, 36 L. ed. 125.

Is the organization known as the United Mine Workers of America contrary to the constitution, common and statutory law of West Virginia?

The question as to whether or not the acts alleged against the respondents in petitioner's bill constitute an invasion of petitioner's rights, was one of mixed law and fact, dependent upon whether the acts alleged to have been committed by respondents were proven, and if proven, did they constitute an invasion of petitioner's con-

stitutional rights. The court of appeals found that the testimony did not sustain the allegations of the bill, and it was, therefore, unnecessary to pass upon the question of the invasion of petitioner's constitutional rights.

The proposition that the United Mine Workers of America is an organization unlawful under the common and statutory law of West Virginia, we shall divide into two questions:

I. The common law of West Virginia.
II. The statutory law of West Virginia.

I. The common law of West Virginia.

The common law of England was adopted as the law of West Virginia, only so far as the great body of that law is applicable to the habits and conditions of society and in harmony with the genius, spirit and objects of our institutions.

> "The common law of England, so far as it is not repugnant to the principles of the bill of rights and constitution of the State of Virginia, was in force in that State when the constitution of this State took effect, and is, therefore, the law of the State unless repealed or modified by the general assembly of Virginia or the legislature of this State."

Cunningham v. Dorsey, 3 W. Va., 293.

> "The common law of England is in force in this State only so far as it is in harmony with its institutions, and its principles applicable to the state of the country and the conditions of society."

Powell v. Sims, 5 W. Va. 1.

> "The common law imposes on the owner of domestic animals the duty of keeping them on his own lands, or within enclosures, and he becomes a wrongdoer if any of them escape, or stray off upon the lands of another — *Held*:
>
> That this common law rule is not in force in West Virginia, it being inconsistent with the legislation of the State, subject to the qualification,

> however, that animals which are unruly, or dangerous, are required to be restrained."
>
> Baylor v. B. & O. R. R. Co., 9 W. Va., 270.
>
> Acts which constituted waste under the common law do not constitute waste in West Virginia, as the law of waste in its application here must be accomodated to the circumstances of our own country.
>
> Findlay v. Smith, 6 Munf. (Va.) 134; McDodrill v. Pardee & Curtin Lumber Co., 40 W. Va., at page 579.

So, the common law doctrine of ancient lights is in applicable to the condition of a growing country such as ours, and is not in force in the Virginias.

> Tunstall v. Christian, 80 Va., at page 4; Cunningham v. Dorsey, 3 W. Va.. 293.

As is said by Chancellor Kent, in volume 1, page 536, of the 12th., edition of his Commentaries, speaking of the common law of England:

> "It has been assumed by the courts of justice, or declared by statute, with the like modifications, as the law of the land in every state."

The State of West Virginia, at the time of her admission into the Union, adopted the common law as it then existed in the State of Virginia; and in a later constitution her people placed the following provision:

> "Such parts of the common law, and of the law, and of the laws of this State as are in force when this article goes into operation, and are not repugnent thereto, shall be and continue the law of the State until altered or repealed by the Legislature."
>
> W. Va., Const. Art. 8, sec. 21.

Under the first constitution, it has always been held that the decisions of the Supreme Court of Appeals of Virginia rendered prior to the separation of the two states are binding authority upon the courts of West Virginia.

> Clarke v. Figgins. 27, W. V., 663.

And since the formation of the State of West Virginia the decisions of the courts of the two states are in accord on practically every question that has come before them involving the application of common law principles; and this, for the reason, as we have seen, that the common law exists with precisely the same modifications in both States. The question involved in the case at bar has never been before the Supreme Court of Appeals of West Virginia.

It has, however, been before the Supreme Court of Virginia, and in Everett Waddey Co. v. Richmond Typographical Union, 105 Va., 188, 53 S. E. 273, that Court made use of the following language:

> "In many of the states of the Union there are statues which provide for the incorporation of trades unions and other labor organizations and in all of them, one of the permissible objects of incorporation is declared to be the securement of better terms of employment; while at common law, as interpetreted by the English decisions and a few of the earliest decisions of the courts of this country, labor combinations formed for the purpose of controlling the rate of wages were regarded as a criminal conspiracy. But these early decisions of the courts of this country were soon departed from by other cases, notably in Massachusetts, New York, and Pennsylvania, which placed labor combinations upon a plane of legal equality with capitalistic combinations, by holding that it was not a criminal conspiracy for workmen to combine for the purpose of enhancing the rate of wages, or for improving in any other way, their relations with employers
>
> * * * * * *
>
> It is lawful for workmen to combine to control the terms of their own hiring, and such a combination is easily distinguishable from one in which the purpose is to control the business of the employer in other matters, not affecting the terms of their own hiring; as, for example, the prevention of the employment of nonunion men.
>
> * * * * *
>
> The authorities, as already noted, hold that a strike is not unlawful; that members of the labor

> unions may singly or in a body quit the service of their employer, and, for the purpose of strengthening their association, may persuade and induce others in the same occupation to join their union, and as a means to that end, refuse to allow their members to work in places where nonunion labor is employed."

Accordingly, the Circuit Court of Appeals held that the United Mine Workers, as an organization, was not unlawful under the common law, as adopted in West Virginia, as now applicable in that state.

II. The statutory law of West Virginia.

The court then says, on page 705 of 214 Fed., "nor do we find anything in the statute law of West Virginia to sustain the contention that this organization is illegal."

> "Nor shall any person or persons, or combination of persons, by force, threats, menaces, or intimidation of any kind, prevent or attempt to prevent from working in or about any mine, any person or persons who have the lawful right to work in or about the same, and who desire to so work; but this provision shall not be so construed as to prevent any two or more persens from associating together under the name of knights of labor, or any other name they may desire, for any lawful purpose, or for using moral suasion or lawful argument to induce any one not to work in or about any mine."
>
> Code, W. Va., 1913, c 15H, Sec. 28.

Speaking of the effect of this statute, in the opinion at page 706, 214 Fed., the Court of Appeals said:

> "As amended it went into effect May 22, 1907, prior to the beginnning of the institution of this suit, and this statute was enacted in 1890, the year in which the United Mine Workers of America were organized.
>
> To say nothing of the legislative intent, the words of the foregoing statute by implication at least recognized labor unions. Referring to the use of labels or trade-marks by labor unions, etc.,

there appears in the Code of 1906, as section 1, c. 62e, serial section 2859, the following language:

'Whenever any person, firm or corporation, or any association or union of working men, has heretofore adopted or used, or shall hereafter adopt or use any label, trade-mark, term, design, or device or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor, as having been made, manufactured, * * * by such person, firm, corporation or association or union of workingmen, or by a member or members of such association or union, and shall register the same as provided in section three of this act, it shall be unlawful to knowingly counterfeit or imitate such label, trade-mark, term, design, device or form of advertisement, or to knowingly use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement."

The fact that the legislature of that state enacted this statute, which has for its purpose the protection of labor unions in the use of what is known as a trade-mark, clearly indicates that the legislature recognized labor unions as lawful"

And further, on page 707:

"In view of what we have said as to the status of these organizations at common law, and the further fact that there is an implied, if not direct, recognition of labor unions by statute in West Virginia, and there being no enactment declaring the same to be unlawful, we are of the opinion that the court below erred in declaring these organizations to be unlawful at common law."

It is submitted, from the considerations here presented, that the Circuit Court of Appeals could not have done otherwise than hold that the United Mine Workers of America, as an organization is not unlawful in West Virginia.

Will this Court review a decision of the Circuit Court of Appeals upon a disputed question of fact?

An inspection of the opinion of the Circuit Court of Appeals will discloss a number of unlawful acts charged

against the respondents, as to which the Court said that "the evidence fails to show any unlawful methods were resorted to by these defendants in this instance."

It will further disclose that the Court carefully weighed all the testimony in the case bearing upon these alleged unlawful acts, some of the most pertinent of which is quoted at length in the opinion; and after careful analysis and mature deliberation, the Court found that the evidence in the case failed to show any unlawful methods were resorted to by these respondents in attempting to promote the growth of their organization by soliciting the petitioner's employes to become members of the United Mine Workers of America, a lawful organization under the laws of the State of West Virginia.

As has been heretofore stated, in order to bring into this case a consideration of any constitutional provision, it would have been necessary that the acts charged to the respondents be proven, and upon this application the Court will not go into the entire record to ascertain whether the findings of fact were unwarranted.

But, be this as it may, in order that a constitutional question may be made the basis of a review of this case by this Court, that question must have been the all controlling one; that is the decision of such a question must have been necessary in order to pass upon the merits of the cause.

> Carey v Houston, etc., R. Co., 160 U. S. 170 37 L. ed. 1041;

Although, if the writ were granted, all other questions would then be open to determination, if inquiry were not rendered unnecessary by the ruling on that arising under the constitution.

> Horner v. United States, 143 U. S. 570, 36 L. ed. 266; Carey v. Houston, etc., R. Co., cited.

So that the Court will not examine into the record in the Circuit Court of Appeals, further than to ascertain if the decision in that Court turned upon a question arising under the Constitution, presented by the pleadings and the facts.

It is not the intention of counsel for the respondents to argue the merits of this controversy, in opposition to the application for a writ of *certiorari*, but only to present to the Court the reasons that suggest themselves why this case does not call for the issuing of this extraordinary writ.

The organization known as the United Mine Workers of America does not now attempt, nor has it ever attempted, to evade a hearing by this Court, upon the question of its status before the law. On the contrary counsel have been repeatedly assured by the officers and members with whom they have talked, that they are anxious that the legality of their association be passed upon and forever settled.

But this association is unwilling that its cause be disposed of under the laws of West Virginia, or the laws of any other one State, for that matter. They insist that when they come into this Court, it be in a proceeding that will properly involve their standing before the laws of the Nation, wherein the pleadings and proof will bring to the attention of the Court every phase of their organization to which Federal laws may be thought to apply. If such were the case at bar, no opposition would be offered to the issuance of the writ. But growing out of local conditions, and governed almost entirely by local law as it is, this case does not involve the decision of those broad and universal principles which will forever set at rest the question of the right of labor to organize for its protection.

And we now submit that this case is determinable by state laws alone, and was so determined by the Circuit Court of Appeals; that it presents, therefore, no questions of such grave general concern as will move the Court, in the exercise of its discretion, to direct the writ to issue.

Respectfully submitted,

CHARLES E. HOGG,

CHARLES J. HOGG,

Counsel for Respondents.



Supreme Court of the United States

OCTOBER TERM, 1913.

No. [redacted] 11

HITCHMAN COAL AND COKE COMPANY, Appellant,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, et al.

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said Court.

Brief of George R. E. Ulhicht and Hennis Taylor for the Hitchman Coal and Coke Company, Appellant and Petitioner.

PLAINTIFF'S INDEX.

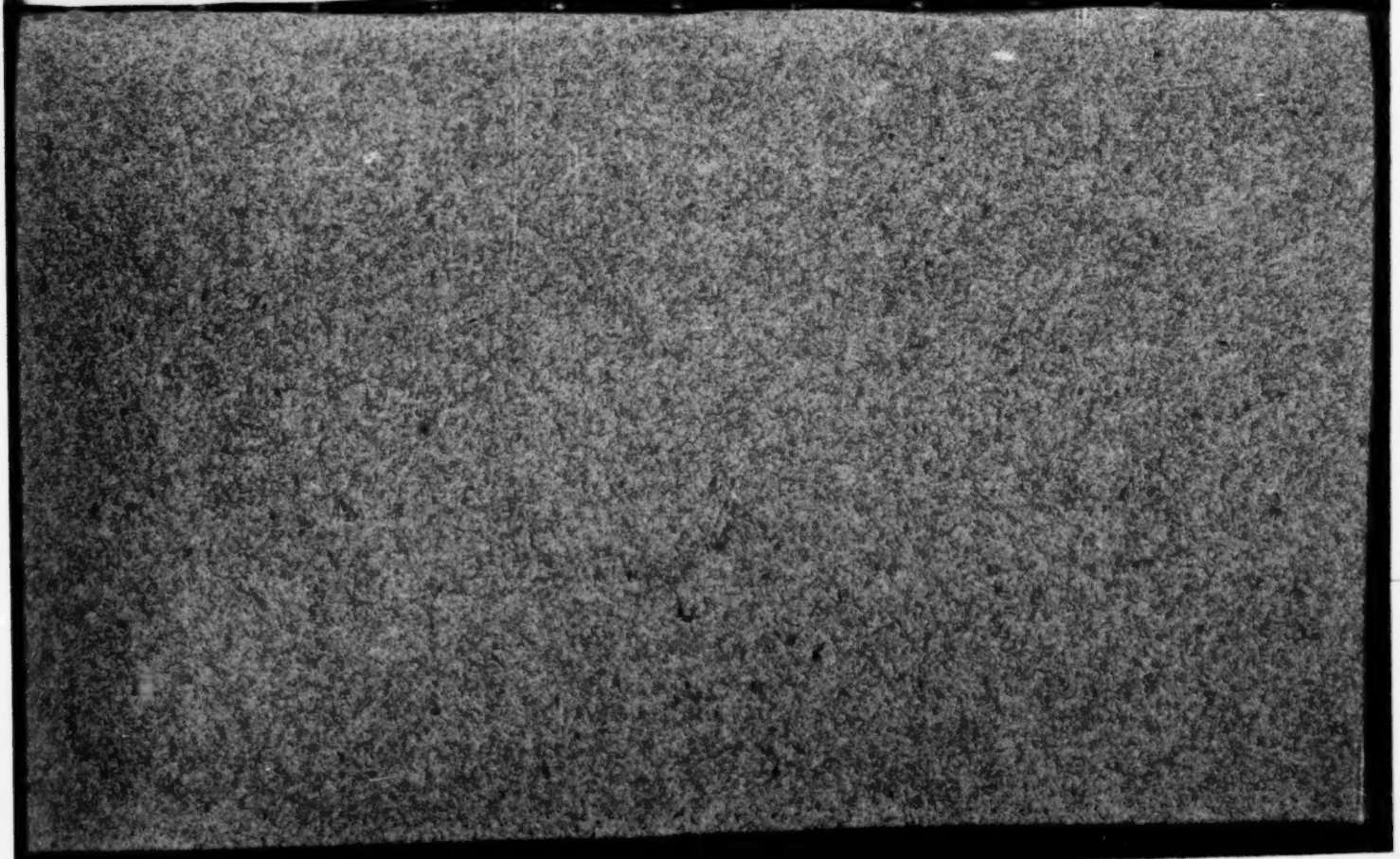
(1) Index to testimony in printed Record.

(2) Index-Digest to Excerpts from original documents transmitted to this Court, but not in printed Record.

(3) Excerpts from original documents transmitted to this Court, but not in printed Record.

NOTE.—The particular documents from which the Excerpts have been taken are now in the custody of the Clerk of this Court, pursuant to the order of the Circuit Court of Appeals. Record pp. 708-711, 954.

BAKER



Supreme Court of the United States

OCTOBER TERM, 1915.

No. 241

HITCHMAN COAL AND COKE COMPANY, Appellant,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said Court.

Brief of George R. E. Gilchrist and Hannis Taylor for the Hitchman Coal and Coke Company, Appellant and Petitioner.

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(*b*) With men who have entered employment with the Company since June 12, 1906.

(*a*) At the time the mine resumed work "non-union," June 12, 1906.

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Direct—
Record, p. 380, l. 45–51.
Record, pp. 381, 382, l. 1–34.

Cross—
Record, p. 384, l. 45–51.
Record, pp. 385, 386, 387.
Myers.
Direct—
Record, p. 456, l. 50–52.
Record, pp. 457, 458, l. 1–34.
Cross—
Record, p. 460, l. 32–35.
Record, p. 461, l. 16–51.
Rowand.
Recalled-Direct
Record, pp. 462, 463, 464, l. 1–10.
Cross—
Record, p. 464, l. 13–49.
Record, p. 465, l. 1–29.
Popage.
Direct—
Record, p. 466, l. 6–50.
Record, p. 467, l. 1–25.

CARD.
See Employment Card.
Record, p. 689, l. 45–50.
Record, p. 690, l. 1–13.
Cotts.
Direct—
Record, p. 264, l. 42–52.
Record, p. 265, l. 1–5.
Koch.
Direct—
Record, p. 284, l. 37–53.
Record, p. 285, l. 1–4.

CENTRAL COMPETITIVE FIELD.
See Competitive Field.

CERTIFICATE OF INCORPORATION OF HITCHMAN COAL & COKE CO.

"Hitchman's Exhibit No. 1."

Direct—

Record, p. 249, l. 45–51.
Record, p. 250, l. 1–6.

(Original document transmitted to U. S. Supreme Court.)

CHALK MARKS ON PAVEMENTS.

See Notices of Meetings.

Stewart.

Direct—

Record, p. 469, l. 30–47.

CHECK-OFF PAID BY MEN.

See Breaking away from Union.

CHECK-OFF.

Admitted in pleading.

CHICAGO AGREEMENT OF 1898.

Lewis.

Cross—

Record, p. 538, l. 38–41.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 575, l. 51, 52.
Record, pp. 576, 577, 578, l. 1–21.
Record, p. 579, l. 7–12.

CLOSED SHOP.

See U. M. W. of A.

(*a*) Enforced by the United Mine Workers of America.

Lewis.

Cross—

Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.

(*b*) Was a result of the Chicago Agreement of 1898.
Lewis.
Cross—
Record, p. 538, l. 33–49.
(*c*) Reasons given by the United Mine Workers of America for enforcing the closed shop.
Lewis.
Cross—
Record, p. 618, l. 1–25.
(*d*) Number of men belonging to United Mine Workers of America working under closed shop agreements amounts to over 200,000.
Lewis.
Cross—
Record, p. 618, l. 25–50.
(*e*) States in which closed shop agreements are made and enforced by the United Mine Workers of America: Ohio, Indiana, Michigan, Illinois, Iowa, Kansas, Missouri, Oklahoma, Texas, Arkansas, part of Kentucky, part of British Columbia, part of Washington, all Wyoming, all Montana, part of Central Pennsylvania, and greater part of Western Pennsylvania.
Lewis.
Cross—
Record, p. 618, l. 25–41.

COMPETITIVE FIELD.
The Central.
See Freight Rate.
(*a*) Consists of—
Western Pennsylvania.
Ohio.
Indiana.

Illinois.
McKinley.
Direct—
Record, p. 410, l. 38–50.
Record, p. 411, l. 1–28.
Record, p. 411, l. 42–50.
Record, pp. 412, 413, 414, l. 1–12.
Upstill.
Direct—
Record, p. 472, l. 39–48.
Record, pp. 473 to 485, l. 1–3, incl.
Cross—
Record, pp. 486, 487, 488, 489, 490, l. 1–13.
Re-Direct—
Record, p. 490, l. 18–32.
(*b*) Associations of Operators.
Efforts have been and are now being made to include all Operators.
Lewis.
Cross—
Record, p. 571, l. 12–14.
COMPETITIVE FIELD SCALE.
(*a*) Based upon physical condition of mines, selling price of the coal and earning power of the mine.
Lewis.
Cross—
Record, p. 543, l. 43–46.
Re-Direct—
Record, p. 620, l. 10–52.
(*b*) First fixed in a preliminary way by the National Convention of U. M. W. of A., which takes into consideration the different peculiarities of districts or sections of country and conditions of coal and the markets.

Lewis.
Cross—
Record, p. 543, l. 47–50.
Record, pp. 544 to 550, l. 1–35.
Re-Direct—
Record, p. 620, l. 4–52.

(c) When agreed on between operators and miners in convention is enforced against every other operator not a party to the conference but who operates a mine within that particular competitive field.

Lewis.
Cross—
Record, p. 590, l. 39–51.
Record, pp. 591, 592, l. 1–15.

COMPETITORS OF HITCHMAN COAL & COKE CO.
Were members of operators' association holding joint conferences with United Mine Workers.
Lorain Coal & Dock Co. was such a competitor.
So was the Pursglove mine.
Upstill.
Direct—
Record, p. 477, l. 51.
Record, p. 478, l. 1–3.
Record, p. 482, l. 43–51.
Record, p. 483, l. 1–36.
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

COMPLAINT.
None against the Company.
See Grievance.

Its men had none at the time of the 1906 strike.
Koch.
Direct—
Record, p. 282, l. 23–27.
Pickett.
Direct—
Record, p. 301, l. 27–38.

CONTRACT BETWEEN B. & O. AND HITCHMAN COMPANY REQUIRED HITCHMAN COMPANY IN CASE OF STRIKE TO LOAD OTHER COAL ON B. & O. ENGINES WHICH MIGHT BE BROUGHT TO THE HITCHMAN MINE BY THE B. & O. RAILROAD COMPANY.

1904.
Hitchman.
Direct—
Record, p. 251, l. 34–53.
1906.
Hitchman.
Direct—
Record, p. 253, l. 13–25.
1903.
Koch.
Direct—
Record, p. 276, l. 7–24.
1904.
Koch.
Direct—
Record. p. 276, l. 25–37.
1906.
Koch.
Direct—
Record, p. 276, l. 38–51.
Record, p. 277, l. 1–15.

CONTRACTUAL RELATIONS BETWEEN HITCHMAN COAL & COKE COMPANY AND ITS EMPLOYEES.

See Knowledge of Contractual Relations between Men and Company.
Agreement with Men.

CORNS, WESLEY.
Direct—
Record, pp. 327–330.
Cross—
Record, pp. 331–333.

COTTS, R. J.
Direct—
Record, pp. 259–266.
Cross—
Record, pp. 266–272.
Recalled-Direct—
Record, pp. 333–335.
Recalled-Cross—
Record, pp. 335–336.

DAUGHERTY, WM.
Direct—
Record, pp. 343–358.
Cross—
Record, pp. 358–366.
Re-Direct—
Record, pp. 367–368.
Re-Cross—
Record, pp. 368–369.

DECREE DIRECTING TAKING OF TESTIMONY.
Record, p. 221.

DEFENDANTS.

(*a*) Are higher officials of the U. M. W. of A., are in that business for a living, and have been acquainted and have dealt with each other for years.

Lewis.

Cross—

Record, p. 550, l. 36–51.
Record, pp. 551, 552, l. 1–43.
Record, p. 575, l. 42–46.

Sullivan.

Cross—

Record, p. 630, l. 25–49.
Record, pp. 631 to 635, l. 1–45, incl.

(*b*) Some one or all of them.

Had to do with the Mount Pleasant mine and also had to do with unionizing the Hitchman mine in 1903, and with the Hitchman while it was run union from May 23, 1903, to April 16, 1906, and with the efforts to re-unionize the Hitchman mine in 1907 up to the time of the granting of the restraining order forbidding such efforts, and also with the efforts to unionize the Hitchman in spite of the restraining order, and also with the design of the Union to still unionize the Hitchman mine if the injunction can be gotten rid of as was testified to by Lewis and by Sullivan.

See Efforts to Unionize.

Hitchman.

Direct—

Record, p. 250, l. 17–37.

Cross—

Record, p. 256, l. 17–19, l. 23–50.
Record, p. 257, l. 1–23.

Daugherty.
Direct—
Record, p. 358, l. 17–36.
See—
Notices of Meetings.
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
Pickett's Exhibit No. 1.
Pickett's Exhibit No. 2.
McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.

EARNINGS.
Depend on output.
Koch.
Recalled-Direct—
Record, p. 295, l. 42–44.

EFFORTS.
(*a*) Efforts made by Company with Union officials to get permission to run pending the fixing of a National Scale in 1906, but so as only to mine engine coal and not commercial coal and to take care of Company's railroad trade.
Koch.
Direct—
Record, p. 287, l. 7–24.
See Wages.

See Warning.
Pickett.
Direct—
Record, p. 301, l. 39–49.
Record, p. 302, l. 1–30.
Cross—
Record, p. 308, l. 1–45.
Oliver.
Direct—
Record, p. 320, l. 1–33.
Corns.
Direct—
Record, p. 328, l. 20–49.
Record, p. 329, l. 1–18.
Cross—
Record, p. 331, l. 7–13.
Daugherty.
Direct—
Record, p. 345, l. 9–51.
Record, pp. 346 to 350, l. 1–38, incl.
Jarrett, Albert.
Direct—
Record, p. 375, l. 18–36.
Jarrett, James.
Direct—
Record, p. 379, l. 46–48.
Record, p. 380, l. 1–44.
(*b*) Efforts made by the men employed by the Hitchman mine to get the consent of their Union officials for the men to continue working pending the adjustment of a National Scale at the time of the 1906 strike, which strike order, after running for 16 days, the men finally obeyed on April 16, 1906.

Rowand.
Direct—
Record, p. 313, l. 29–49.
Record, pp. 314, 315, l. 1–33.
Daugherty.
Direct—
Record, p. 345, l. 9–51.
Record, pp. 346, 347, l. 1–38.
Rowand.
Recalled-Direct—
Record, pp. 462, 463, 464, l. 1–10.
Cross—
Record, p. 464, l. 13–49.
Record, p. 465, l. 1–29.

(*c*) Efforts to settle strike between April 16, 1906, and June 12, 1906, whereby mine would resume union.

None made by the Union's officials.
None made by the men on strike.
None made by the Company.
Koch.
Direct—
Record, p. 285, l. 34–43.

(*d*) Efforts made by defendants to induce Company to agree to again run a union mine after it started up non-union June 12, 1906, and before Hughes appeared at the mine in the fall of 1907.

Koch.
Direct—
Record, p. 285, l. 50–52.
Record, pp. 286, 287, l. 1–24.
Recalled-Direct—
Record, p. 294, l. 14–48.
Record, p. 295, l. 1, 2.

Pickett.
Direct—
Record, p. 302, l. 47–52.
Record, p. 303, l. 1–21.
Daugherty.
Direct—
Record, p. 358, l. 13–36.
Cross—
Record, p. 364, l. 47–52.
Record, p. 365, l. 1–23.
Record, p. 366, l. 20–22.
Jarrett, Albert.
Direct—
Record, p. 377, l. 42–46.
Record, p. 378, l. 1–10.

(*e*) Efforts made by some of the defendants who tried to induce Company to re-unionize before Hughes appeared to assist Hughes in his work after Hughes appeared—thus connecting them up with Hughes in the entire scheme.

Daugherty.
Direct—
Record, p. 358, l. 17–36.
"Notices of Meetings."
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.

(*f*) Efforts of Hughes and other defendants were about to be successful at the time the restraining order was granted in the Hitchman case, October 24, 1907, so Hughes claimed, and the mine was to be shut down and to be kept shut down until Company agreed to run Union.

McKinley.

Direct—

Record, p. 415, l. 11–33.

Leonard.

Direct—

Record, p. 429, l. 3–49.
Record, p. 430, l. 1–26.
Record, p. 431, l. 49, 50.
Record, p. 432, l. 1–31.

Logston.

Direct—

Record, p. 452, l. 20–33.

Myers.

Direct—

Record, p. 458, l. 35–51.
Record, p. 459, l. 1–27.

Stewart.

Direct—

Record, p. 469, l. 3–14.
Record, p. 470, l. 22–25.

(*g*) Efforts made by defendants to unionize Hitchman mine after the restraining order of October 24, 1907, was granted.

Hitchman.

Direct—

Record, p. 255, l. 9–26.

Cross—

Record, p. 258, l. 34–37.

(*h*) Efforts to unionize the Hitchman mine would still be made if the injunction forbidding it were out of the way.

Lewis.
Direct—
Record, p. 534, l. 17–21.
Sullivan.
Direct—
Record, p. 628, l. 50–53.
Record, p. 629, l. 1–11.
Savage.
Cross—
Record, p. 503, l. 34, 35.

EMPLOYMENT CARD.
See—
Card.
Agreement with men (*b*).
Cotts.
Direct—
Record, p. 264, l. 38–52.
Record, p. 265, l. 1–40.
Cross—
Record, p. 270, l. 39–51
Record, pp. 271, 272, l. 1–20.
Koch.
Direct—
Record, p. 284, l. 38–53.
Record, p. 285, l. 1–33.
Pickett.
Direct—
Record, p. 304, l. 27–52.
Record, p. 305, l. 1–30.
Cross—
Record, p. 307, l. 31–50.

Cotts.
Recalled-Direct—
Record, p. 334, l. 26–43.
Cross—
Record, p. 336, l. 11–20.

ENGINE COAL.
See—
Trade of Hitchman mine.
(*b*) At times of strikes.
1906 strike.
Breaking away from Union.

EXHIBITS.
A. Plaintiff's Exhibits.
B. Defendants' Exhibits.
A. Plaintiff's Exhibits.
(*a*) Plaintiff's Documentary Exhibits numbered.
(*b*) Plaintiff's Documentary Exhibits not numbered, but otherwise identified.
(*c*) Plaintiff's Witnesses' Exhibits numbered, introduced by plaintiff.
(*d*) Defendants' Witnesses' Exhibits numbered, introduced by plaintiff.
(*a*) Plaintiff's Documentary Exhibits numbered.
Plaintiff's Documentary Exhibit No. 1.
"Constitution of International Union, United Mine Workers of America.
Revision 1907."
McKinley.
Direct—
Record, p. 290, l. 5–24.
Daugherty.
Cross—
Record, p. 358, l. 48, 49.
Record, p. 359, l. 1–15.

Re-Direct—
Record, p. 367, l. 4–37.
Re-Cross—
Record, p. 369, l. 1–29.
Savage.
Direct—
Record, p. 491, l. 20–51.
Record, pp. 492 to 496, l. 1–28, incl.
Lewis.
Direct—
Record, p. 507, l. 1–51.
Record, pp. 508 to 517, l. 1–24, incl.
Record, p. 519, l. 6–52.
Record, pp. 520 to 527, l. 1–5, incl.
Record, p. 532, l. 46–51.
Record, p. 533, l. 1–14.
Cross—
Record, p. 566, l. 30–50.
Record, p. 567, l. 1–28.
Record, p. 579, l. 13–51.
Record, p. 580, l. 40–51.
Record, p. 581, l. 1–5.
Sullivan.
Direct—
Record, p. 623, l. 43–45.
Record, p. 625, l. 46–51.
Record, p. 626, l. 1–9.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 2.
"Constitution of District No. 6, United Mine Workers of America.
"Established April 15, 1890.
"Containing all amendments to date, January 12, 1907."

McKinley.
Direct—
Record, p. 290, l. 5–24.
Recalled-Direct—
Record, p. 407, l. 31–51.
Record, p. 408, l. 1–20.
Record, p. 408, l. 34–44.
Daugherty.
Cross—
Record, p. 359, l. 15–24.
Re-Direct—
Record, p. 367, l. 18–34.
Re-Cross—
Record, p. 369, l. 1–29.
Savage.
Direct—
Record, p. 491, l. 20–51.
Record, pp. 492 to 496, l. 1–28, incl.
Lewis.
Direct—
Record, p. 507, l. 1–51.
Record, pp. 508 to 517, l. 1–24, incl.
Record, p. 519, l. 6–52.
Record, pp. 520 to 527, l. 1–5, incl.
Record, p. 531, l. 44–51.
Record, p. 532, l. 1–17.
Cross—
Record, p. 567, l. 35–50.
Record, p. 568, l. 1–27.
Record, p. 579, l. 13–51.
Record, pp. 580, 581, l. 1–5.
Sullivan.
Direct—
Record, p. 625, l. 39–43.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 3.
"Preamble and Manual Constitution United Mine Workers of America, Sub-District 5 of District 6.
"Revision 1907."
McKinley.
Direct—
Record, p. 290, l. 5–24.
Recalled-Direct—
Record, p. 398, l. 40–51.
Record, pp. 399 to 407, l. 1–29, incl.
Daugherty.
Cross—
Record, p. 359, l. 24–30.
Re-Direct—
Record, p. 367, l. 38–50.
Record, p. 368, l. 1–8.
Re-Cross—
Record, p. 369, l. 1–29.
Savage.
Direct—
Record, p. 491, l. 20–51.
Record, pp. 492 to 496, l. 1–28, incl.
Lewis.
Direct—
Record, p. 507, l. 1–51.
Record, pp. 508 to 517, l. 1–24, incl.
Record, p. 519, l. 6–52.
Record, pp. 520 to 527, l. 1–5, incl.
Cross—
Record, p. 579, l. 13–51.
Record, pp. 580, 581, l. 1–5.
Sullivan.
Direct—
Record, p. 625, l. 39–45.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 4.

"Proceedings of the Eighteenth Annual Convention of the United Mine Workers of America held in the City of Indianapolis, Indiana. January fifteenth to twenty-second, inclusive, nineteen seven."

McKinley.

Direct—

Record, p. 290, l. 25–38.

Cross—

Record, p. 292, l. 49–50.
Record, p. 293, l. 1–11.

Lewis.

Cross—

Record, p. 592, l. 16–38.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 5.

"Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6, United Mine Workers of America, held at Wheeling, West Virginia, March 14, 15, 16, 18, and 19, 1907."

McKinley.

Direct—

Record, p. 290, l. 39–50.

Cross—

Record, p. 293, l. 12–25.

Recalled-Direct—

Record, p. 414, l. 31–49.
Record, p. 415, l. 1–48.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary—
Exhibit No. 19.
Exhibit No. 20.
Temporary injunction and affidavits read in support of same in the Richland case.
(Original documents transmitted to U. S. Supreme Court.)
(*b*) Plaintiff's Documentary Exhibits not numbered, but otherwise identified.
All of the first lot of answers and orders relating thereto, including the affidavits of Watkins, Hogg, and Barnes, and order withdrawing all of those answers.
These items are the nine items mentioned in an order entered November 5, 1910, in the Hitchman case.
Record, pp. 85–87.
Separate answer of Watkins filed May 26, 1908.
Record, pp. 88–101.
Order extending time for answers.
Record, p. 102.
Joint and several answer of T. L. Lewis and others.
Record, pp. 102–117.
Separate answer of William Green.
Record, pp. 118–133.
Separate answer of D. H. Sullivan.
Record, pp. 133–148.
Order filing answers July 13, 1908.
Record, pp. 148, 149.
Sworn separate answer of A. R. Watkins and affidavits of A. R. Watkins, Chas. E. Hogg, and Uriah Barnes.
Record, pp. 150–177.

Order August 20, 1908, tendering for filing sworn separate answer of A. R. Watkins, and affidavits of A. R. Watkins, Chas. E. Hogg, and Uriah Barnes.

Record, pp. 177, 178.

Order entered July 22, 1910, withdrawing separate answers of Green and Sullivan and original and amended answers of Watkins, and joint and several answers of all served defendants.

Record, pp. 178, 179.

Motion to modify the injunction of May 26, 1908.

Record, pp. 37–39.

Decree deferring proceedings pending consideration of motion.

Record, pp. 39–41.

Opinion of Court on motion to modify.

Record, pp. 41–49.

Decree refusing to modify injunction.

Record, pp. 50–52.

Preliminary motion filed at Parkersburg, January 11, 1908, with supporting affidavit of E. T. Hitchman and Exhibits 1 to 29 incl., and affidavits of Wayne Archer and B. F. Marling, relating to defendants' acts in attempting to organize plaintiff's mine in defiance of the restraining order which had been granted on October 24, 1907.

These items are the four items mentioned in an order entered November 5, 1910, in the Hitchman case.

Record, pp. 179, 180.

Preliminary motion.

Record, pp. 181–184.

Affidavit of E. T. Hitchman and exhibits.
Record, pp. 184–203.
Affidavit of Wayne Archer.
Record, pp. 204, 205.
Affidavit of B. F. Marling.
Record, pp. 206, 207.
Decrees and papers *in re* Glendale Coal Company *v.* John Mitchell, *et al.* Decree November 5, 1910, relating to the following papers: decree June 26, 1908, extending time for filing answers; joint and separate answers of T. L. Lewis, *et al.*, answer of William Green, separate answer of D. H. Sullivan, and separate answer of A. R. Watkins, each filed July 13, 1908; order filing foregoing answers, entered July 13, 1908; and decree withdrawing answers, entered July 22, 1910.
(Original documents transmitted to U. S. Supreme Court.)
Decrees *in re* Glendale Coal Company *v.* John Mitchell, *et al.* Decree November 5, 1910, relating to the following decrees: two decrees entered December 15, 1908, *in re* motion to dissolve injunction; decree entered October 6, 1909, overruling motion to dissolve injunction.
(Original documents transmitted to U. S. Supreme Court.)
General replication to defendants' answers *in re* Glendale Coal Company *v.* John Mitchell, *et al.*
(Original document transmitted to U. S. Supreme Court.)

Decree of November 5, 1910, suspending action in Glendale case pending disposition of Hitchman case.
(Original document transmitted to U. S. Supreme Court.)
(*c*) Plaintiff's Witnesses' Exhibits numbered, introduced by plaintiff.
Hitchman's Exhibit No. 1.
Certificate of Incorporation of Hitchman Coal & Coke Company.
Hitchman.
Direct—
Record, p. 249, l. 45–49.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 1.
Hitchman Coal & Coke Company's tonnage.
Commercial Coal and Engine Coal.
March 2, 1903, to April 2, 1903, and from May 23, 1903, to June 23, 1903.
Cotts.
Direct—
Record, p. 259, l. 45–49.
Record, p. 260, l. 1–4.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
Koch.
Direct—
Record, p. 274, l. 7–16.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 2.
Hitchman Coal & Coke Company's tonnage.
Commercial Coal and Engine Coal.

March 20, 1904, to April 20, 1904, and from June 15, 1904, to July 15, 1904.

Cotts.

Direct—

Record, p. 260, l. 5–12.
Record, p. 262, l. 6–15.

Cross—

Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.

Koch.

Direct—

Record, p. 274, l. 26–36.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 3.

Hitchman Coal & Coke Company's tonnage.

Commercial Coal and Engine Coal.

March 16, 1906, to April 16, 1906, and from June 12, 1906, to July 12, 1906.

Cotts.

Direct—

Record, p. 260, l. 13–20.
Record, p. 262, l. 16–27.

Cross—

Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.

Koch.

Direct—

Record, p. 274, l. 37–50.
Record, pp. 275, 276, 277, l. 1–15.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 4.

Hitchman Coal & Coke Company's tonnage on engine and commercial coal covering the

years 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, to and including November, 1910.

Cotts.
Direct—
Record, p. 260, l. 21–51.
Record, p. 261, l. 1–46.
Record, p. 262, l. 41–52.
Record, p. 263, l. 1–11.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.

See Cotts' Exhibit No. 7, supplementing Cotts' Exhibit No. 4.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 5.
Memorandum Card of Employment between the Hitchman Coal & Coke Company and its employees.

Cotts.
Direct—
Record, p. 264, l. 38–52.
Record, p. 265, l. 1–16.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
Record, p. 270, l. 39–51.
Record, pp. 271, 272, l. 1–20.

Koch.
Direct—
Record, p. 284, l. 25–53.
Record, p. 285, l. 1–4.
Recalled-Direct—
Record, p. 297, l. 16–21.

Pickett.
Direct—
Record, p. 304, l. 27–52.
Record, p. 305, l. 1–30.
Cross—
Record, p. 307, l. 31–50.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 6.
Memorandum or list of men employed during the year 1908 and those employed during 1909 and those employed during 1910, down to December 9, and signed employment cards.
Cotts.
Direct—
Record, p. 265, l. 16–40.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
Record, p. 270, l. 39–51.
Record, pp. 271, 272, l. 1–20.
Koch.
Direct—
Record, p. 284, l. 25–34.
Record, p. 285, l. 1–4.
Recalled-Direct—
Record, p. 297, l. 16–21.
Pickett.
Direct—
Record, p. 304, l. 27–52.
Record, p. 305, l. 1–30.
Cross—
Record, p. 307, l. 31–50.
See Cotts' Exhibit No. 8, supplementing Cotts' Exhibit No. 6.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 7.

Tonnage, Hitchman Coal & Coke Company, December, 1910, to February, 1911.

Supplements Cotts' Exhibit No. 4.

Cotts.

Recalled-Direct—

Record, p. 333, l. 33–47.

Record, p. 334, l. 1–24.

Cross—

Record, p. 335, l. 39–49.

Record, p. 336, l. 1–10.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 8.

Hitchman Coal & Coke Company employees employed during December, 1910, January, February, and March, 1911, and signed employment cards.

Supplements Cotts' Exhibit No. 6.

Cotts.

Recalled-Direct—

Record, p. 334, l. 26–43.

Recalled-Cross—

Record, p. 336, l. 11–20.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 1.

A small pamphlet entitled "United Mine Workers of America, District No. 6, Ohio, issued by the authority of the executive board of District No. 6, Ohio miners, United Mine Workers of America, G. W. Savage, Secretary-Treasurer, for scale year, April 1, 1908, to March 31, 1910."

Koch.

Direct—

Record, p. 277, l. 16–25.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 2.

Paper purporting to be an official mining scale of the Pittsburgh vein of Sub-District 5 of District No. 6, U. M. W. of A., at Belmont, Jefferson, and part of Harrison counties, Ohio, and the Panhandle District of West Virginia. "All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations."

Koch.

Direct—

Record, p. 277, l. 26–35.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 3.

Paper headed "Official Mining Scale, United Mine Workers of America of the Panhandle District of West Virginia, in effect April 1, 1903, and ending March 31, 1904. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations."

Koch.

Direct—

Record, p. 277, l. 36–50.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 4.

Document consisting of four typewritten pages, which is headed: "The following conditions

are attached as an amendment to the official mining scale, United Mine Workers of America of the Panhandle District of West Virginia, and are to be considered by both the United Mine Workers as well as the Hitchman Coal & Coke Company, as a part of said scale." The paper has attached to it on the third page under the heading, "Signed for operator, W. H. Koch, Manager for Hitchman Coal & Coke Company, 5-22-'03," and under the heading, "Signed for miners," are the names "G. W. Savage, Secretary and Treasurer; John Stevenson, President Sub-District 5 of 6; William Daugherty, John F. Jewel, Z. C. Martin." Attached to that agreement and as the fourth page there is matter which contains at the foot the following: "For the company: J. C. McKinley, George W. Savage, John Stevenson."

The above document covered special conditions that were not covered by the regular scale.

Koch.

Direct—

Record, p. 278, l. 1–51.
Record, p. 288, l. 6–50.
Record, p. 289, l. 1–47.

Recalled-Cross—

Record, p. 298, l. 9–50.
Record, pp. 299, 300, 301, l. 1–5.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 5.

Paper headed, "Scale for month of April, 1904," and sub-headed, "Wheeling, W. Va., April

14, 1904. At a joint conference of operators and miners of Sub-District 5 of District 6, Ohio, the following resolutions were unanimously adopted. First: This convention do now adjourn to meet Tuesday, April 26, 1904, at 9 o'clock a. m., at Wheeling, W. Va.; that last year's scale and conditions shall prevail until the 30th of April, with the reduction called for by the Indianapolis convention. Second: That a committee of two operators be appointed to examine the scale and issue statement to superintendents and miners of the District. Committee for the Miners, W. H. Worker and Lee Rankin. Committee for the Operators, J. J. Robey and P. McBride." Another sub-heading reads as follows: "The Official Mining Scale, U. M. W. of A., of the Pittsburgh Vein of Sub-District 5 of District No. 6, in effect April 1, 1904, to end April 30, 1904. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations." This paper has at the bottom of it, on one side, the following signatures: "James Minder, Hugh Mullen, James Jarrett, Com." and on the other side having the printed signatures. "Signed on behalf of the operators: J. J. Robey, P. McBride. On behalf of the Miners: W. H. Worker, Lee Rankin," and in writing the signature, "Hitchman Coal & Coke Company. W. H. Koch, Manager, 4–18–'04."

Koch.

Direct—

Record, p. 279, l. 1–37.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 6.

A printed paper having attached to it a typewritten sheet of paper; the paper has upon it the following heading: "Official Mine Scale between the Operators and United Mine Workers of America, for the Panhandle District of West Virginia. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations. In effect April 1, 1904, and ending March 31, 1906." The typewritten sheet attached to the printed paper just identified has the following heading: "The following local rules are made as a part of the Panhandle scale of W. Va., as adopted for the period April 30, 1904, to March 31, 1906, and are to be recognized as such by both operator and miners interested." And immediately following that heading are four short rules, which read as follows:

"Rule 1. The check weighman, if possible, must be an employee of the company, but should he be chosen from the outside, he must not be objectionable to the company.

"Rule 2. Day labor is allowed to work overtime and to be paid scale price for such overtime. This to be done without any recess between the end of the eight-hour day and the overtime.

"Rule 3. Enough men to report for work and work on holidays, Sundays and days on which a death by accident to an employee

might occur, to keep fuel supplied for engines.

"Rule 4. Work shall begin at seven o'clock a. m.; work until eleven o'clock; one hour for dinner and work from twelve m. until four o'clock p. m., eastern standard time"

At the foot of that paper and the language, "Signed and agreed to on behalf of the company," is the signature, "W. H. Koch." On the other side of the same sheet of paper, and opposite the signature of W. H. Koch, and under the heading, "Signed and agreed to on behalf of the miners," are the signatures, "James Jarrett, Walter Miller, S. P. Rowand, James Conoway."

Koch.

Direct—

Record, p. 279, l. 38–51.

Record, p. 280, l. 1–29.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 7.

A printed paper purporting to be a mine scale between the employees of the Hitchman Coal & Coke Company, and the Hitchman Coal & Coke Company, in effect April 1, 1906, and ending March 31, 1908, and having also at the head, in writing, these words: "All persons accepting employment at the mine hereby agree to be governed by the following rules and regulations." The paper has some modifications of the printed scale by marking in ink of certain figures opposite the printed figures, indicative of the price to be paid for the particular service,

and it has crossed out in ink the following language: "Rule 9. We adopt the check-off system as a part of the agreement in this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, or local union, or the party upon whom the fine is imposed object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. Check-off lists shall be handed in at my office not later than 5 p. m., on the 2d and 17th days of each month; otherwise, operators shall not be required to check off same." In addition to having that rule I have just quoted and which is printed, stricken out in ink, the following rule, No. 10, is also stricken out in ink. "Rule No. 10. No strike shall take place at any mine under the jurisdiction of Sub-District 5 of District 6, except for specific violation of agreement. That is, screens irregular; failure to pay on pay day without explanation; violation of mining laws by operators, or reduction from scale wages, until the grievance of the mine affected has been thoroughly investigated by the officers of District 6, U. M. W. of A., and operators interested. Any man or men that cause a stoppage of work at any time in violation of this rule, shall be subject to dismissal at the will of the company." In addition to

this rule, No. 10, last referred to as being stricken out in ink, the third paragraph of Rule No. 19 is stricken out in ink. That paragraph reads as follows: "Miner so suspended shall have the right of appeal to officials U. M. W. of A., and operators interested;" and in addition to having that third paragraph of Rule No. 19 stricken out, Rule No. 22 is stricken out in ink. Rule No. 22 reads as follows: "Mines to be placed on a screen basis; run of mine to be paid for on an average of each man's screened coal per day. The price of run of mine from Boggs Run mine shall be 61 cents per car." And in addition to having Rule No. 22, as above, stricken out in ink, Rule No. 25 is also stricken out in ink. Rule No. 25 reads: "No new rule, either local nor general, shall be permitted unless mutually agreed upon by operators and miners interested." Attached to this printed scale is a slip of paper upon which is written: "Rule 22. Run of mine coal used at bin to be paid for at the rate of (32⅓) thirty-two and one-third cents per ton, r. of m." This printed scale has attached to it for the purpose of signature a piece of paper upon which is written: "Hitchman Coal & Coke Company, W. H. Koch, Manager."

Koch.

Direct—

Record, p. 280, l. 30–52.
Record, p. 281, l. 1–34.
Record, p. 282, l. 23–51.
Record, pp. 283, 284, l. 1–25.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 8.

A printed paper headed, "Official Mining Scale of Association of Pittsburgh Vein Operators, of Ohio, for their mines in Belmont, Harrison, and Jefferson counties, Ohio, and the United Mine Workers of America. All persons accepting employment in these mines hereby agree to be governed by the following rules and regulations. In effect April 1, 1906, and ending March 31, 1908."

Koch.

Direct—

Record, p. 281, l. 35–41.

(Original document transmitted to U. S. Supreme Court.)

McKinley's Exhibit No. 1.

A paper-backed book having upon its title page the following: "Inter-state Conventions, 1906, Joint Conference Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana, and Illinois. Indianapolis, Indiana, January 25 to February 2, and March 20 to 29, 1906. Stenographic Report by Mrs. Mary Burke East, Indianapolis, Indiana. Revised and edited by C. L. Scroggs, Springfield, Illinois. Allied Printing Trade's Council, Joliet, Illinois. Union Label."

McKinley.

Direct—

Record, p. 291, l. 1–14.

Cross—

Record, p. 293, l. 26–35.

Lewis.
Cross—
Record, p. 610, l. 17–51.
Record, pp. 611, 612, l. 1–14.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 2.
A paper-backed book or pamphlet having on its title page the following: "Joint Convention of the Illinois Coal Operators' Association and the United Mine Workers of America, District Twelve, held at Springfield, Illinois, May 17 to June 1, 1906. Stenographically reported by Mrs. Mary Burke East, Indianapolis, Indiana. Revised and edited by C. L. Scroggs, Room 525, Odd Fellows' Building, Springfield, Illinois; Joliet Republican Printing Company. Allied Printing Trade's Council, Joliet, Illinois. Union Label."
McKinley.
Direct—
Record, p. 291, l. 15–25.
Cross—
Record, p. 293, l. 36–43.
Lewis.
Cross—
Record, p. 608, l. 11–52.
Record, pp. 609, 610, l. 1–16.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 3.
A paper-backed book, having on its title page the following: "Inter-state Convention of 1908. Joint Conference of Coal Miners and Opera-

tors of Western Pennsylvania, Ohio, and Indiana, held at Toledo, Ohio, April 14–17, 1908. Stenographically reported by Ella Shera Green, Indianapolis, Indiana. Revised and edited by F. S. Brooks, Secretary, Allied Printing Trade's Council, Columbus. Union Label."

McKinley.

Direct—

Record, p. 291, l. 26–36.

Cross—

Record, p. 293, l. 44–49.

(Original document transmitted to U. S. Supreme Court.)

McKinley's Exhibit No. 4. (Same as Upstill's Exhibit No. 1.)

A paper-backed book having on its title page the following: "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio, and Indiana, Cincinnati, March 8–29, 1910. Revised and edited by F. S. Brooks, Secretary. Allied Trade's Council, Columbus, Ohio. Union Label."

For References—

See Upstill's Exhibit No. 1.

(Original document transmitted to U. S. Supreme Court.)

McKinley's Exhibit No. 5.

A pamphlet having on its outside cover the following: "Report of President T. L. Lewis, Twentieth Annual Convention of United Mine Workers of America. Allied Printing Trade's Council, Indianapolis. Union Label." and the figures, "13."

McKinley.
Direct—
Record, p. 291, l. 49, 50.
Record, p. 292, l. 1–9.
Cross—
Record, p. 293, l. 44–49.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 6.
A pamphlet which has on its outside cover, "Report of Vice-President John T. White, Twentieth Annual Convention of United Mine Workers of America. Allied Printing Trade's Council, Indianapolis, Union Label;" figures "13" and on the first page having the following: "Vice-President White's Report, Indianapolis, Indiana, January 19, 1909."
McKinley.
Direct—
Record, p. 292, l. 10–21.
Cross—
Record, p. 293, l. 44–49.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 7.
A paper-backed book or pamphlet having on its outside cover the following: "Report of Secretary W. D. Ryan, Twentieth Annual Convention of United Mine Workers of America. Allied Printing Trade's Council, Indianapolis. Union Label;" and the figures "13," and on the first page the following: "Report of Secretary Ryan."

McKinley.
Direct—
Record, p. 292, l. 22–34.
Cross—
Record, p. 293, l. 44–49.
Lewis.
Cross—
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 8.
A pamphlet having on its title page the following: "Official Mining Scale of Association of Pittsburgh Vein Operators of Ohio for their mines in Belmont, Harrison, and Jefferson counties, Ohio, and the United Mine Workers of America," and on the first page the following: "Conditions of the Columbus Day Wage Scale, 1898." In effect April 1, 1906, and ending March 31, 1908.
McKinley.
Direct—
Record, p. 292, l. 35–47.
Cross—
Record, p. 293, l. 50, 51.
Record, p. 294, l. 1–8.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 9.
A small book which has on the title page, "Official Mining Scale of Association of Pittsburgh Vein Operators, for their mines in Belmont, Harrison, and Jefferson counties, Ohio, and the United Mine Workers of America.

Adopted May 19, 1910. In effect April 1, 1910, and ending March 31, 1912."

McKinley.

Recalled-Direct—

Record, p. 388, l. 6–36.

Savage.

Direct—

Record, p. 496, l. 42–50.

Record, p. 497, l. 1–18.

(Original document transmitted to U. S. Supreme Court.)

Pickett's Exhibit No. 1.

A printed card which reads as follows: "Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 p. m., at Nick Heil's Baseball Grounds, for the purpose of discussing the principles of organization. President Green will be present and all miners are cordially invited to attend."

Pickett.

Recalled-Direct—

Record, p. 338, l. 3–23.

Recalled-Cross—

Record, p. 340, l. 30–43.

(Original document transmitted to U. S. Supreme Court.)

Pickett's Exhibit No. 2.

A card which reads as follows: "Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 p. m., at Nick Heil's Baseball Grounds, for the purpose of discussing the principles of organization. President Green will be present. All miners are cordially invited to attend."

Pickett.
Recalled-Direct—
Record, p. 338, l. 25–47.
Recalled-Cross—
Record, p. 340, l. 44–51.
Record, p. 341, l. 1, 2.
(Original document transmitted to U. S. Supreme Court.)
Albert Jarrett's Exhibit No. 1.
Charter of the Independent Mine Workers of West Virginia, as it is printed in the published report of the Secretary of State of the State of West Virginia, March 4, 1905, to March 1, 1907, page 567, printed at Charleston in 1907.
Jarrett, Albert.
Direct—
Record, p. 376, l. 20–45.
Record, p. 377, l. 1–41.
Jarrett, James.
Cross—
Record, p. 386, l. 4–22.
(Original document transmitted to U. S. Supreme Court.)
Austin's Exhibit No. 1.
A card upon which is printed the following language: "Notice. To the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 p. m., at Nick Heil's Baseball Grounds for the purpose of discussing the principles of organization. President William Green will be present. All miners are cordially invited to attend."

Austin.
Direct—
Record, p. 437, l. 9–39.
Cross—
Record, p. 438, l. 32–43.
(Original document transmitted to U. S. Supreme Court.)
Austin's Exhibit No. 2.
A card upon which appears, in black stencil, the following: "Notice. A meeting for Hitchman's miners at 6.30 p. m., Friday, September 27. President Green will be there."
Austin.
Direct—
Record, p. 437, l. 40–48.
Record, p. 438, l. 1–3.
Cross—
Record, p. 438, l. 44–49.
Record, p. 439, l. 1–39.
Knapp.
Direct—
Record, p. 440, l. 6–46.
Cross—
Record, p. 441, l. 5–50.
Record, p. 442, l. 1–51.
Re-Direct—
Record, p. 443, l. 4–12.
Re-Cross—
Record, p. 443, l. 17–22.
(Original document transmitted to U. S. Supreme Court.)
Upstill's Exhibit No. 1. (Same as McKinley's Exhibit No. 4.)
A book which says on its title page, "Proceedings of Joint Conference of Coal Operators and

Coal Miners of Western Pennsylvania, Ohio, and Indiana. Cincinnati, Ohio, March 8–29, 1910. Revised and edited by F. S. Brooks, Secretary."

McKinley.
Direct—
Record, p. 291, l. 37–48.
Cross—
Record, p. 293, l. 44–49.
Recalled-Direct—
Record, p. 412, l. 27–50.
Record, pp. 413, 414, l. 1–12.

Upstill.
Direct—
Record, p. 484, l. 43–51.
Record, p. 485, l. 1–3.

Savage.
Cross—
Record, pp. 503, 504, l. 1–38.
Re-Direct—
Record, p. 506, l. 25–27.

Lewis.
Direct—
Record, p. 527, l. 6–52.
Record, p. 528, l. 1–21.
Cross—
Record, p. 538, l. 50, 51.
Record, pp. 539, 540, 541, 542, 543, 544, 545, 547, 548.
Record, pp. 549, 550, 551, 552, 553, l. 1–44.
Record, p. 558, l. 35–51.
Record, p. 559, l. 1–22.
Record, p. 576, l. 3–51.
Record, pp. 577, 578, 579, l. 1–12.
Record, p. 612, l. 27–51.
Record, pp. 613, 614, 615.

(*d*) Defendants' Witnesses' Exhibits numbered, introduced by plaintiff.

Savage's Exhibit No. 1.

Strike Order of the Ohio Miners, March, 1911.

Savage.

Cross—

Record, p. 502, l. 49–51.
Record, p. 505, l. 30–53.

Sullivan.

Cross—

Record, p. 635, l. 52.
Record, p. 636, l. 1–48.

(Original document transmitted to U. S. Supreme Court.)

Lewis' Exhibit No. 1.

President Lewis' Report; See United Mine Workers' Journal, Indianapolis, Indiana, Thursday, January 19, 1911, pages 1 to 8.

Lewis.

Cross—

Record, p. 560, l. 10–41.
Record, pp. 561, 562, 563, l. 1–33.
Record, pp. 601, 602, l. 1–17.
Record, pp. 616, 617.

(Original document transmitted to U. S. Supreme Court.)

Lewis' Exhibit No. 2.

Tabulation "Expenditures;" See United Mine Workers' Journal, Thursday, January 26, 1911.

Lewis.

Cross—

Record, p. 563, l. 34–49.
Record, pp. 564, 565, l. 1–33.

(Original document transmitted to U. S. Supreme Court.)

Lewis' Exhibit No. 3.
Tabulation showing income of U. M. W. of A. for the year 1910; See United Mine Workers' Journal, Thursday, January 26, 1911.
Lewis.
Cross—
Record, p. 604, l. 50–53.
Record, p. 605, l. 1–7.
(Original document transmitted to U. S. Supreme Court.)
Lewis' Exhibit No. 4.
A short report headed: "Annual Report of International Auditors," in which the income and expenditures and a recapitulation for the year 1910 are given, covering the money received and the money paid out. See United Mine Workers' Journal, Thursday, January 26, 1911.
Lewis.
Cross—
Record, p. 605, l. 8–16.
(Original document transmitted to U. S. Supreme Court.)

FREIGHT RATE.
See Competitive Field.

GILCHRIST, AFFIDAVIT OF GEORGE R. E.
Exhibit No. 1.
Record, p. 218.
Letter, Gilchrist to Littlepage, January 20, 1908.
Record, p. 219.
Exhibit No. 2.
Letter, Littlepage to Gilchrist, January 27, 1908.
Record, p. 219.

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Exhibit No. 3.
Letter, Littlepage to Gilchrist, February 5, 1908.
Record, p. 219.
Exhibit No 4.
Letter, Gilchrist to Littlepage, February 7, 1908.
Record, p. 220.
Exhibit No. 5.
Record, p. 221.

GLENDALE MINE, FACTS ABOUT.

(*a*) Same Board of Directors and same management as and run from office of Hitchman Coal & Coke Company.

Koch.
Direct—
Record, p. 272, l. 23–45.

(*b*) Has about 1,200 acres of coal.

Koch.
Direct—
Record, p. 281, l. 42–45.

(*c*) Method of employment of men is same as at Hitchman mine.

Koch.
Recalled-Direct—
Record, p. 297, l. 26–28.

(*d*) Is a shaft mine about 90 feet deep.

Koch.
Recalled-Direct—
Record, p. 297, l. 29, 30.

(*e*) Men who quit.

Pickett.
Direct—
Record, p. 306, l. 36–51.
Record, p. 307, l. 1–6.

Cross—
Record, p. 310, l. 30–51.
Record, p. 311, l. 1–3.
Re-Direct—
Record, p. 312, l. 33–48.
Record, p. 313, l. 1–25.
Cotts.
Recalled-Direct—
Record, p. 334, l. 47–50.
Record, p. 335, l. 1–18.
Recalled-Cross—
Record, p. 335, l. 22–38.
Pickett.
Recalled-Direct—
Record, p. 336, l. 45–48.
Record, p. 337, l. 1–10.
Recalled-Cross—
Record, p. 339, l. 18–42.

GRIEVANCE OF MEN.
Against the Company. None.
See Complaint.

HART, J. W.
Direct—
Record, pp. 369–371.
Cross—
Record, pp. 371–375.

HITCHMAN, E. T.
Direct—
Record, pp. 248–255.
Cross—
Record, pp. 255–258.

HITCHMAN COAL & COKE COMPANY.
Incorporated January 11, 1902.
Certificate of Incorporation filed and marked Hitchman's Exhibit No. 1.

Hitchman.
Direct—
Record, p. 249, l. 45–49.
(Original document transmitted to U. S. Supreme Court.)

HITCHMAN MINE, FACTS ABOUT.
(*a*) When and why opened, 1902.
By whom opened.
Designed primarily to supply coal to the B. & O. R. R. engines at its yards at Benwood, W. Va., four miles below Wheeling, for which trade a contract was made before the mine was opened. Such coal is termed "Engine Coal."
Secondarily, the mine was designed to ship coal to the general markets, local and otherwise, as its production became great enough in the course of its development to admit of that trade. Such coal is termed "Commercial Coal."
Hitchman.
Direct—
Record, p. 248, l. 20–43.
Record, pp. 249, 250, l. 1–6.
(*b*) Was opened "non-union" in 1902, and was first run "non-union," and then was "unionized" April 1, 1903.
Hitchman.
Direct—
Record, p. 249, l. 1–13.
Cross—
Record, p. 255, l. 28–51.
Record, p. 256, l. 1–7.

Koch.
Direct—
Record, p. 272, l. 45–49.
Record, p. 273, l. 1–35.
Pickett.
Direct—
Record, p. 301, l. 13–18.
Lewis.
Direct—
Record, p. 518, l. 50, 51.
(*c*) Hitchman mine was run "union" from April 1, 1903, to April 16, 1906.
Strikes occurred during that time.
Hitchman.
Direct—
Record, p. 249, l. 1–13.
Record, p. 250, l. 25–41.
Cross—
Record, p. 256, l. 36–50.
Record, p. 257, l. 1–21.
Koch.
Direct—
Record, p. 273, l. 30–51.
Record, p. 274, l. 1–6.
Record, p. 276, l. 25–41.
Pickett.
Direct—
Record, p. 301, l. 13–18.
Lewis.
Direct—
Record, p. 518, l. 50, 51.
See Strikes.
(*d*) Hitchman mine has been run "non-union" since June 12, 1906.
No strikes have occurred in that time.

Cotts.
Direct—
Record, p. 263, l. 12–17.
Koch.
Direct—
Record, p. 274, l. 33–36.
Record, p. 295, l. 40–42.
Myers.
Direct—
Record, p. 458, l. 18–34.
Popage.
Direct—
Record, p. 466, l. 6, 7.

(*e*) Has lost no time by reason of labor troubles since June 12, 1906.

Hitchman.
Direct—
Record, p. 254, l. 32–34.

(*f*) Has about 5,000 acres of coal.

Koch.
Direct—
Record, p. 281, l. 43, 44.

(*g*) Is equipped with electrical mining machinery and haulage.

Koch.
Direct—
Record, p. 281, l. 45, 46.
Record, p. 295, l. 7–9.

(*h*) Has a 1200 ft. steel trestle running from the mine through the yards of the B. & O. R. R. at Benwood to large bins for the storage of coal located near the R. R. Co.'s round house.

Koch.
Direct.
Record, p. 281, l. 47–53.

(*i*) Has loading device for loading coal cars on main track and on a siding at the mine also.

Koch.

Direct—

Record, p. 281, l. 53.

Record, p. 282, l. 1, 2.

(*j*) Its trade.

Engine one-half and commercial one-half.

Hitchman.

Direct—

Record, p. 253, l. 26–34.

(*k*) Engine coal.

Engine coal must be mined and delivered with regularity and without shut downs that are incident to strikes.

Koch.

Direct—

Record, p. 282, l. 9–23.

(*l*) Lake coal.

The same is true as to mine coal for the lake trade. It can only be mined and shipped while lake navigation is open.

Koch.

Direct—

Record, p. 282, l. 2–5.

Recalled-Direct—

Record, p. 296, l. 8–46.

(*m*) Ships considerable coal locally and to Lorain, Ohio, for the lake trade while navigation on the lake is open—which usually is from the first of April to the first of December.

Koch.

Direct—

Record, p. 282, l. 2–5.

Recalled-Direct—

Record, p. 296, l. 8–46.

(*n*) Vein of coal operated is about 5 feet 8 inches thick.

Koch.

Direct—

Record, p. 282, l. 6–8.

(*o*) Daily output when running in full is from 1800 to 2000 tons.

Koch.

Direct—

Record, p. 282, l. 9–11.

(*p*) Supplies approximately 110 engines daily to the B. & O.

Koch.

Direct—

Record, p. 282, l. 11–23.

(*q*) The Hitchman mine is a slope mine about 900 feet slope and about 80 feet deep vertically.

Koch.

Recalled-Direct—

Record, p. 295, l. 4–7.

(*r*) List of men who signed statement which was filed with the bill October 24, 1907, saying they were satisfied with their employment, their wages and work and would like to remain in the Company's employ.

Pickett.

Recalled-Direct—

Record, p. 336, l. 31–44.

Recalled-Cross—

Record, p. 341, l. 3–51.

Record, p. 342, l. 1–17.

Re-Direct—

Record, p. 342, l. 38–49.

Record, p. 343, l. 1–7.

(*s*) Men were engaged to go to work, and then after having been seen in conversation with Hughes left and failed to report for work.

Pickett.
Recalled-Direct—
Record, p. 337, l. 22–36.
Recalled-Cross—
Record, p. 339, l. 43–49.
Record, p. 340, l. 1–24.

(*t*) Street car line runs by the Hitchman and by the Glendale mine, and is the route and means usually adopted by the public in going from Wheeling to Benwood, those two mines and to Moundsville.

Pickett.
Recalled-Direct—
Record, p. 337, l. 37–51.
Record, p. 338, l. 1, 2.
Recalled-Cross—
Record, p. 340, l. 25–29.

(*u*) Real difference between running "Union" and "non-union" at the Hitchman mine.

Daugherty.
Cross—
Record, p. 363, l. 24–50.
Record, p. 364, l. 1–46.

Lewis.
Direct—
Record, p. 518, l. 51.
Record, p. 519, l. 1, 2.

(*v*) Defendants were about to close it down, unless the management consented to unionize it.

McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.

Leonard.
Direct—
Record, p. 429, l. 3–49.
Record, p. 430, l. 1–26.
Record, p. 431, l. 49–50.
Record, p. 432, l. 1–31.
Stewart.
Direct—
Record, p. 470, l. 15–28.
(*w*) Bins are near the B. & O. round house.
Mooney.
Direct—
Record, p. 448, l. 3, 4.

HITCHMAN "NON-UNION" COAL WAS DISPLACED IN LAKE TRADE BY OHIO "UNION" MINED COAL, RESULTANT UPON EFFORTS OF UNITED MINE WORKERS ORGANIZATION TO UNIONIZE HITCHMAN MINE IN SUMMER OF 1907.
Koch.
Recalled-Direct—
Record, p. 296, l. 8–52.
Record, p. 297, l. 1–15.
Upstill.
Direct—
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 487, l. 51, 52.
Record, p. 488, l. 1–33.

HOMES.
Some of the Hitchman men own their own homes—only partly paid for.
Daugherty.
Direct—
Record, p. 356, l. 24–34.

Myers.
Direct—
Record, p. 456, l. 27–49.
Record, p. 459, l. 37–42.
Cross—
Record, p. 460, l. 44–46.

HOUSES BELONGING TO THE COMPANY AND THE USE MADE OF THEM.
Men were allowed to still live in them while they were out on strike in 1903, 1904 and 1906.
Hitchman.
Direct—
Record, p. 253, l. 42–47.
Cross—
Record, p. 257, l. 38–50.
Record, p. 258, l. 1, 2.
Koch.
Direct—
Record, p. 285, l. 41–48.

HUGHES, THOMAS.
(*a*) He was employed in 1907 by District No. 6 as an organizer.
Savage.
Direct—
Record, p. 499, l. 17–20.
(*b*) Visits, acts and words of—
Koch.
Recalled-Direct—
Record, p. 297, l. 32–49.
Record, p. 298, l. 1–4.
Pickett.
Direct—
Record, p. 305, l. 31–51.
Record, pp. 306, 307, l. 1–28.

Cross—
Record, p. 308, l. 46–52.
Record, pp. 309, 310, 311, 312, l. 1–30.
Re-Direct—
Record, p. 312, l. 35–48.
Record, p. 313, l. 1–25.
Recalled-Direct—
Record, p. 338, l. 3–47.
Record, p. 339, l. 1–13.
Recalled-Cross—
Record, p. 340, l. 30–51.
Record, p. 341, l. 1, 2.
Record, p. 342, l. 18–33.
Corns.
Direct—
Record, p. 330, l. 33–52.
Cross—
Record, p. 332, l. 41–51.
Record, p. 333, l. 1–27.
Daugherty.
Direct—
Record, p. 356, l. 17–51.
Record, pp. 357, 358, l. 1–36.
Cross—
Record, p. 364, l. 47–52.
Record, pp. 365, 366, l. 1–22.
Hart.
Direct—
Record, p. 370, l. 6–52.
Record, p. 371, l. 1–14.
Cross—
Record, p. 371, l. 16–50.
Record, pp. 372, 373, 374, 375, l. 1–7.
Jarrett, Albert.
Direct—
Record, p. 377, l. 42–46.
Record, p. 378, l. 1–14.

Jarrett, James.
Direct—
Record, p. 382, l. 41–52.
Record, p. 383, l. 1–22.
Cross—
Record, p. 386, l. 23–52.
Record, p. 387, l. 1–12.
Record, p. 387, l. 34–52.
McKinley.
Recalled-Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Leonard.
Direct—
Record, p. 428, l. 32–47.
Record, pp. 429, 430, 431, 432, l. 1–31.
Cross—
Record, p. 433, l. 44–51.
Record, pp. 434, 435, 436, l. 1–42.
Austin.
Direct—
Record, p. 436, l. 46, 47.
Record, pp. 437, 438, l. 1, 2.
Cross—
Record, p. 438, l. 26–49.
Record, p. 439, l. 1–39.
Knapp.
Direct—
Record, p. 439, l. 43–49.
Record, p. 440, l. 1–46.
Cross—
Record, p. 440, l. 49, 50.
Record, pp. 441, 442, l. 1–51.
Re-Direct—
Record, p. 443, l. 4–12.
Re-Cross—
Record, p. 443, l. 17–22.

Logston.
Direct—
Record, p. 452, l. 18–41.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.
Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–42.
Cross—
Record, p. 460, l. 36–49.
Record, p. 461, l. 1–15.
Popage.
Direct—
Record, p. 466, l. 26–50.
Record, p. 467, l. 1–37.
Stewart.
Direct—
Record, p. 468, l. 28–50.
Record, pp. 469, 470, l. 1–28.
Cross—
Record, p. 470, l. 33–48.
Record, p. 471, l. 1–53.

HUNDT, HERMAN A.
Direct—
Record, pp. 453–455.
No Cross.

ICE HOUSE (B. & O.).
Burned May 22, 1906.
See Lorain Coal & Dock Company mines.
Pickett.
Recalled-Direct—
Record, p. 337, l. 11–21.

Mooney.
Direct—
Record, p. 449, l. 5–21.

INDEPENDENT MINE WORKERS OF WEST VIRGINIA.
See—
Breaking away from Union.
Benefits.
Formation of, by men employed at the Hitchman mine.
Oliver.
Direct—
Record, p. 322, l. 32–52.
Record, pp. 323, 324, l. 1–33.
Cross—
Record, p. 326, l. 27–48.
Record, p. 327, l. 1–13.
Jarrett, Albert.
Direct—
Record, p. 375, l. 48, 49.
Record, pp. 376, 377, l. 1–41.
Jarrett, James.
Cross—
Record, p. 385, l. 30–52.
Record, p. 386, l. 1–22.
Record, p. 387, l. 20–52.
Rowand.
Direct—
Record, p. 316, l. 1–5.

IRWIN FIELD, STRIKE IN.
As a result of an effort to organize it.
Lewis.
Cross—
Record, p. 560, l. 10–41.
Record, pp. 561, 562, 563, l. 1–33.
Record, p. 593, l. 31–51.

Record, p. 594, l. 1–7.
Record, p. 605, l. 17–44.
Record, pp. 606, 607, l. 1–30.

Savage.
Cross—
Record, p. 505, l. 1–26.

JARRETT, ALBERT.
Direct—
Record, pp. 375–378.
Cross—
Record, pp. 378–379.

JARRETT, JAMES.
Direct—
Record, pp. 379–383.
Cross—
Record, pp. 383–387.

JOINT INTERSTATE MOVEMENT.
(*a*) Central Competitive Field.
Started with the Chicago Convention of 1898.
Lewis.
Cross—
Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, 542, 543, l. 1–3.
(*b*) Southwest Competitive Field.
Started after the Joint Movement in the Central Competitive States.
Lewis.
Cross—
Record, p. 543, l. 3–26.
(*c*) Rocky Mountain Mining Districts.
U. M. W. of A. tried to establish, but failed.
Lewis.
Cross—
Record, p. 543, l. 6–32.

JOINT MOVEMENTS.
Are held in other States, where there is no Joint Interstate Movement.
Lewis.
Cross—
Record, p. 542, l. 45–51.
Record, pp. 543, 544, l. 1–45.

JOINT SCALE COMMITTEE MEETING.
Is secret.
Lewis.
Direct—
Record, p. 531, l. 44–49.

KNAPP, MARTIN.
Direct—
Record, pp. 439–440.
Cross—
Record, pp. 440–442.
Re-Direct—
Record, p. 443.
Re-Cross—
Record, p. 443.

KNOWLEDGE OF TEMPORARY ARRANGEMENT FOR MINING COAL FOLLOWING EXPIRATION OF SCALE, APRIL 1, 1906.
Defendants had knowledge of company's arrangement with its men to mine engine coal after April 1, 1906, during that national strike, pending agreement upon the national scale between United Mine Workers and operators' association, old scale to be paid at all events and new scale to be paid back to April 1, 1906, if more than expired scale.
Hitchman.
Direct—
Record, p. 253, l. 9–12.

Koch.
Direct—
Record, p. 282, l. 33–51.
Record, pp. 283, 284, l. 1–17.
Record, p. 287, l. 7–50.
Record, pp. 288, 289, l. 1–47.
Daugherty.
Direct—
Record, p. 346, l. 25–51.
Record, p. 347, l. 1–6.
Record, p. 348, l. 37–47.
Rowand.
Direct—
Record, p. 313, l. 39–49.
Record, p. 314, l. 1–46.

KNOWLEDGE OF CONTRACTUAL RELATIONS BETWEEN MEN AND COMPANY.
(*a*) Was in possession of the defendants prior to the attempt in 1907 to unionize the Hitchman mine, and such knowledge has since remained with them and they have such knowledge now.
Koch.
Direct—
Record, p. 285, l. 24–52.
Record, pp. 286, 287, l. 1–5.
(*b*) Hughes had such knowledge.
Daugherty.
Direct—
Record, p. 356, l. 19–51.
Record, pp. 357, 358, l. 1–36.
Hart.
Direct—
Record, p. 370, l. 47–52.
Record, p. 371, l. 1–8.

Logston.
Direct—
Record, p. 452, l. 18–38.
Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–42.
Stewart.
Direct—
Record, p. 468, l. 28–50.
Record, p. 469, l. 1–27.

KOCH, W. H.
Direct—
Record, pp. 272–289.
Recalled-Direct—
Record, pp. 294–298.
Cross—
Record, pp. 298–301.

LAKE TRADE.
What is meant by it.
See Loss.
Koch.
Recalled-Direct—
Record, p. 295, l. 40–51.
Record, pp. 296, 297, l. 1–25.

LEGISLATION.
Brought about by the U. M. W. of A.
Lewis.
Direct—
Record, p. 509, l. 47–52.
Record, p. 510, l. 1–31.

LEONARD, PAUL.
Direct—
Record, pp. 428–432.

Cross—
Record, pp. 432–436.

LEWIS, T. L.
Direct—
Record, pp. 506–535.
Cross—
Record, pp. 535–618.
Re-Direct—
Record, pp. 619–623.

LOGSTON, J. W.
Direct—
Record, pp. 451–452.
Cross—
Record, pp. 452–453.

LORAIN COAL & DOCK COMPANY MINES.
(*a*) Coal was procured from the Lorain Coal & Dock Company's union mines in Ohio by the B. & O. R. R. Co. and furnished to the Hitchman Company to be loaded by it under its contract with the B. & O. over its tipples and into its bins and thence into the engines of the B. & O. at the same time that the Union's officials refused to let the Hitchman miners continue work during the 1906 strike.
This was one of the causes which led the men at the Hitchman mine to break away from the Union.
See Breaking away from the Union.
Jarrett, Albert.
Direct—
Record, p. 378, l. 14–43.

Sivert.
Direct—
Record, p. 443, l. 30–46.
Record, pp. 444, 445, l. 1–17.
Cross—
Record, p. 445, l. 22–49.
Record, pp. 446, 447, l. 1–10.
Mooney.
Direct—
Record, p. 447, l. 14–49.
Record, pp. 448, 449, 450, l. 1–7.
Cross—
Record, p. 451, l. 12–39.
Rowand.
Recalled-Direct—
Record, p. 463, l. 5–51.
Record, p. 464, l. 1–10.
Recalled-Cross—
Record, p. 465, l. 3–29.
(*b*) Resumed work between May 16, 1906, and May 20, 1906.
Pickett.
Recalled-Direct—
Record, p. 337, l. 18–21.
Jarrett, Albert.
Direct—
Record, p. 378, l. 23–43.
Sullivan.
Cross—
Record, p. 634, l. 44–52.
Record, p. 635, l. 1–45.

LOSS—ON ACCOUNT OF STRIKES.
See—
Strikes.
Tonnage.

Price.
Stoppage of Mine.
Lake Trade.
Koch.
Direct—
Record, p. 273, l. 46–51.
Record, p. 274, l. 1–6.
Record, p. 275, l. 26–49.
Record, pp. 276, 277, l. 1–15.
Recalled-Direct—
Record, p. 296, l. 47–52.
Record, p. 297, l. 1–15.
1903 Strike..... $4,590
2,652
$7,242
Koch.
Direct—
Record, p. 275, l. 37–49.
Record, p. 276, l. 1–24.
1904 Strike..... $17,000
Koch.
Direct—
Record, p. 276, l. 25–48.
1906 Strike..... $22,400
2,100
$24,500
Koch.
Direct—
Record, p. 276, l. 49–51.
Record, p. 277, l. 1–15.
Summary—
Loss by three strikes of what would have been the net profit of operations during such periods of enforced suspension.

1903	$7,242
1904	17,000
1906	24,500
Total	$48,742

McKINLEY, J. C.
Direct—
Record, pp. 290–292.
Cross—
Record, pp. 292–294.
Recalled-Direct—
Record, pp. 388–420.
Recalled-Cross—
Record, pp. 420–427.
Re-Direct—
Record, p. 427.
Re-Cross—
Record, pp. 427–428.
Re-Direct—
Record, p. 428.

MINE WORKERS' JOURNAL.
Daugherty.
Cross—
Record, p. 360, l. 47–51.
Record, p. 361, l. 1–19.

MINIMUM PRICE FOR COAL.

One of the objects of the U. M. W. of A. is to unite all employes in and around the mines in this country that the organization may fix a minimum wage scale and that the operator be compelled to fix a selling price for his coal which will admit of his paying this minimum wage to the members of the Union for mining coal.

Savage.
Direct—
Record, p. 495, l. 1–22.
Record, p. 495, l. 44–50.
Record, p. 496, l. 1–28.
Lewis.
Cross—
Record, p. 612, l. 27–51.
Record, p. 613, l. 1–53.

MOONEY, JOHN.
Direct—
Record, pp. 447–451.
Cross—
Record, p. 451.

MOTION AND PLEA OF THOMAS HUGHES.
Record, p. 212.

MOTION AND PLEA OF JOHN MITCHELL.
Record, p. 209.

MOTION AND PLEA OF W. B. WILSON.
Record, p. 212.

MOTION OF PLAINTIFF TO DENY MOTION OF DEFENDANTS TO DISMISS MITCHELL, WILSON AND HUGHES.
Record, p. 216.

MOUNT PLEASANT MINE, FACTS ABOUT.
(In Jefferson County, Ohio.)
(*a*) When opened—1902.
By whom opened—
By same persons mainly as owned and operated the Hitchman mine.
Hitchman.
Direct—
Record, p. 250, l. 11–16.

(*b*) Was opened "Union" 1902.
and
Was run "Union"
and
Hitchman, while in charge of the opening up and operating of the Mount Pleasant mine "Union" dealt with the defendants, Lewis, Sullivan, Savage, Watkins and Rankin as officers of the United Mine Workers in signing up the scale to operate the Mount Pleasant mine under the rules and regulations of the United Mine Workers.

Hitchman.
Direct—
Record, p. 250, l. 17–24.
Cross—
Record, p. 255, l. 41–51.
Record, p. 256, l. 1–5.
Record, p. 256, l. 20–22.

(*c*) During the spring of 1903 and prior to April 1, 1903, the Hitchman mine was operated "non-union" and Hitchman himself was spending the most of his time running the Mount Pleasant mine in Ohio.

These defendants, Lewis, Sullivan, Savage, Watkins, and Rankin, officers of the United Mine Workers, with whom Hitchman dealt regarding the Mount Pleasant mine, threatened to close down the Mount Pleasant mine unless the management would unionize the Hitchman mine.

So the Hitchman mine was unionized April, 1903, resultant upon that threat, and then there was a strike and the Hitchman mine was idle for 51 days.

Hitchman.
Direct—
Record, p. 250, l. 17–41.

MYERS, ROBERT.
Direct—
Record, pp. 455–460.
Cross—
Record, pp. 460–461.

"NON-UNION" DEFINED.
Daugherty.
Direct—
Record, p. 343, l. 19–23.

NOTICES OF MEETINGS.
Held by Hughes in trying to organize Hitchman miners
See—
Chalk Marks on Pavements.
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
Pickett's Exhibit No. 1.
Pickett's Exhibit No. 2.
Austin.
Direct—
Record, p. 437, l. 9–48.
Record, p. 438, l. 1–3.
Cross—
Record, p. 438, l. 26–49.
Record, p. 439, l. 1–39.
Knapp.
Direct—
Record, p. 439, l. 43–49.
Record, p. 440, l. 1–46.
Cross—
Record, p. 440, l. 49, 50.
Record, pp. 441, 442, l. 1–51.

Re-Direct—
Record, p. 443, l. 1–12.
Re-Cross—
Record, p. 443, l. 15–22.

NO. 8 COAL.
Mined at Hitchman mine on West Virginia side of Ohio River, near Wheeling.
Mined also in Eastern Ohio, in Belmont, Harrison, and Jefferson counties, near Wheeling.
Upstill.
Direct—
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

OLIVER, JOHN.
Direct—
Record, pp. 319–324.
Cross—
Record, pp. 324–327.

OPERATORS' ASSOCIATION.
(*a*) Hitchman Company was not connected with the operators' association which was dealing with the U. M. W. of A.
1903.
Koch.
Direct—
Record, p. 273, l. 38–41.
1906.
Koch.
Direct—
Record, p. 282, l. 28–31.

(*b*) Hitchman Company was not connected with the operators' association at all.

Koch.
Direct—
Record, p. 282, l. 31, 32.

(*c*) Members were competitors of Hitchman Coal & Coke Company.

Hitchman.
Direct—
Record, p. 252, l. 36–46.

(*d*) Lorain Coal & Dock Company was member of.
Excerpt 274.

See—
McKinley's Exhibit No. 1.
(Proceedings of Interstate Convention, 1906.)
p. 132, l. 31.
McKinley's Exhibit No. 3.
(Proceedings of Interstate Convention, 1908.)
p. 235, l. 14.
McKinley's Exhibit No. 4.
(Proceedings of Interstate Convention, 1910.)
p. 358, l. 7.
(Original documents transmitted to U. S. Supreme Court.)

(*e*) Coal bought by Upstill in 1907 to fill contracts of Hitchman Company, which Hitchman Company was unable to fill on account of efforts to unionize Company's mine, was bought from an Ohio "Union" operator, a competitor of the Hitchman Company.

Upstill.
Direct—
Record, p. 477, l. 51.
Record, p. 478, l. 1–3.
Record, p. 482, l. 43–51.

Record, p. 483, l. 1–36.
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

"ORGANIZED" DEFINED.
Daugherty.
Direct—
Record, p. 343, l. 19–23.

ORGANIZED MINE.
Same as "Unionized."
See Unionized Mine Defined.
Lewis.
Cross—
Record, p. 568, l. 24–30.
Re-Direct—
Record, p. 623, l. 5–28.
Sullivan.
Direct—
Record, p. 624, l. 45–49.

ORGANIZERS.
Were secretly put into mine in the spring of 1903.
Koch.
Direct—
Record, p. 273, l. 1–29.
Recalled-Cross—
Record, p. 300, l. 39–51.
Record, p. 301, l. 1–5.
Daugherty.
Direct—
Record, p. 343, l. 27–48.
Record, pp. 344, 345, l. 1–8.

Jarrett, James.
Direct—
Record, p. 379, l. 39–45.
Cross—
Record, p. 383, l. 25–34.
Logston.
Direct—
Record, p. 452, l. 1–6.
Popage.
Direct—
Record, p. 465, l. 40–46.

ORGANIZING.
Admitted reasons for trying to organize "non-union" mines.
Lewis.
Cross—
Record, p. 616, l. 44–52.
Record, pp. 617, 618, l. 1–50.
Re-Direct—
Record, p. 619, l. 12–14.

PANHANDLE DISTRICT OF WEST VIRGINIA.
"Non-union" mines in
Glendale Mine.
Hitchman Mine.
Moundsville Mine.
Elm Grove Mine.
Richland Mine.
Beech Bottom Mine.
McKinley.
Recalled-Direct—
Record, p. 414, l. 31–49.
Record, p. 415, l. 1–33.

Leonard.
Direct—
Record, p. 428, l. 38–47.
Cross—
Record, p. 433, l. 16–19.

PICKETT, E. C.
Direct—
Record, pp. 301–307.
Cross—
Record, pp. 307–312.
Re-Direct—
Record, pp. 312–313.

POPAGE, MIKE.
Direct—
Record, pp. 465–467.
No Cross.

PRICE.
Received for engine and for commercial coal covered by tabulations referred to under Tonnage.
See—
Tonnage.
Strikes.
Cotts.
Direct—
Record, p. 261, l. 47–51.
Record, pp. 262, 263, l. 1–11.
Recalled-Direct—
Record, p. 334, l. 19–24.
Recalled-Cross—
Record, p. 335, l. 39–49.
Record, p. 336, l. 1–10.

RANKIN, LEE.
Not in Union now.
Forfeited his membership.
Savage.
Direct—
Record, p. 501, l. 31–34.

REASONS FOR OPPOSING THE UNION.
(1) Prior to April 1, 1903.
(a) Hitchman's experience in running mines union and non-union in Pennsylvania prior to coming to Benwood and opening up the Hitchman mine.
Hitchman.
Direct—
Record, p. 248, l. 20–32.
Record, p. 251, l. 1–16.
Cross—
Record, p. 258, l. 9–17.
Koch.
Direct—
Record, p. 272, l. 35–40.
Record, p. 273, l. 3–5.
(b) That experience coupled with the fact that the Hitchman mine was opened up primarily to supply the B. & O. with engine fuel at its yards at Benwood, which business would not admit of arbitrary stoppages and strikes, caused the management to open up that mine non-union.
Hitchman.
Direct—
Record, p. 251, l. 17–28.
(2) After June 12, 1906.
(a) Experience with the Union while the mine was run Union from April 1, 1903, when the

mine was unionized, to June 12, 1906, when the mine again started up non-union.

Hitchman.

Direct—

Record, p. 251, l. 29–53.

Record, pp. 252, 253, 254, 255, l. 1–26.

Koch.

Recalled-Direct—

Record, p. 297, l. 22–25.

RESOLUTION NO. 8.

(*a*) Text of.

McKinley.

Recalled-Direct—

Record, p. 414, l. 31–42.

Plaintiff's Documentary Exhibit No. 5, p. 28. (Original document transmitted to U. S. Supreme Court.)

(*b*) Referred to Panhandle District of West Virginia.

McKinley.

Recalled-Direct—

Record, p. 414, l. 21–30.

(*c*) Hitchman mine was one of those intended to be organized under this Resolution.

McKinley.

Recalled-Direct—

Record, p. 415, l. 15–22.

Leonard.

Direct—

Record, p. 428, l. 38–47.

(*d*) The Glendale mine and the Richland mine were also intended to be organized under this Resolution.

McKinley.

Recalled-Direct—

Record, p. 414, l. 13–49.

Record, p. 415, l. 1–48.

(e) Efforts made by defendants to induce Company to agree to again run a Union mine after it started up non-union June 12, 1906, and before Hughes appeared at the mine in the fall of 1907.

Koch.

Direct—

Record, p. 285, l. 50–52.
Record, pp. 286, 287, l. 1–24.

Recalled-Direct—

Record, p. 294, l. 14–48.
Record, p. 295, l. 1, 2.

Pickett.

Direct—

Record, p. 302, l. 47–52.
Record, p. 303, l. 1–21.

Daugherty.

Direct—

Record, p. 358, l. 13–36.

Cross—

Record, p. 364, l. 47–52.
Record, p. 365, l. 1–23.
Record, p. 366, l. 20–22.

Jarrett, Albert.

Direct—

Record, p. 377, l. 42–46.
Record, p. 378, l. 1–10.

(f) Efforts made by some of the defendants who tried to induce Company to re-unionize before Hughes appeared to assist Hughes in his work after Hughes appeared; thus connecting them up with Hughes in the entire scheme.

Daugherty.

Direct—

Record, p. 358, l. 17–36.

"Notices of Meetings."
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.
(g) Efforts of Hughes and other defendants were about to be successful at the time the restraining order was granted in the Hitchman case October 24, 1907, so Hughes claimed, and the mine was to be shut down and to be kept shut down until Company agreed to run Union.
McKinley.
Direct—
Record, p. 415, l. 11–33.
Leonard.
Direct—
Record, p. 429, l. 3–49.
Record, p. 430, l. 1–26.
Record, p. 431, l. 49, 50.
Record, p. 432, l. 1–31.
Logston.
Direct—
Record, p. 452, l. 20–33.
Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–27.

Stewart.
Direct—
Record, p. 469, l. 3–14.
Record, p. 470, l. 22–25.

(*h*) Efforts made by defendants to unionize Hitchman mine after the restraining order of October 24, 1907, was granted.

Hitchman.
Direct—
Record, p. 255, l. 9–26.
Cross—
Record, p. 258, l. 34–37.

(*i*) Efforts to unionize the Hitchman mine would still be made if the injunction forbidding it were out of the way.

Lewis.
Direct—
Record, p. 534, l. 17–21.
Sullivan.
Direct—
Record, p. 628, l. 50–53.
Record, p. 629, l. 1–11.
Savage.
Cross—
Record, p. 503, l. 34, 35.

RICHLAND AND GLENDALE CASES BY AGREEMENT OF COUNSEL AND COURT HAVE BEEN STAYED UNTIL THERE IS A FINAL DECISION BY THE SUPREME COURT IN THE HITCHMAN CASE.

The Richland, the Glendale and the Hitchman Companies filed their bills for injunctions in the District (then Circuit) Court of the United States for the Northern District of West

Virginia, and were awarded temporary restraining orders. Temporary injunctions were granted later on in each case and by agreement of counsel and Court further progress in the Richland case and in the Glendale case was stayed until there should be a final decision by the Supreme Court in the Hitchman case, which it was agreed, should be made a test case.

See Plaintiff's Documentary Exhibits Nos. 7, 15, 11 and 16, and decree of November 5, 1910, in the Glendale case, suspending further action in the Glendale case, pending disposition of the Hitchman case, all of which documentary exhibits and the decree mentioned are, as introduced in evidence in the Hitchman case, before the Supreme Court.

(Original documents transmitted to U. S. Supreme Court.)

RICHLAND MINE.

Facts about its men being unionized by Hughes and then shut down.

McKinley.

Recalled-Direct—

Record, p. 414, l. 13–19.
Record, p. 415, l. 1–48.

Leonard.

Direct—

Record, p. 428, l. 32–47.
Record, pp. 429, 430, 431, 432, l. 1–31.

Cross—

Record, p. 433, l. 44–51.
Record, pp. 434, 435, 436, l. 1–43.

ROWAND, B. C.
Direct—
Record, pp. 313–316.
Cross—
Record, pp. 316–319.
Re-Direct—
Record, p. 319.
Recalled-Direct—
Record, pp. 462–464.
Recalled-Cross—
Record, pp. 464–465.

RUN OF MINE.
See—
Scale.
Wages.
Average.
Cotts.
Direct—
Record, p. 263, l. 27–51.
Record, p. 264, l. 1–37.
Cross—
Record, p. 268, l. 29–52.
Record, pp. 269, 270, l. 1–38.
Koch.
Direct—
Record, p. 289, l. 38–47.
Cross—
Record, p. 298, l. 9–50.
Record, pp. 299, 300, l. 1–38.
Pickett.
Direct—
Record, p. 303, l. 9–50.
Record, p. 304, l. 1–26.
Cross—
Record, p. 308, l. 1–45.

Rowand.
Direct—
Record, p. 316, l. 6–43.
Cross—
Record, p. 316, l. 45–49.
Record, pp. 317, 318, 319, l. 1–11.
Oliver.
Direct—
Record, p. 319, l. 30–46.
Daugherty.
Cross—
Record, p. 366, l. 23–46.
McKinley.
Recalled-Cross—
Record, p. 426, l. 25–49.
Re-Cross—
Record, p. 427, l. 44–48.
Record, p. 428, l. 1–17.
Re-Direct—
Record, p. 428, l. 20–28.
Logston.
Direct—
Record, p. 452, l. 11–15.
Cross—
Record, p. 453, l. 1–37.

SAVAGE, GEORGE W.
Direct—
Record, pp. 490–501.
Cross—
Record, pp. 501–506.
Re-Direct—
Record, p. 506.

SCALE, 1906.
Same as 1903 scale which was restored or readopted.
Savage.
Direct—
Record, p. 497, l. 19–24.

SCALE.
See—
Wages.
Run of Mine.
(*a*) For scale signed May 22, 1903, at the close of the strike of April 2, 1903, immediately following the unionizing of the mine, April 1, 1903.
Koch.
Direct—
Record, p. 277, l. 36–50.
Koch's Exhibit No. 3.
(Original document transmitted to U. S. Supreme Court.)
(*b*) For modification of scale on the "Run of mine" price, as part of that settlement of May 22, 1903.
Koch.
Direct—
Record, p. 278, l. 1–51.
Koch's Exhibit No. 4.
(Original document transmitted to U. S. Supreme Court.)
(*c*) For scale signed April 18, 1904, to cover month of April, 1904, the 30-day extension agreed on between the operators and miners in convention, owing to there having been a failure to agree on a national scale for the year beginning April 1, 1904, and after which signing by Koch on April 18, 1904, the men

were ordered out on strike and struck on April 20, 1904, and by which the mine remained idle until June 15, 1904.

Koch.

Direct—

Record, p. 279, l. 1–37.

Koch's Exhibit No. 5.

(Original document transmitted to U. S. Supreme Court.)

(*d*) For scale signed on the resumption of mining June 15, 1904, at the end of the 1904 strike.

See for special modifications.

Koch.

Direct—

Record, p. 279, l. 38–51.
Record, p. 280, l. 1–29.

Koch's Exhibit No. 6.

(Original document transmitted to U. S. Supreme Court.)

(*e*) For scale signed between the Company and its men when work was resumed non-union June 12, 1906, after the close of the strike called by the Union April 1, 1906, and obeyed April 16, 1906.

Koch.

Direct—

Record, p. 280, l. 30–52.
Record, p. 281, l. 1–34.

*Note the special modifications and elimination of everything in the printed form which would show any recognition of the United Mine Workers.

Koch's Exhibit No. 7.

(Original document transmitted to U. S. Supreme Court.)

SCREEN.
at Hitchman mine
is the same as when the mine ran Union.
Daugherty.
Cross—
Record, p. 366, l. 47–50.
Re-Direct—
Record, p. 368, l. 43–47.

SIVERT, JOHN H.
Direct—
Record, pp. 443–445.
Cross—
Record, pp. 445–447.

STEWART, JAMES.
Direct—
Record, pp. 467–470.
Cross—
Record, pp. 470–472.

STOPPAGES OF MINE.
(*a*) Always entail loss apart from the loss of trade.
See Loss.
Koch.
Recalled-Direct—
Record, p. 295, l. 11–39.
(*b*) Affect the ability of a mine to get trade.
Koch.
Recalled-Direct—
Record, p. 295, l. 40–51.
Record, p. 296, l. 1–7.

STRIKE OF 1897.
Lewis.
Cross—
Record, p. 577, l. 1–5.
Re-Direct—
Record, p. 622, l. 27–29.

STRIKES.
While running Union from April 1, 1903, to June 12, 1906.
See
Tonnage.
Price.
Loss.
(*a*) 1903 April 2 to May 23.
Hitchman.
Direct—
Record, p. 250, l. 40, 41.
Cotts.
Direct—
Record, p. 263, l. 12–17.
Koch.
Direct—
Record, p. 273, l. 30–46.
Cross—
Record, p. 298, l. 9–50.
Record, pp. 299, 300, 301, l. 1–5.
Pickett.
Direct—
Record, p. 303, l. 22–50.
Record, p. 304, l. 1–5.
(*b*) 1904 April 20 to June 15.
Hitchman.
Direct—
Record, p. 251, l. 29–53.
Cotts.
Direct—
Record, p. 263, l. 12–17.
Koch.
Direct—
Record, p. 276, l. 42–48.
Record, p. 279, l. 1–51.
Record, p. 280, l. 1–29.

Oliver.
Direct—
Record, p. 319, l. 33–43.
(*c*) 1906 April 16 to June 12.
Hitchman.
Direct—
Record, p. 252, l. 6–51.
Record, p. 253, l. 1–18.
Cross—
Record, p. 258, l. 37–45.
Cotts.
Direct—
Record, p. 263, l. 12–17.
Record, p. 265, l. 41–51.
Record, p. 266, l. 1–19.
Cross—
Record, p. 266, l. 21–37.
Record, p. 268, l. 29–52.
Record, pp. 269, 270, l. 1–38.
Koch.
Direct—
Record, p. 274, l. 37–50.
Record, p. 275, l. 1–25.
Record, p. 282, l. 23–51.
Record, pp. 283, 284, l. 1–17.
Recalled-Cross—
Record, p. 300, l. 13–38.
Pickett.
Direct—
Record, p. 301, l. 20–49.
Record, p. 302, l. 1–30.
Record, p. 304, l. 6–26.
Rowand.
Direct—
Record, p. 313, l. 29–49.
Record, pp. 314, 315, l. 1–33.

Oliver.
Direct—
Record, p. 320, l. 1–33.
Corns.
Direct—
Record, p. 328, l. 11–49.
Record, p. 329, l. 1–18.
Cross—
Record, p. 331, l. 1–51.
Record, p. 332, l. 1–40.
Daugherty.
Direct—
Record, p. 345, l. 9–51.
Record, pp. 346, 348, 349, 350, l. 1–38.
Record, p. 351, l. 37–51.
Jarrett, Albert.
Direct—
Record, p. 375, l. 14–36.
Record, p. 378, l. 14–43.
Jarrett, James.
Direct—
Record, p. 381, l. 9–15.
Cross—
Record, p. 383, l. 34–49.
Record, p. 384, l. 1–44.
Myers.
Direct—
Record, p. 455, l. 30–48.
Record, p. 456, l. 1–49.

STRIKES.

While running non-union before unionizing April 1, 1903, and since resuming non-union June 12, 1906.

None to date.
Cotts.
Direct—
Record, p. 263, l. 12–17.

Koch.
Direct—
Record, p. 274, l. 33–36.
Record, p. 295, l. 40–42.
Myers.
Direct—
Record, p. 458, l. 18–34.
Popage.
Direct—
Record, p. 466, l. 6, 7.

SULLIVAN, D. H.
Direct—
Record, pp. 623–630.
Cross—
Record, pp. 630–642.
Re-Direct—
Record, pp. 642–643.

SYMPATHETIC STRIKE IN EASTERN OHIO AND WESTERN PENNSYLVANIA.
Called to coerce operators in the Tuscarawas field whose men were on strike.
Savage.
Direct—
Record, p. 496, l. 42–50.
Record, p. 497, l. 1–18.
Cross—
Record, p. 502, l. 49–51.
Record, p. 505, l. 30–53.
Lewis.
Cross—
Record, p. 578, l. 22–49.
Record, p. 581, l. 6–52.
Record, pp. 582–590, l. 1–15, incl.

Sullivan.
Cross—
Record, p. 635, l. 52.
Record, p. 636, l. 1–44.

TONNAGE.
See—
Price.
Strikes.
Trade.
(*a*) For one month before and one month after each strike, both commercial and engine coal.
(*b*) Annual production of mine since 1902, both commercial and engine coal.
Cotts.
Direct—
Record, p. 259, l. 3–44.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
(*a*) For one month before and one month after each strike, both commercial and engine coal.
Cotts.
Direct—
Record, p. 259, l. 45–49.
Record, p. 260, l. 1–20.
Koch.
Direct—
Record, p. 274, l. 7–50.
Record, pp. 275, 276, 277, l. 1–15.
(*b*) Annual production of mine since 1902, both commercial and engine coal.
Cotts.
Direct—
Record, p. 260, l. 21–51.
Record, p. 261, l. 1–46.

Recalled-Direct—
Record, p. 333, l. 33–47.
Record, p. 334, l. 1–16.

TRADE OF HITCHMAN MINE.
(*a*) Generally.
(*b*) At times of strikes.
(*c*) At the time of the attempted unionizing of the mine in the summer and fall of 1907.
(*a*) Generally.
Hitchman.
Direct—
Record, p. 249, l. 29–45.
Record, p. 253, l. 19–42.
Cross—
Record, p. 255, l. 28–31.
(*b*) At times of strikes.
1903 Strike.
Hitchman.
Direct—
Record, p. 250, l. 38–50.
Record, p. 253, l. 30, 31.
Record, p. 253, l. 40–42.
Koch.
Direct—
Record, p. 273, l. 46–51.
Record, p. 274, l. 1–6.
Record, p. 282, l. 17–19.
1904 Strike.
Hitchman.
Direct—
Record, p. 251, l. 29–53.
Record, p. 253, l. 26–34.
Record, p. 253, l. 34–42.

Koch.
Direct—
Record, p. 274, l. 17–36.
Record, p. 276, l. 25–37.
Record, p. 282, l. 19–22.
1906 Strike.
Hitchman.
Direct—
Record, p. 253, l. 13–25.
Record, p. 253, l. 26–39.
Koch.
Direct—
Record, p. 274, l. 39–50.
Record, p. 275, l. 1–25.
Record, p. 276, l. 38–41, l. 49–51.
Record, p. 277, l. 1–15.
Record, p. 282, l. 22, 23.
Record, p. 282, l. 35–51.
Record, pp. 283, 284, l. 1–17.
Cotts.
Direct—
Record, p. 265, l. 41–51.
Record, p. 266, l. 1–19.
Jarrett, Albert.
Direct—
Record, p. 378, l. 14–43.
Sivert.
Direct—
Record, p. 443, l. 26–46.
Record, pp. 444, 445, l. 1–17.
Cross—
Record, p. 445, l. 22–49.
Record, pp. 446, 447, l. 1–10.
Mooney.
Direct—
Record, p. 447, l. 14–49.
Record, pp. 448, 449, 450, 451, l. 1–7.

Cross—
Record, p. 451, l. 12–39.
Myers.
Direct—
Record, p. 456, l. 11–17.
Record, p. 459, l. 28–50.
Record, p. 460, l. 1–27.
Rowand.
Recalled-Direct—
Record, p. 462, l. 5–48.
Record, pp. 463, 464, l. 1–10.
Recalled-Cross—
Record, p. 464, l. 26–49.
Record, p. 465, l. 1–29.
(*c*) At the time of the attempted unionizing of the mine in the summer and fall of 1907.
Koch.
Recalled-Direct—
Record, p. 296, l. 47–52.
Record, p. 297, l. 1–15.
Upstill.
Direct—
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 34–47.
Record, p. 487, l. 51, 52.
Record, p. 488, l. 1–7.

"UNION" DEFINED.
Daugherty.
Direct—
Record, p. 343, l. 19–23.

"UNION" AND "NON-UNION."
Difference between running.

Daugherty.
Cross—
Record, p. 361, l. 50, 51.
Record, pp. 362, 363, 364, l. 1–46.

UNIONISM.
Net effect of.
(*a*) Men must not strike without permit or approval of officers.
Daugherty.
Direct—
Record, p. 351, l. 12–31.
(*b*) Men must strike if ordered to do so by officers.
Daugherty.
Direct—
Record, p. 351, l. 32–36.
(*c*) Men in 1906 struck on orders of officials, although men wanted to work, and employer wanted them to work, and there was no dispute between them and their employer.
Daugherty.
Direct—
Record, p. 351, l. 37–51.

"UNION" MINED COAL FROM LORAIN COAL & DOCK COMPANY MINE IN OHIO, NEAR WHEELING, SUPPLANTED HITCHMAN MINE COAL FOR B. & O. ENGINES DURING THE STRIKE WHICH WAS ORDERED APRIL 16, 1906.
Myers.
Direct—
Record, p. 460, l. 1–27.
Sivert.
Direct—
Record, p. 443, l. 30–46.
Record, pp. 444, 445, l. 1–17.

Cross—
Record, p. 445, l. 22–49.
Record, pp. 446, 447, l. 1–10.
Mooney.
Direct—
Record, p. 447, l. 14–49.
Record, pp. 448, 449, 450, l. 1–7.
Cross—
Record, p. 451, l. 12–39.
Rowand.
Recalled-Direct—
Record, p. 463, l. 5–51.
Record, p. 464, l. 1–10.
Recalled-Cross—
Record, p. 465, l. 3–29.
Pickett.
Recalled-Direct—
Record, p. 337, l. 18–21.
Jarrett, Albert.
Direct—
Record, p. 378, l. 14–43.
Sullivan.
Cross—
Record, p. 634, l. 44–52.
Record, p. 635, l. 1–45.
Daugherty.
Direct—
Record, p. 353, l. 19–34.
Record, p. 355, l. 22–50.
Record, p. 356, l. 1–16.

UNIONIZING OR ORGANIZING MEN, DEFINED.
Savage.
Direct—
Record, p. 496, l. 32–41.

Lewis.
Cross—
Record, p. 616, l. 44–52.
Record, pp. 617, 618, l. 1–50.
Re-Direct—
Record, p. 619, l. 12–14.
Record, p. 623, l. 5–28.
Sullivan.
Direct—
Record, p. 624, l. 45–49.

UNIONIZING MINE, DEFINED.

See Organized Mine.
"Creating joint relations between the employers and the employees."
Savage.
Direct—
Record, p. 496, l. 32–41.
Record, p. 496, l. 42–50.
Record, p. 497, l. 1–18.
NOTE.—This is done by the officers of the U. M. W. of A. after the men join that organization. Hence by unionizing the men the officials get into position to force their will upon the employer.
Savage.
Direct—
Record, p. 496, l. 32–41.
Record, p. 500, l. 9–20.
Lewis.
Re-Direct—
Record, p. 623, l. 5–28.
Sullivan.
Direct—
Record, p. 624, l. 45–49.

UNITED MINE WORKERS OF AMERICA.
(*a*) Origin of (in 1890).
Lewis.
Direct—
Record, p. 532, l. 17–45.
Cross—
Record, p. 538, l. 5–15.
Record, p. 542, l. 13–44.
(*b*) Absorbed all other organizations for mining of coal.
Lewis.
Cross—
Record, p. 542, l. 13–44.
(*c*) Principles, Procedure and Practices.
McKinley.
Recalled-Direct—
Record, p. 388, l. 3–51.
Record, pp. 389–420, l. 1–22, incl.
Cross—
Record, p. 420, l. 25–50.
Record, p. 427, l. 1–6.
Re-Direct—
Record, p. 427, l. 11–31.
Re-Cross—
Record, p. 427, l. 34–48.
Record, p. 428, l. 1–17.
Re-Direct—
Record, p. 428, l. 20–28.
Savage.
Direct—
Record, pp. 490–501, l. 1–34, incl.
Cross—
Record, p. 501, l. 36–50.
Record, p. 506, l. 1–12.
Re-Direct—
Record, p. 506, l. 14–27.

Lewis.
Direct—
Record, p. 506, l. 29–49.
Record, pp. 507–535, l. 1–41, incl.
Cross—
Record, p. 554, l. 4–51.
Record, pp. 555–565, l. 1–19.
Record, p. 565, l. 34–49.
Record, pp. 566, 567, 568, l. 1–27.
Record, p. 574, l. 9–49.
Record, pp. 575–618, l. 1–50.
Re-Direct—
Record, p. 619, l. 1–51.
Record, pp. 620, 622, 623, l. 1–28.
Sullivan.
Direct—
Record, p. 623, l. 30–49.
Record, pp. 624–630, l. 1–21, incl.
Cross—
Record, p. 630, l. 23–49.
Record, pp. 631–642, l. 1–20, incl.
Re-Direct—
Record, p. 642, l. 23–41.

(*d*) Neither the national organization of U. M. W. of A. nor the district bodies nor the sub-district bodies are incorporated.

Savage.
Cross—
Record, p. 505, l. 27–29.

(*e*) Patterned after the United States Government, and after the State and County and Township Government.

Lewis.
Direct—
Record, p. 522, l. 1–52.
Record, p. 523, l. 1–11.

(*f*) Do not furnish union men to work for an operator who wishes to run a Union mine, *i. e.*, the organization is not an employment agency, but it claims to supervise the men after they are employed, and may prevent their discharge.

Lewis.
Direct—
Record, p. 520, l. 40–51.
Record, p. 521, l. 1–42.
Cross—
Record, p. 587, l. 37–51.
Record, pp. 588, 589, l. 1–35.

(*g*) The closed shop did not exist in the coal mining industry until it was established by contract between the operators and miners of the Central Competitive States as the result of the Chicago Agreement of 1898.

Lewis.
Cross—
Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 618, l. 25–50.

(*h*) Part of the American Federation of Labor, with the largest voting strength of any delegation.

Lewis.
Cross—
Record, p. 553, l. 45–53.
Record, p. 554, l. 1–3.
Re-Direct—
Record, p. 621, l. 1–24.
Savage.
Cross—
Record, p. 502, l. 34–43.

(*i*) Amount of money expended in strikes.
Lewis.
Cross—
Record, p. 560, l. 10–41.
Record, pp. 561, 562, 563, 564, 565, l. 1–33.
Re-Direct—
Record, p. 622, l. 5–14.

(*j*) Largest labor organization in the world.
Lewis.
Cross—
Record, p. 569, l. 40–43.

(*k*) Had about 20,000 members in 1897 when organized.
Lewis.
Cross—
Record, p. 559, l. 36, 37.

(*l*) Membership fell to about 10,000 in 1897.
Lewis.
Cross—
Record, p. 559, l. 37–44.

(*m*) About 300,000 members now.
Lewis.
Cross—
Record, p. 559, l. 31–33.
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

(*n*) Membership for each year since 1890.
Excerpt 431 (*d*).

(*o*) Aims to organize every mine on the American Continent.
Lewis.
Cross—
Record, p. 569, l. 48–52.
Record, pp. 570, 571, l. 1–15.
Re-Direct—
Record, p. 619, l. 12–14.

(*p*) Districts and their geographical location and number of members.

Lewis.

Cross—

Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

(*q*) United Mine Workers of America consider that those operators that ship coal west should be a part of their Central Competitive Field.

Lewis.

Cross—

Record, p. 571, l. 1–3.

(*r*) United Mine Workers of America sent men into Hitchman Company's employ in 1903 for purpose of secretly creating discontent and organizing the Hitchman Company's men.

Koch.

Direct—

Record, p. 273, l. 1–35.

(*s*) The Hitchman Company after being unionized in 1903 and while running union the mine was idle for 164 days due to strikes called by the Union's officials.

Cotts.

Direct—

Record, p. 263, l. 12–17.

Koch.

Direct—

Record, p. 273, l. 30–51.
Record, pp. 274, 275, 276, 277, l. 1–15.

(*t*) Hitchman Company's reasons for running non-union are the necessity for continuous service in furnishing engine coal and to the fact that shipment for lake trade must be made during

the season of the year while navigation is open.

Under contract supplies coal to B. & O. engines at its Benwood terminal near the bridge crossing Ohio River at Benwood to Bellaire, Ohio.

Hitchman.

Direct—

Record, p. 249, l. 10–49.

(*u*) Hitchman Company is engaged in the lake trade under which coal is contracted to be furnished and must be furnished during the lake season, *i. e.*, usually between April and November.

Koch.

Recalled-Direct—

Record, p. 295, l. 43–51.

Record, pp. 296, 297, l. 1–25.

(*v*) Hitchman Company never had any shut down or suspension even for one day running non-union, neither before the Company was running union nor since when running non-union.

Koch.

Direct—

Record, p. 274, l. 30–36.

UNORGANIZED" DEFINED.

Daugherty.

Direct—

Record, p. 343, l. 19–23.

PSTILL, E. A.

Direct—

Record, pp. 472–485.

Cross—

Record, pp. 485–490.

Re-Direct—
Record, p. 490.

WAGES PAID BY HITCHMAN COAL & COKE CO.
See—
Scale.
Run of mine.
(*a*) Same except in one instance and in that instance a little better than the wages paid by mines operating under the United Mine Workers' Scale.
Ever since the mine resumed non-union June 12, 1906, and now.
Cotts.
Direct—
Record, p. 263, l. 18–27.
(*b*) Men were paid the advance wages on April 25, 1906, for the sixteen days they worked loading engine coal before being required by the Union's officials to quit work.
Cotts.
Direct—
Record, p. 263, l. 27–45.
Cross—
Record, p. 266, l. 21–37.
Record, p. 268, l. 29–52.
Record, pp. 269, 270, l. 1–38.
Koch.
Direct—
Record, p. 287, l. 28–50.
Record, pp. 288, 289, l. 1–47.

WAGE SCALE.
How made and against whom enforced.
See Competitive Field Scale.

WARNING WAS GIVEN TO THE DEFENDANTS PRIOR TO THE 1906 STRIKE THAT IF THE MEN WERE CALLED OUT THE MINE WOULD NOT RUN "UNION" AGAIN, BUT WOULD RUN "NON-UNION."

Hitchman.

Direct—

Record, p. 254, l. 35–51.
Record, p. 255, l. 1–8.

Cross—

Record, p. 258, l. 3–8.

Koch.

Direct—

Record, p. 283, l. 27–47.

Rowand.

Recalled-Direct—

Record, p. 462, l. 41–48.
Record, p. 463, l. 1–4.

WESTERN FEDERATION OF MINERS.

Its relation to the U. M. W. of A., and to the American Federation of Labor.

Lewis.

Cross—

Record, p. 554, l. 4–51.
Record, pp. 555, 556, 557, l. 1–20.
Record, p. 599, l. 14–48.
Record, pp. 600, 601, l. 1–9.
Record, p. 601, l. 10–51.
Record, pp. 602, 603, l. 1–35.

WESTERN SUPPLY COMPANY.

Austin.

Cross—

Record, p. 438, l. 6–23.

WITNESSES.
(See Individual's name.)
(*a*) For Plaintiff.
(*b*) For Defendants.
(*a*) For Plaintiff.
Austin, R. G., Record, p. 436.
Corns, Wesley, Record, p. 327.
Cotts, R. J., Record, p. 259.
Cotts, R. J. (recalled), Record, p. 333.
Daugherty, William, Record, p. 343.
Hart, J. W., Record, p. 369.
Hitchman, E. T., Record, p. 248.
Hundt, Herman A., Record, p. 453.
Jarrett, Albert, Record, p. 375.
Jarrett, James, Record, p. 379.
Knapp, M. C., Record, p. 439.
Koch, W. H., Record, p. 272.
Koch, W. H. (recalled), Record, p. 294.
Leonard, Paul, Record, p. 428.
Logston, J. W., Record, p. 451.
Mooney, John, Record, p. 447.
Myers, Robert, Record, p. 455.
McKinley, J. C., Record, p. 290.
McKinley, J. C. (recalled), Record, p. 388.
Oliver, John, Record, p. 319.
Pickett, E. C., Record, p. 301.
Pickett, E. C. (recalled), Record, p. 336.
Popage, Mike, Record, p. 465.
Rowand, B. C., Record, p. 313.
Rowand, B. C. (recalled), Record, p. 462.
Sivert, John H., Record, p. 443.
Stewart, James, Record, p. 467.
Upstill, E. A., Record, p. 472.

(*b*) For Defendants.
Lewis, T. L., Record, p. 506.
Savage, G. W., Record, p. 490.
Sullivan, D. H., Record, p. 623.

YARDAGE.
Rowand.
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Excerpt 437 (j).
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BENEFITS.
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Lewis—Joint Interstate Convention of Miners and Operators 1910.
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Second to none in this country in its importance.
Lewis—Joint Interstate Convention of Miners and Operators 1910.
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DISCHARGE OF MAN.
For incompetency or inefficiency.
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INDUSTRIAL PEACE IN THE MINING INDUSTRY.
In our country hinges on the result of these Joint Interstate Conventions.
Lewis—Joint Interstate Convention of Miners and Operators, 1910.
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JOINT INTERSTATE MOVEMENT.
Established by the Chicago Agreement of 1898 was brought about by the United Mine Workers of America who solicited the operators of the Central Competitive States to meet them for that purpose.
Maurer.
Excerpt 6.
As planned by the officials of the United Mine Workers contemplates the establishment of a wage scale that will be practically the same in every State and in every territory where coal is mined and sold in a common market.
Mitchell.
Excerpt 245.
Is a continuous movement running from year to year from and after its inauguration at Chicago in 1898.
So construed by Mitchell.
Excerpt 245.

Claimed to be the most practical solution of the labor problem yet discovered by the United Mine Workers of America.

Lewis—Joint Interstate Convention, 1910.

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Contemplates bringing into one convention the operators and miners of every State in the Union.

Mitchell.

Excerpt 245.

Green.

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Walker.

Excerpt 306.

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In the Central Competitive States.

Is a close corporation so far as the four States are concerned, between the miners and the operators.

Chapman.

Excerpts 246, 281, 282.

Operators who are not parties, but whose mines are within Union territory, are required to abide by the scale and rules and regulations of the Union established by the Joint Interstate Movement whether they want to do so or not, or else remain idle.

Excerpts 132, 133, 134.

Entire membership of United Mine Workers determines finally what the miners in Joint Interstate Conventions with operators of certain states may work for, and the miners of those particular states are not allowed to contract on terms that may be satisfactory to themselves and to their employers, unless the terms of the agreement have met, or else meet the approval of the entire body of United Mine Workers throughout the country, which necessarily means the approval of officers high in power who hold the destiny of the United Mine Workers in their hands.

Excerpts 237, 242, 243, 271, 272, 281, 421.

United Mine Workers compelled operators to join the operators' association in return for the operators' association compelling the miners to join the United Mine Workers.

Mitchell.

Excerpts 294, 296, 298, 299, 310.

Denial in 1906 of any unlawful purposes made by representatives of miners and operators as a result of an outspoken declaration of unlawful purposes made by J. H. Walker.

Excerpts 255, 256, 270, 273, 288, 294, 306, 307, 366.

JOINT INTERSTATE CONVENTION, 1910, CINCINNATI.

Was made up of the accredited representatives of Western Pennsylvania operators and miners, the accredited representatives of Ohio operators and miners, the accredited representatives of Indiana operators and miners, the National officers of the United Mine Workers, the Executive Board Members of the United Mine Workers, and the Secretaries and commissioners of the Operators' Associations.

Excerpt 3.

All questions affecting the proposed scale and agreement required to be carried by unanimous vote.

Excerpt 4.

Same rule in 1908.

McKinley's Exhibit No. 3—pg. 16, l. 36–39.

Same rule in 1906.

Excerpt 244.

Miners' Proposition.

See Miners' Propositions.

JOINT INTERSTATE CONVENTION, 1908.

Was brought about after months of work on the part of the Mine Workers' organization.

Feehan.

Excerpt 233.

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Operators and Miners in Central Competitive Field.
Illinois Operators and Miners.

JOINT INTERSTATE CONVENTION, 1906.

United Mine Workers tried to enlarge the 1906 Convention so as to take in the miners and operators of the Southwest territory, which

territory had a separate Joint Interstate Movement similar to that of the Central Competitive Field.

Mitchell.

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JOINT SCALE COMMITTEE.

Meet in secret session.

Excerpts 67, 68.

LEWIS, T. L.

One of the founders of the United Mine Workers of America.

Excerpt 322.

National Convention of United Mine Workers of 1907 disapproves of Vice-President Lewis' criticism of the adoption at the Special Convention of United Mine Workers in 1906 of Mitchell's plan to effect local or district settlements, instead of a settlement for all operators, or none as Lewis held out for.

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A party to and represented by Edward Johnson at the following Joint Interstate Conventions.

1910—Excerpt 274.

1908—Excerpt 274.

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Tabulation of.

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NON-UNION MINES IN PANHANDLE OF WEST VIRGINIA.
In re organization of.
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OHIO COAL.
Local consumption does not keep up with the supply, and the only other legitimate market Ohio has is to the west.
Excerpt 302.

OHIO OPERATORS.
Wanted to withdraw from the Convention held at Cincinnati in 1910.
Maurer—Spokesman for Ohio Operators.
Excerpt 136.

OPERATORS AND MINERS IN CENTRAL COMPETITIVE FIELD.
Meet in annual or biennial joint conference, and fix the wages and conditions of employment in the coal mining industry representing a produc-

tion in 1906 of over 100,000,000 tons, or about one-third of all the bituminous coal produced in the United States.

Mitchell—1907 National Convention of United Mine Workers.

Excerpts 315, 428 (a).

Renewal of Joint Interstate Conference urged by United Mine Workers upon the operators of the Central Competitive Field and a convention sought for some time prior to April 1, 1908.

Mitchell—1907 National Convention of United Mine Workers.

Excerpts 315, 331, 333, 428 (a).

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Joint Interstate Convention, 1908.

Illinois Operators and Miners.

OPERATORS IN ILLINOIS WHO WOULD NOT ENTER THE JOINT INTERSTATE MOVEMENT WERE PENALIZED.

The United Mine Workers' organization made rates that placed them at a disadvantage.

Excerpts 278, 292, 293, 294, 295, 310.

ORGANIZE.

United Mine Workers of America insist that they have the right to organize the mine workers in every state in the Union.

Excerpts 434 (g).

Why the United Mine Workers want to organize all the mines in the country.

Excerpt 435 (h).

ORGANIZERS, USE OF.
Mitchell served notice on the Pittsburg operators that he would stop every mine in the Pittsburg District if he had to fill the mines with organizers in order to get a 20 per cent advance for outside day labor.
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Used to organize Locals.
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Excerpt 317.
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Action of National Convention of United Mine Workers of America, 1907.
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Rankin's Report to 1907 Convention.
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RULES AND CONDITIONS.
The rule prohibiting men from working on idle days should be enforced.
Watkins' Report to 1907 Convention.
Excerpts 359, 395, 410.
Day men may work on idle days when necessary, but such work must be distributed equally amongst the employes.
Excerpts 149, 179.
If cars are not at mine within thirty minutes after starting time in the morning the miners are to go home and not work that day.
Excerpts 150, 167, 178, 187, 217, 257, 258, 259, 290.
If the operator shall so manage his business that four of his employees are out of cutting or drilling when work time comes in the morning, the mine committee may shut the mine down for the next day.
Excerpts 151, 165.

If miner receives a car in time to load it before quitting time he shall load it provided he has enough coal mined to do so; but if as a result the car is derailed the operator must take charge of that car.

Excerpts 158, 162.

Sons of members of United Mine Workers are to be given the preference of going into mines, when becoming of proper age.

Excerpts 152, 186, 394.

Each two men shall have two working places in the mine and the operator is not allowed to employ more men until each two men have two working places.

Excerpts 164, 176, 216, 412, 422, 426.

The Union regulates the speed with which the operator may drive entries by providing that the turn shall be uniform throughout the mine, and the same rule operates to control the operator in mining the coal in rooms.

Excerpts 174, 183, 196, 201, 207, 219, 220, 223, 230, 413, 422, 426.

If operator insists on machine men cutting places, the operator shall pay for all coal lost by places falling in.

Excerpts 170, 177, 185.

Members of the mine committee are not required to remain at their working places in the mine if while away from their work they are looking after the proper interests of the Union.

Excerpts 197, 414, 422.

A minimum pay for two hours is exacted whether the mine works two hours or not.

Excerpts 147, 157, 161, 193, 421, 426.

Excerpt 232—Columbus Day Wage Scale—See Resolution IV.

Membership of engineers, firemen, electricians and machinists in U. M. W. of A., considered and solidarity of Union insisted on.

Excerpts 199, 313, 422, 428 (a).

Engineers, firemen, pumpers, and other necessary men may work during suspension of work—otherwise during a strike—provided that the operator does not produce coal by non-union labor, and if in addition the operator pays the rate of wages which may subsequently be agreed upon.

Excerpts 153, 159, 163, 168, 180, 188, 198, 206, 214, 228, 422, 426, 428 (a).

Operator must have water out of working place at starting time and keep it out during working hours. Where loaders bail water the operator shall furnish sufficient barrels and pay loader ten cents per barrel for water bailed.

Excerpts 202, 422, 426.

Spike team drivers shall harness but one mule.

Excerpt 203.

There shall be but one loader in each entry.

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Operator is given permission to close down his mine if miners fail to observe contract to produce clean coal.

Excerpts 148, 215.

Miner may not be transferred from his place inside to outside the mine unless he consents and in addition unless he is paid inside scale wages.

Excerpts 166, 181, 194, 422.

Work day is eight hours of forty-eight hours a week of six days of eight hours per day.

Excerpt 192.
Excerpt 231—Chicago Agreement 1898—Rule 5.
Excerpt 232—Columbus Day Wage Scale—Resolution III.

Day laborers working at the mine must be members of the Union.

Excerpt 213.

Operators must keep people out of engine room.

Excerpt 229.

Where any company operates more than one mine on the same line of road in the same vein of coal, the work between the respective mines shall be as nearly as business conditions will permit equally divided.

Excerpt 218.

In case of emergency work, if the mine committee approve of the work being done on overtime, the men engaged thereon shall not be required to lay off until their time is equalized with the others working in such mine.

Excerpt 227

If for any grievance, real or supposed, any of the workmen shut down the mine, each employee shall pay the Company one dollar per day during shut down; and if because of any grievance with any employee, real or supposed, the Company shuts down its mine it shall pay one dollar per day to each workman in and about the mine during such shut down.

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Is 5-7 of the price of Pick Mining—or on a 95-cent scale—.6785 cents per ton.
Excerpts 146, 173, 182, 190, 200.
In Ohio the practice is to pay for it on a screened coal basis. The coal is run over the screen and then the screened coal, the nut and slack are all put together again.
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RYAN RESOLUTION.
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Favored by Lewis and Green.
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SALARIES OF OFFICERS OF SUB-DISTRICT 5 OF DISTRICT 6.
Go up or down with the scale.
Constitution of Sub-District 5 of District 6, United Mine Workers of America.
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Eastern Ohio Scale applied to the Panhandle Counties of West Virginia by virtue of the action of the United Mine Workers' Annual Convention of 1906.
Watkins' Report to 1907 Convention of Sub-District 5 of District 6, held at Wheeling, March 14, 15, 16, 18 and 19, 1907.
Excerpt 358.
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Constitution of District 6, Article II section 1.
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The scale of wages agreed on between the United Mine Workers of America as an organization and those operators who meet with the United Mine Workers in Joint Interstate Conventions is not made on the earning power of the men, but is a competitive scale; and that competitive scale is the one that is enforced against operators not parties to the agreement, or else the mine must remain idle.
Excerpts 277, 279, 281, 341.

SCALE, 1910–1912.
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1898 Columbus Day Wage—
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1900 —Excerpt 417.
1901 —Excerpt 417.
1902 —Excerpt 418.
1903 —Excerpt 419.
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STOPPAGES OF WORK.
At mine for even a single day involve unnecessary cost in the production of coal.
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Rankin's Report to 1907 Convention.
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Was most bitter in the history of Sub-District 5 of District 6.
Rankin's Report to 1907 Convention.
Excerpt 350.

United Mine Workers' organization gave store orders as benefits because money ran out.
Rankin's Report to 1907 Convention.
Excerpts 360, 397, 398, 399.
See Store Orders.
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Operators of Panhandle Counties of West Virginia refused to meet the United Mine Workers of America in Joint Convention to sign a scale.
Watkins' Report to 1907 Convention.
Excerpt 358.
Some of the men in the Panhandle district of West Virginia went to work without any Union or without getting a scale signed.
Watkins' Report to 1907 Convention.
Excerpt 358.
Was not settled in Sub-District 5 of District 6 until the last Joint Convention held in Wheeling, July 24, 25, 26 and 27, 1906.
Watkins, President of Sub-District 5 of District 6 U. M. W. of A., in address to Annual Convention of United Mine Workers of Sub-District 5 of District 6, held at Wheeling, March 14, 15, 16, 18 and 19, 1907.
Excerpt 357.
As a result of this strike mines started up non-union in the Panhandle Counties of West Virginia, and the United Mine Workers in Convention in 1907 were urged to organize every mine worker in that section and establish scale rates.
Watkins' Report to 1907 Convention, and its action.
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Constitutional provisions of.
See
Constitution of the International Union.
Constitution of District No. 6.
Constitution of Sub-District 5 of District 6.
Some provisions of the.

UNITED MINE WORKERS OF AMERICA.
Districts of.
May adopt such laws as they deem necessary provided they do not conflict with the International Union.
Excerpt 375.

UNITED MINE WORKERS OF AMERICA.
Sub-Districts of.
May adopt such laws as they deem necessary provided they do not conflict with International and District Constitutions, or agreements entered into.
Excerpts 376, 377.

UNITED MINE WORKERS OF AMERICA.
Is a secret organization.
Has pass-word.
Article I, section 2.
Article XIII, section 3.
Constitution of International Union.
Excerpts 377, 382.

See also
Constitution of Sub-District 5 of District 6.
Excerpt 400.
None but members admitted to meetings of.
Manual. Constitution of District No. 6 United Mine Workers of America.
Excerpt 382.
Manual. Constitution Sub-District 5 of District 6.
Excerpt 400.
Procured Joint Wage Agreements.
Excerpt 433 (f).
See Joint Interstate Movement.
Aim to compel men in and around mine to belong to no union but the United Mine Workers of America.
See Autonomy Resolution.
Aim to be a monopoly and to have all wage agreements expire on the same date, both in the Anthracite and Bituminous fields, and then by strike or cessation of work throughout the entire United States compel compliance with their demands.
Lewis—1907 National Convention of United Mine Workers of America.
Excerpts 323, 324, 325, 334, 366, 386, 391, 402, 403, 428 (a), 429 (b).
Political activity of.
Excerpt 318.
Put operators at a disadvantage who refused to go into the Joint Interstate Movement.
See Operators in Illinois.
Put men in the field to boycott the coal coming from West Virginia.
Excerpt 336.

If strong enough they compel all men at a mine to join their organization, but if not strong enough they work quietly and gradually until they are able to accomplish their end.

Excerpt 343.

Owe their strength as an organization to the check-off which the operators meeting with them in joint Interstate Conventions conceded to them. The operators collect and pay over to the United Mine Workers' officers the money which sustains that organization, and supports its officers, and enables the Union to fight the operators, who consent to that sort of business because they have benefited and hope to benefit more by the efforts of the United Mine Workers' organization to place and keep their non-union competitors at a disadvantage.

Excerpts 245, 311.

Claim they have the right to organize the mine workers in every state in the Union.

Excerpt 434 (g).

Why they want to organize all the mines in the country.

Excerpt 435 (h).

Compelled operators in the Southwest territory to join the operators association in that territory.

See Joint Interstate Movement.

Excerpts 294, 296, 298, 299, 310.

Constantly aim and plan to involve West Virginia and other non-union fields in local or national strikes.

Excerpts 347, 348, 349.

Threatened to stop every mine in the Pittsburg District by filling them with organizers.

See Organizers, Use of.

Man forfeits his membership and must be initiated over again, pay an initiation fee and maybe a fine in addition which may be imposed by the local union if he works in a non-union mine.

Walker—Mitchell.

1907 National Convention United Mine Workers.

Excerpt 329.

See also

Excerpts 371, 396, 409.

Officers may close down mines whenever they deem it to be for the best interests of the Union.

Excerpts 373, 374, 389, 390, 406.

Held a special National Convention in 1906 and failing to effect an agreement with the operators of the Central Competitive Field, the United Mine Workers in their special National Convention determined to sign local or district agreements in the absence of an agreement with the operators of the Central Competitive Field.

Excerpts 319, 321, 331, 333, 334, 335, 336, 337, 338, 339, 340, 342, 344, 345, 346, 347, 350, 351, 352, 428 (a).

Suffered a tremendous loss of membership as a result of the 1906 strike.

Excerpt 320.

Recognize organizing the mine workers of the non-union fields as the all-important problem which confronts the Union.

Excerpt 432 (e).

1907 National Convention passed a resolution declaring for immediate establishment of the initiative, referendum and recall.

Excerpts 355, 356.

1910 Convention took action in favor of solidifying forces with forces of the Western Federation of Miners.
Excerpt 437 (j).
Took action in National Convention of 1910 for establishing a mining department under the jurisdiction of the American Federation of Labor to control the mining industry of the American Continent.
Excerpt 437 (j).
Under threat to withdraw from American Federation of Labor in National Convention, 1911, compelled the American Federation of Labor to grant a charter to the Western Federation of Miners giving to the Western Federation of Miners a status with reference to control of all men employed in and around the mines the same as the control of the United Mine Workers of America.
Excerpt 437 (j).
Urged to aid in the repeal of the Sherman Anti-Trust Law.
Excerpt 436 (i).
Tabulation of Income and Expenditures for year 1906.
Excerpt 327.
Tabulation of Expenditures for 1910.
Excerpt 438.
Tabulation of Income for 1910.
Excerpt 439.
Annual Report of International Auditors showing Receipts and Disbursements for 1910.
Excerpt 440.
Tabulation of Membership of.
Excerpt 431 (d).

Tabulation of Cost of Strikes, declared by.
Excerpt 430 (c).

WAGES OF MINERS.
More than double now what they were when the Chicago Agreement of 1898 was entered into.
Excerpts 145, 262, 263, 264, 428 (a).

WEST VIRGINIA.
Non-union fields and mines are the constant objective of the United Mine Workers of America in their scheme to fasten their monopoly upon the American public.
Excerpt 432 (e).
United Mine Workers of America aim to involve West Virginia miners in strikes.
See United Mine Workers of America.
Arising out of efforts to unionize West Virginia the United Mine Workers have had almost continuous litigation in the State.
Excerpt 316.

WEST VIRGINIA COAL.
Boycotted by United Mine Workers through men sent out to the different coal markets for that purpose.
Excerpt 336.

WEST VIRGINIA OPERATORS.
Are intentionally put to and kept at a continual expense by the United Mine Workers' organization through organizers for the purpose of aiding Union operators by increasing the cost to the non-union operator of the coal produced at his non-union mine and which comes into competition with the Union product.
Excerpt 108.

See Joint Interstate Movement.
Purposes of and Practices under, in detail.

WESTERN FEDERATION OF MINERS.
United Mine Workers of America at their 1910 Annual Convention passed a resolution recommending the solidification of the organized forces now enlisted under the names of Western Federation of Miners and the United Mine Workers of America.
Excerpt 437 (j).
Now part of the American Federation of Labor.
Excerpt 437 (j).

EXCERPTS FROM ORIGINAL DOCUMENTS TRANSMITTED TO THIS COURT NOT IN PRINTED RECORD.

Excerpts from Book entitled "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8–29, 1910."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 4 and as Upstill's Exhibit No. 1. [Record pp. 706, 291, 484, 485.]

(1) "It may be fitting to say at this time, before we proceed with the organization of the convention, to our friends who are here as visitors, to the men in public life and to the great American people through the press representatives who are here, that the eyes of the United States are focused on Cincinnati this week. We have assembled here as representatives of one of the most important industries in the country. We have come here for the purpose of negotiating a wage contract that will directly and indirectly affect half a million men who are wage earners in the coal mines of this country. We have come here for the purpose of negotiating a wage contract to govern an industry whose value cannot be counted in millions, but in hundreds of millions in actual money value. We are here to negotiate a contract the importance of which is second to no other in this country. Every wheel of industry, whether in the mill or the factory or on our transportation lines, revolves as a direct result of the commodity we produce as mine

workers, and the commodity the operators are responsible for placing on the market."

Chairman Lewis.
p. 6, l. 48–50.
p. 7, l. 1–15.

(2) "The joint movement may have its defects; it has its good qualities, and if there are any imperfections in it let us work to remedy them. There is one thing to be said for this joint movement, and that is that to our minds it is the most practical solution of the labor problem we have yet discovered. There may be another solution, there may be another time when we will find something more practical than the method we have adopted in the mining industry; but I am unwilling to give this method up and go to work and experiment with another at this time. In other words, I am from Missouri temporarily, and I must not only be shown, but I must be convinced that there is some other method more practical than this before I am willing to surrender this method for another.

"Let us express the hope that when we leave Cincinnati it will be with an agreement that will be reasonably satisfactory to all concerned, and that it will mean industrial peace in the mining industry of our country for two years from April 1, 1910."

Chairman Lewis.
p. 8, l. 1–17.

(3) "Upon the reconvening of the session Mr. Savage, secretary of the Committee on Credentials, reported as follows:

"The report of the committee is not written out, but we are ready to make a verbal report. The full report will be prepared for the two secretaries. The committee organized and elected Mr. P. H. Penna, chairman, and G. W. Savage, secretary. A motion was made that the accredited

representatives of Western Pennsylvania, operators and miners; the accredited representatives of Ohio, operators and miners, and the accredited representatives of Indiana, operators and miners, be seated in this convention. That was carried by unanimous vote. Another motion was made that the national officers of the United Mine Workers and the Executive Board members and the Secretaries and Commissioners of the Operators' Associations be seated in the convention.

"Mr. Zerbe, Ohio: That they be seated as ex-officio members.

"Mr. Savage: As ex-officio members. We find the approximate number of delegates as follows: Western Pennsylvania, operators 25, miners 140; Ohio, operators 48, miners 140; Indiana Bituminous, operators 25, miners 90; Indiana Block, operators 2, miners 10.

"On motion the report of the committee was adopted."

p. 10, l. 1–22.

(4) "Fourth. That each state be allowed the same number of votes on the floor of the house—four votes on behalf of the operators and four votes on behalf of the miners in each State.

"Fifth. That no vote be declared carried unless upon the affirmative vote of the miners and operators of each State. That upon all questions of mere procedure the ordinary rules of parliamentary procedure, as stated in any standard manual, shall be the rules of this convention; and that in no event shall the rule requiring unanimous vote on all main and principal questions be suspended. Main and principal questions mean all questions affecting the proposed scale and agreement."

Mr. Dagger, secretary of the Committee on Rules and Order of Business and Permanent Organization—under "RULES."

p. 10, l. 39–46.
p. 11, l. 1–3.

(5) Mr. Lewis, for the miners and representatives, presented the following proposition:

MINERS PROPOSITION

"We, the representatives of the United Mine Workers, present to the Operators for their consideration the following proposition:

"1. That all coal be weighed before being screened and paid for on that basis. The mine-run rate in the different districts shall be at least equivalent to the screen coal prices.

"2. An advance of ten (10) cents per ton for pick mining and an equivalent advance for machine mining and a corresponding increase for all day work, dead work, yardage, etc.

"3. That we demand a uniform rate of wages for all classes of inside and outside day labor. Time and a half for overtime, Sundays and legal holidays.

"4. A change in the present eight hour day work day so as to provide for eight hours from starting time until quitting time, or what is commonly known as from 'bank to bank,' with a half holiday on Saturday.

"5. That the contract period shall be for two years from April 1, 1910.

"6. That all local inequalities and internal differences, both as to prices and conditions, be referred to the districts affected.

"7. That the International officials require all coal companies in the Pittsburg District, where new explosives have been introduced, to comply with all the terms of settlement made with the Charleroi Coal Company and the officials of our organization on the explosive question,

by either paying the miners on run-of-mine basis, or granting an increase of $5\frac{1}{2}$ per cent to miners working in wide rooms and 9 per cent in narrow rooms, and that the miners be furnished the new explosives at the same relative cost as black powder, which was formerly used, and where shot-firers are employed the company shall pay their wages, and that the International officers give the matter immediate attention.

"8. There shall be no limit to the amount of deductions for the organization.

"9. That no district under the control of the United Mine Workers be permitted to enter into an agreement to reimburse the operators for any money expended for labor, directly or indirectly, wherein the law says the expense shall be borne by the operators.

"Mr. Lewis: We are ready to hear from the operators."

p. 15, l. 34–42.
p. 16, l. 1–34.

(6) "Mr. Maurer, Ohio, read the following statement:

"The answer of the operators to the proposition of the miners, in order to be thoroughly understood, makes it necessary to recall the history of wage agreements, and trace with brevity the conditions under which we have from time to time met as operators and miners and effected such agreements, so as to show connectedly the factors which have controlled both parties up to the present time.

"In the years prior to any substantial agreement the conditions of the mining industry were very unsatisfactory in their influence upon both the operators of mines and the miners in the various competitive districts. A remedy for this state of chaos was earnestly sought by both parties and resulted in the early '80's in agreements between the operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois. In 1886 the institution of contracts

between miners and operators was effected. These contracts operated with varying degrees of success and failure for some years and until about the year 1894, when these relations were dissolved. The conditions again took on an aspect of demoralization, which continued with varying degrees of intensity, numerous strikes, lockouts and consequent loss in wages and profits and sometimes injuries to property, until in the year 1898.

"During this period the conditions were such, both as to the price received for coal by operators and the price paid to the miners, that it became imperative for the interests of each to re-establish in some form the former agreements. At this time the basing price of the Hocking district was 56 cents per ton for screened lump coal. For a short time immediately preceding that year, the mining rate was 51 cents. The working hours in the districts, parties to the early agreements, were from nine and a half to ten hours per day.

"The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sustained contractual relations with that organization. Some of the more important factors influencing these conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements.

"In order to correct these most harmful conditions a joint convention of operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois, at the solicitation of the miners officials, was called to meet at Chicago in January, 1898. At this convention an interstate joint agreement was established. After a long session of deliberation and negotiation, continuing over a period of about

three weeks, the basing price for mining in Ohio and Pennsylvania was increased from 56 to 66 cents per ton, an advance of practically 18 per cent, and both the existing price and method of screening and weighing of coal was made uniform throughout the entire territory covered by the terms of the contract. As a result of the Chicago convention a representative meeting was subsequently held at Columbus, at which a uniform day-wage scale was established for inside labor. All of these concessions made by the operators were of substantial benefit to the miners.

"In addition to the advance in the price of mining and the other important concessions enumerated, the action of this convention had an effect of the most far-reaching and salutary character, not alone for the mine workers but for the entire labor world, in the recognition of eight hours as constituting a day's labor, this being the first recognition of the eight-hour day by any large body of employers in the United States.

"The granting of the eight-hour day by the operators, after making these numerous other important concessions, was with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting states adequate protection against the competition of the unorganized fields. From year to year they have been called upon to fulfill that promise.

"The operators, parties to that agreement, at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroachments upon them by their competitors of the unorganized fields. The tonnage of the non-union fields entering into the competitive market, particularly of West Virginia and Kentucky, at that time was not so large, as it was aggressive and threatening, the total ton-

nage entering directly into competition from those fields being approximately 600,000 tons. Since, however, coal from this unorganized territory coming into direct competition with Ohio and Pennsylvania has so increased that a fair estimate places this competitive tonnage at 8,000,000 tons, which does not include the tonnage from non-union fields adjacent to the Pittsburg district. The markets in western and northern Ohio, eastern Indiana, and Michigan, from year to year have been encroached upon by coal from the unorganized districts until at the present time nearly 50 per cent of the coal consumed in these markets is supplied from fields operated with non-union labor. To find a market for the union tonnage displaced in the territory named, the mine owners of Ohio and Pennsylvania within the past five years, have made heavy investments and built and equipped large coal docks to secure the markets at the upper lake ports; but these operators now find the non-union coal rapidly commanding a heavy percentage of this market, when, at the time of the Chicago agreement the non-union fields had but a small fraction of this trade, and unless these conditions are corrected the markets so secured will soon be replaced by the tonnage from West Virginia and Kentucky.

"Though in the very heart of the consuming territory, on account of the wide difference between the price of labor in the organized fields of Ohio and Pennsylvania and the unorganized fields of West Virginia, Kentucky and the fields adjacent to the Pittsburg district, Ohio and western Pennsylvania are rapidly losing the markets at their very doors.

"It is evident to any candid observer that such unfair conditions should not be imposed upon the operators and miners of the unionized territory. That the interests of

operators and miners are mutual in every respect does not admit of controversy. Each is equally concerned in rescuing this business from its present peril."

p. 16, l. 45–48.
p. 17, l. 1–50.
p. 18, l. 1–51.
p. 19, l. 1–4.

(7) "Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concessions. It is now, in our view, not only to the interest of the miners, but their duty as well, to do their share to meet these conditions.

"It has been set forth as the controlling reason for an increased price for mining that the cost of living has increased during the past few years. Is it not fair, equitable or reasonable to believe that by making conditions in all competing districts equal, the districts which are parties to this agreement will benefit by a larger number of days employment, and thus the earning capacity of the miners of our district be largely increased?

"We believe this to be a true statement of facts, and therefore call upon you to relieve us as well as yourselves from the unfortunate situation in which we now find ourselves, due to the failure of the miners' organization to keep the faith pledged at Chicago in 1898.

"We therefore insist that your organization place the districts, parties to this agreement, on the same relative

basis as the unorganized districts with which we are compelled to compete."

p. 20, l. 17–42.

(8) "The Hocking District of Ohio is the basing point for this state, and if we were to accept unchallenged the statement made by our friend, Mr. Maurer, in behalf of the operators, the impression would naturally go out that the miners of this country have had their wages advanced from 56 cents a ton in 1897 to 90 cents a ton in the past two years. Let your minds go back to another period in the Hocking District, the winter of 1880, or the fall of 1879, if we must go into history. The miners of the Hocking District received for their labor as miners 60 cents a ton, 75 cents a ton, a dollar a ton, and then back to 80 cents a ton inside of two months. Market conditions caused the fluctuation, and the ability of the miners at that time to take advantage of the market conditions. That was only a temporary arrangement, but from that arrangement was established the mining rate in the Hocking District of 80 cents a ton in the winter and 70 cents a ton in the summer, and that continued year after year until 1884 when the operators of the Hocking District conceived the idea of going into a movement to reduce our wages, and after a strike of eleven months we got a beautiful trouncing at the hands of the operators. Our wages went away down, so far down that neither the miners or the operators could live or make a profit. Out of that condition, which was demoralizing to all, grew the Interstate movement of 1886. That continued, as stated by Mr. Maurer, until 1894, when the operators of the country again concluded they could do better business by running the business themselves, and we had a contest. The result was that it was settled by a compromise and everybody tried to do business the best they could until

1897. The methods of doing business 'as best they could' created another sliding scale. That scale carried with it the sliding of men's wages from one point to another until we struck not 56 cents, but 45 cents in the Hocking District, 51 cents in Eastern Ohio, and different rates all over the country. Then the operators awakened to the fact that they were going into bankruptcy, and we awakened to the fact that we were headed for the poor houses. We engaged in another contest in 1897 and as a result of that contest a compromise was effected, and this present interstate joint movement was re-established."

Mr. Lewis.
p. 21, l. 4–40.

(9) "I don't know whether or not all the business that transpired at Chicago was simply and purely a mutuality. I am not prepared to admit that it was. It was more a question of bargain and sale, we selling our labor at the most favorable conditions we could get you to agree with us upon, and you seeking to buy our labor at the most favorable terms you could induce us to believe you could pay for the labor you purchased."

Mr. Lewis.
p. 22, l. 17–23.

(10) "So far as establishing other conditions at Chicago is concerned, we endeavored to establish a uniform mining rate, at least in the basing points in the several competitive fields, namely, the thin vein district of Western Pennsylvania, the Hocking District of Ohio, the Bituminous District of Indiana, and the Danville District of Illinois."

Mr. Lewis.
p. 22, l. 50, 51.
p. 23, l. 1–4.

(11) "One delegation of operators and miners is absent from this meeting. That is Illinois, and the operators and

miners of that state are absent because they say while they are on the outside they will not come back until we agree to grant them relief, and relief is a peculiar word unless you have it interpreted. I have endeavored to get from the Illinois operators what they mean by relief, just the same as we endeavored to get from some Ohio operators last year what they meant by relief from the present situation. It sounds all right to make the statement. So far as our friends in Illinois are concerned, I said to the official representatives of the operators, 'Come into this movement, and join with us; present all the questions that you want relief from, and we will present a few to you that we want relief from in Illinois, and we will count noses to see who is right and who is wrong.' They are not here."

Mr. Lewis.
p. 23, l. 14–28.

(12) "The real facts are that the operators from Western Pennsylvania and Ohio that are going into the districts the operators complain of resort to the same tactics as the West Virginia operators do to keep the United Mine Workers out of that field."

Mr. Lewis.
p. 23, l. 50, 51.
p. 24, l. 1–3.

(13) "It is not a question with us of seeing how cheap we can work, and it is not a question with you of giving your coal away."

Mr. Lewis.
p. 24, l. 30–32.

(14) "If I have a proper conception of this movement it means the uplifting of the industry. If I have a proper conception of this movement, it does not mean that either operators or miners can publicly say, 'We will organize

West Virginia in order that the miners of Ohio or Indiana can get more work.' That has done more to prevent the organization of West Virginia than anything I know of. Coupled with that is the attitude of Ohio and Western Pennsylvania, probably of Indiana, and I know of some Illinois operators who have gone to West Virginia and have built human fences around their properties. I mean by that that they surround their properties with pickets, men who, even when the organizers of the United Mine Workers want to walk along a county or township road passing through the properties, is met at the property line and compelled to state what his business is before he can walk on the public highway. Men will say that that is not possible in a free country, but I say it is possible. It is possible in some mining districts in this country, and I believe they are in the United States because they are in West Virginia, Kentucky, Tennessee, Alabama and a few places in Pennsylvania "

Mr. Lewis.
p. 24, l. 37–51.
p. 25, l. 1–5.

(15) "It would be interesting for the American public to know how much coal from the screened coal mines is sold as mine run notwithstanding the fact that it is mined and paid for on the screened coal basis. It is hardly necessary to go into a discussion of that, because everybody who understands the mining situation knows that the steam trade of this country is a mine-run proposition. Go wherever you will in Ohio and see the engines coaled at the mines, and you will discover that where the coal is run over the screen and the nut and slack coal run through it is all put back into the bins and put on the engine tender. Of course the operators will tell us—and I do not want to make their arguments either, by the way—that

they are paying the equivalent of mine-run when they are paying on a screened coal basis at the present price. We are willing to admit that it was sought to fix the equivalents on that basis, but in order that there will be no argument about the equivalent we are ready to wipe out the screened coal basis, wipe out your equivalents, and go on the run of mine basis in order that there may be no argument about that."

Mr. Lewis.
p. 25, l. 31–49.

(16) "There is another reason and we all recognize the force of it. If the operators of this country are not willing to get together to get living profits on their investments the mine workers of this country are not responsible, and we are not going to be parties to a condition that keeps us down to a point where we cannot meet our honest obligations and pay our debts out of the wages we receive for our labor. We want to say, and we say it kindly but positively to the gentlemen on the other side of the house, 'Get together and organize, not only in Ohio and West Virginia—and I know a lot of you have influence enough over there, if you do as much work as we do to organize them."

Mr. Lewis.
p. 26, l. 20–30.

(17) "Our third demand was for a uniform rate of wages for all classes of inside and outside labor, and time and a half for overtime, Sundays and holidays. Why do we want uniform wages for different classes of outside labor? What do we mean by uniformity? We have, generally speaking, a uniform scale for inside day labor of different classes, but for outside labor we haven't. We are unwilling to see one operator operate his mine and pay

a dumper a certain rate of wages, and another operator who is his competitor in an organized district, selling his coal in the same market, pay a dumper in a mine of the same capacity a less price for his labor. What is true of the dumper is true of the engineer, the trimmer, and all the men who work on the outside of the mine."

Mr. Lewis.
p. 26, l. 31–43.

(18) "Our eighth proposition is 'that there shall be no limit to the amount of deductions for the organization.' We mean by that that there shall be no restriction on the amount of deduction we ask from our wages to turn over to our organization. It is true that in some of the districts there is no limitation, but in other districts there is a limitation. And while I am not one of those people who believe in organizing West Virginia to close up their mines, I am one of those people who believe in organizing West Virginia in order that the operators of the Central Competitive Field as well as West Virginia operators can get better returns on their investments, and in order that we can get better returns for our labor. If we are unable to get the operators to co-operate, to get the West Virginia operators to come into the joint movement, as was originally intended in Chicago, the only other method we have is to spend our money to organize that state and enable the operators to do business."

Mr. Lewis.
p. 27, l. 49–51.
p. 28, l. 1–13.

(19) "I believe every man sitting here today will admit that this method of settling our differences has been mutually advantageous; that it has worked for the good of the industry and has provided the best way of arranging our wage contracts. As a result of it improved conditions

of employment and increased wages have come to the miners, and I believe better returns on their investments have come to the gentlemen on the other side of the house. I believe it was the method by which the coal industry was put on a paying and profitable basis. I do not think any man here wishes to resort to the old method, and I do not believe there is an operator in the Central Competitive Field who has a contract with the United Mine Workers of America who would want to resort to the old method that brought about such bitter experiences and such unprofitable returns."

Mr. Green
p. 29, l. 28–41.

(20) "Our friend, Mr. Maurer, in the well prepared statement he has submitted to this convention, referred to an obligation he claims was assumed by the United Mine Workers of America in the meeting at Chicago in 1898. Mr. Chairman and gentlemen, we agreed that to a certain extent that was right; but I do not believe it was ever understood that one party to this contract was obligated exclusively to carry out that promise. I believe it was intended to be a mutual understanding and that both sides would co-operate in trying to organize West Virginia and other non-union districts in order to extend this businesslike basis of adjusting our differences to those fields.

"Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the

attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia.

"Is the fact that we have spent hundreds of thousands of dollars appropriated from the small earnings of our people in the Central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does not that show that we have honestly, sincerely and diligently attempted to redeem it? I believe, gentlemen, that if the operators had done one-half as much as the miners have done, if they had even co-operated with us in what we have done, West Virginia would be organized and the operators and miners of that state would be here today participating in this joint movement."

Mr. Green.
p. 29, l. 47–51.
p. 30, l. 1–31.

(21) "You on the one side have had your price of labor to consider; we have had the cost of transportation of your coal to market, where it is brought into competition with the product of other interests to consider. During this period of time your wages have remained the same; but the price of coal and the opportunity to market it from the districts of Western Pennsylvania and Ohio have been reduced. It is admitted by your president that the increase from competitive states has been much greater than the increase from other states that are recognized in this convention today."

Mr. W. P. Murray, Ohio.
p. 35, l. 40–44.
p. 36, l. 1–5.

(22) "We are unwilling that the non-union operators and miners of West Virginia or of any other coal field shall set the standard of prices and the standard of living for the intelligent operators and miners engaged in the mining industry in the states that are represented here. I believe that is the honest opinion of all of the operators who are present. It is unnecessary for me to refer to the fact that many of the operators who are represented here in this joint conference have interests in West Virginia and in other non-union coal fields whose products are going into the markets they are complaining of. It is true that they have contributed, with the other operators who are engaged in the industry in those states and districts, to keep the organization from obtaining a hold or becoming a factor in the industry in those fields of which they complain. If they will withdraw their objections to the establishment of the organization in those fields, I am sure they would not be confronted with those conditions, and we would be able to remove the evil in a very brief time. The practices resorted to by the non-union operators of West Virginia are un-American."

Mr. Feehan, Pennsylvania.
p. 42, l. 32–51.

(23) "If we were regulating the selling price of the product, I am sure we would not trouble the operators with our demands, but we would immediately force the consumer to pay an amount for coal that would allow those who produce it to live as respectable American working men should live."

Mr. Feehan.
p. 43, l. 10–15.

(24) "but I do propose to discuss that upon which every wage agreement must be made, and that is the best price that can be secured for the commodity you produce. A wage scale can be based on no other foundation."

Mr. Maurer, Ohio.
p. 44, l. 35–39.

(25) "To a greater or lesser extent these agreements become in the end a partnership."

Mr. Maurer, Ohio.
p. 44, l. 42–44.

(26) "We have a condition confronting this convention as grave as confronted the convention that met in Chicago in 1898. We have this great tonnage from the unorganized fields of West Virginia and Kentucky that is absolutely taking away from us our markets and taking away the employment which belongs to you. It is a condition that not one of us must meet, but that both of us must meet, not only for our protection but for your protection as well. The cost of living is only incident to it, and the mine-run basis is only incident to it. Every man who swings the pick will agree with me that we can pay you no more for mining coal than we can get for the product of your labor. And I am going to put up to you, I am willing to concede to this convention that West Virginia is not organized; that for ten or twelve long years the miners have done everything in their power to organize that field, and that they did it diligently and earnestly is admitted, nevertheless that field today is unorganized. Nobody is to blame. Neither the operator nor the miner is to blame for that condition; but it is a condition that we must meet and each one bear his share of the burden. Eight million tons of the coal from that unorganized state is today taking away from you the product of your labor, and taking away from the operator every cent of

profit he ever had in the business. You cannot correct that. You may say to us, 'You must get together and agree upon prices; you must get the West Virginia operators in and agree upon a price.' Why, every man who stands here knows that if the operators in the State of Ohio attempt it they do so in violation of the Valentine law and that the penitentiary stares them in the face. Every miner here knows that if in the States of Ohio and West Virginia the operators were to attempt anything of the kind, they would violate, not only the Valentine law of Ohio, but they would violate the Sherman Anti-trust Law. It is easy to tell us what to do, but you should also tell us how to do it. Does any miner here believe that the operators of the State of Ohio have not tried to get the best price they can for their commodity? We have some interest in our business, we have our money invested in it, and I assure you that for two years the miners and the railroads have got every cent there was in it, and more too."

Mr. Maurer, Ohio.
p. 45, l. 3–40.

(27) "However, we stayed in the market, we gave you employment. Now, it is up to the miners of this state to meet those conditions and bear their share of that burden. I want to tell you here that if the miners of the State of Ohio insist on an increased price of their coal they will lose every bit of business they have on the Great Lakes. You have already lost your commercial business. Who supplies Michigan today with commercial coal? Who supplies Detroit? Who supplies Toledo? Who supplies Marion? Who supplies Columbus, right in the heart of the Hocking District? Who supplies Eastern Indiana? Who supplies all of Western Ohio? Tell me, tell me you miners from the Hocking Valley who have seen your mines lay idle while West Virginia coal in train

load lots has gone past your mines! Tell me you miners in Eastern Ohio who have stood idly by and watched Fairmont coal in train load lots taking your markets! Ninety per cent of that market is supplied by West Virginia coal from the non-union fields. I say to you the cost of living does not enter into this. I say to you these other elements did not enter into this. I say to you that the best price we can get for our coal under the competitive conditions will not admit of it.

"You miners who mine coal in the State of Ohio, and, if you please, in Western Pennsylvania, know that every bit of the trade I refer to was formerly supplied by Ohio and Pennsylvania even down to the gas business, but it is now supplied by West Virginia."

Mr. Maurer, Ohio.
p. 46, l. 16–40.

(28) "If it is a partnership, deal with it as a partnership."

Mr. Maurer, Ohio.
p. 46, l. 46, 47.

(29) "We both have a condition confronting us, and as long as West Virginia is in the field with her increased production and her low cost of mining you have got to put us on a competitive basis or you have got to lose your business."

Mr. Maurer, Ohio.
p. 47, l. 3–7.

(30) "I appeal to you in all fairness, I appeal to you as fair-minded men engaged in a common purpose, and that purpose is to find a market for your commodity, to bear a share of this burden."

Mr. Maurer, Ohio.
p. 47, l. 13–16.

(31) "Now the argument is made that we ought to turn our attention to West Virginia and stop the competition from that state. I admit that argument is good; but in order for that argument to have strength it is necessary for the operators at home to stop the kind of guerilla warfare they have among themselves."

Mr. Lewis.
p. 48, l. 18–23.

(32) "Mr. Maurer has very well said—and I am glad he has brought the subject up—that we say to the operators, 'Get a better price for your coal in order that you can pay us a better price for our labor.' Then he supplements that statement, and very properly, by the statement that if they were to organize to get a better price for their coal they would be haled into court under the provisions of the Valentine law of Ohio and possibly sent to the penitentiary. Probably we would too. He supplements that statement by asking us to tell them how to get a better price for their coal. I am going to tell you. First, stop making war on the railroads. The poor fellows need help! And this proposition is going to be no joke. I recognize what the mining industry is; I recognize that it is more important than transportation. I recognize that the Valentine law of the State of Ohio was put on the statute books by a lot of political demagogues who believed they were working in the interests of the dear people—and they did it once for the dear people and about twenty times for themselves! I recognize that this industry does not occupy the plane among the industries of the country that it ought to occupy, because we have met in joint conventions year after year and discussed our wage relations instead of devoting some of our time to going out and telling certain people to keep their hands off our business.

"The railroad companies of this country say to the mine owners, 'We want our fuel at a certain rate.' The mine owners, in order to get a part of the fuel trade of the railroads, put down the prices in some instances to cost, not because of competition, but because of your desire to get a part of that trade. Then after securing a part of that trade the official representatives of the railroads are in so close touch with the leaders of the manufacturing industries of our country that the steam trade, as we call it, buys fuel almost at as cheap a price as the railroad company. Then in order to make ends meet somebody must pay a better price, and it is usually the domestic consumers, the masses of the people. And that is where the political demagogues get their work in, because they are the people who have votes and that is why they have anti-conspiracy laws placed on the statute books.

"That is not the only phase of it that hurts us. In order to crowd out somebody or in order to get a better price for coal going into the markets our friends on the other side, finding that the miners' contract is signed on this end, that the railroads are insisting on a lower price on the other side, seek to get a readjustment of the freight rates in order that they may increase their returns on their investment. What is the result? They haul the railroads before the railroad commission or before the Interstate Commerce Commission and secure a readjustment of freight rates as was done in Ohio recently when the rate was made 20 cents a ton lower than it was last year. Of course that makes a railroad feel good! The railroads, like the rest of us have more or less resistance in their makeup against what they call unreasonable demands. They go into the courts, and the operators will very probably say that while they have a decision from the Ohio Railroad Commission the chances are it will not become

operative for a year or two because the railroads will fight it in the courts, the operators will do the same, and they will all spend money in legal fees that should go to paying our wages and go to giving you returns on your investment. It is true that that is what is transpiring, because you men deluded yourselves into the belief that the railroads are going to hold a dividing line along the Ohio River. Don't you think they will readjust the rates going over to West Virginia? Certainly. There is a well-founded suspicion in the minds of most men that the railroads have an indirect interest in the mines, not only in West Virginia, but in a great many other coal producing states. The railroads in Illinois have advanced freight rates 10 cents a ton on all of the coal to be handled there the coming year. The Illinois operators will probably meet us in conference, and they will say, 'We must get relief because the railroads have put on an increased rate of 10 cents, and you must meet the issue.' Of course we must meet the issue, no matter what we get. We are going to meet it. We are going to insist upon an advance in wages. We are going any length to enable you to get a better price for coal than you have been receiving; but we do not want so much competition in your own ranks. You should not come in here until you come, as they say in court, with clean hands on your own proposition."

Mr. Lewis.
p. 48, l. 38–51.
p. 49, l. 1–51.
p. 50, l. 1–11.

(33) "I am ready to admit with him that any system that sells to the big consumer, who can afford to pay a big price, a commodity at cost, or less than cost, and then in order to make up the deficiency taxes the little fellow who

cannot afford to pay a price larger than it would be necessary under ordinary circumstances, is wrong."

Mr. Penna.
p. 50, l. 42–48.

(34) "The very purpose of the union is to increase the price of labor, to reduce the hours of labor, and then when that is done in this meeting we go home and there are attempts made, and often enforced, that further increase the cost. That is the very purpose of unionism. It has no right to life on any other plane than that, or least we have never discovered it. It has no object in existing that we know anything about except to increase wages and decrease hours of work, and it has been successful in doing it. It is also a fact that not more than one-half of the miners of the United States are unionized. Those who are not unionized work more hours, perform more labor for less money, and as a result throw on the market a cheap product. Those are the non-union men, those are the men who are our mutual foes. They are your foe, and as long as you pursue a policy of trying to get more from the operators in the territory that is unionized, getting more directly and getting more by indirect methods, you are furnishing an inducement to the non-union miner and to the non-union coal operator to remain in that position, because they are better able to take your trade, they are better able to take our markets, they are better able to get your work, and the operators are better able to get our profits."

Mr. Penna.
p. 51, l. 6–26.

(35) "It is time for you to step up with us and say to those men in West Virginia, 'You will either decrease your hours of labor and increase your wages to meet these conditions or we will meet them.'"

Mr. Zerbe.
p. 60, l. 20–23.

(36) "There are three things that are the cause of present conditions—too high cost of production, discriminating freight rates, and the low prices caused by competition with non-union fields."

Mr. Chapman, Ohio.
p. 61, l. 18–20.

(37) "It is an admitted fact that there is a difference today of between 40 and 50 cents per ton in the cost of production of coal in the union fields of Ohio and the non-union fields of the trade east and south of us in West Virginia, Kentucky, Tennessee and Alabama, and three of those states, gentlemen, are competitors in the markets of Ohio Coal—West Virginia, Kentucky and Tennessee."

Mr. Chapman, Ohio.
p. 61, l. 41–47.

(38) "The production of West Virginia for 1907 was 40,043,311 gross tons, 44,091,000 being net tons. In 1908 the production was 44,091,000 net tons. In 1909 the production was 44,495,000 net tons."

Mr. Chapman.
p. 62, l. 17–20.

(39) "Ohio's production for 1907 was 32,365,949 net tons; in 1908, 26,287,800 net tons, and in 1909, 27,756,172 net tons."

Mr. Chapman.
p. 62, l. 33, 34.

(40) "There are some more interesting statistics connected with this proposition. The following are the numbers of days the miners worked in West Virginia during the years from 1904 to 1909: 1904, 209; 1905, 213; 1906, 237; 1907, 234; 1908, 211; 1909, 192; making an average of 216 days of ten hours per day, or a total of 2,160 hours worked each year. Reduced to eight hours per day would

be an average of 270 days each year. Ohio worked in 1904, 164 days; 1905, 171; 1906, 175; 1907, 204; 1908, 157; 1909, 165 days, an average for the six years of 173 days, or ninety-seven days less than the average work in West Virginia on the eight-hour basis."

Mr. Chapman.
p. 62, l. 44–51.
p. 63, l. 1–3.

(41) "Now gentlemen, it is useless, after the discussions that have taken place here by the gentlemen who preceded me, to discuss at any great length the market that the non-union fields have taken from Ohio in the past. It has been well said that they are putting coal into Columbus, into Michigan, into Detroit, taking the markets that heretofore have been enjoyed by Ohio coal. In the city of Athens, Ohio, which is within three miles of several of the large producing Hocking Valley mines, West Virginia coal is being sold. The gentlemen who are familiar with the situation have informed me that over 2,000 tons of West Virginia coal was sold there between the first of September and a short time ago. Even in the town of Logan, one of the points where Hocking Valley gathers its trains to start its coal out to the markets they have, West Virginia coal is taking that market. The gentlemen who were in the Toledo convention and returned on the Hocking Valley train, if they had their eyes open, would have seen full solid trains of Norfolk and Western coal passing up over that road to Toledo. There was not a single car of Hocking Valley coal in the trains. At the town of Bowling Green, twenty miles south of Toledo; when I came through a few weeks ago, I saw every car of coal standing on the side tracks were loaded with West Virginia coal.

"Think of the proposition, gentlemen! Toledo, the central point at which several Ohio coal roads bring every-

thing, and 60 per cent or more of the coal being consumed there is from West Virginia! The Pennsylvania people have a road coming in there, the Wheeling and Lake Erie have a road coming in there, the Toledo and Ohio Central goes in there, the Hocking Valley goes in there, and the D. T. & I. goes in there on a direct line. Now just consider that proposition for a minute, and is it any wonder that Ohio coal operators and interests are in the condition they are today with that state of affairs?

"It was well said by Mr. Lewis and Mr. Penna that people buy their fuel where they can buy it cheapest. I am not through with this proposition. I want to bring you to the city we are now holding this convention in and give you a few figures. In 1897 Pittsburg shipped by river, 1,401,000 tons of coal to the city of Cincinnati. The Kanawha region shipped by river 717,000 tons of coal. The Kanawha fields shipped by rail 704,000 tons. The other interests from West Virginia, Kentucky and Tennessee shipped here 275,400 tons. Now we will come to the year 1908.

"Pittsburg District shipped 535,000 tons to the city of Cincinnati in 1908 as against 10,401,000 in 1897. Kanawha shipped by river 867,000 tons in 1908, as against 717,000 tons in 1897, and Kanawha shipped by rail in 1908, 1,848,000 tons, as against 462,000 in 1897. The Pocahontas District, the Tennessee and Alabama fields shipped in 1908 by rail 1,512,000 tons to the city of Cincinnati as against 275,400 in 1907.

"Gentlemen, do you need any more statistics of this kind to show where the coal trade of Ohio and Pennsylsylvania is going? I do not want to worry you, but I have some more statistics that are interesting.

"Mr. Lewis: Go ahead.

"Mr. Chapman: I will now present the lake tonnage figures:

West Virginia—1901, 739,011 tons, 12.73 per cent;
1907, 3,249,505 tons, 19.02 per cent;
1908, 3,521,149 tons, 23.98 per cent;
1909, 3,793,517 tons, 25.61 per cent.

"Poor Hocking Valley, gentlemen, makes a bad showing.

"The following are the figures for Hocking Valley:

1901, 1,513,646 tons, 26.08 per cent;
1907, 2,125,692 tons, 12.64 per cent;
1908, 1,378,465 tons, 9.41 per cent;
1909, 1,199,670 tons, 8.10 per cent.

"The following are the figures for all Ohio:

1901, 1,824,507 tons, 21.37 per cent;
1907, 4,186,571 tons, 24.89 per cent.
1908, 3,484,845 tons, 23.81 per cent;
1909, 3,111,256 tons, 21.02 per cent.

"That shows what is becoming of Ohio's lake trade that we have heretofore enjoyed. These figures speak for themselves as to Ohio's condition."

p. 63, l. 20–51.
p. 64, l. 1–40.

(42) "Now I am going to say something that isn't very pleasant, but I will make the statement all the same. I have been told that some of the best lawyers in the country claim that your organization is liable under the same laws, if prosecuted, for combination in restraint of trade and that your check-off, although agreed to locally, is absolutely in violation of the law. These lawyers said they would be willing to take a case with their fees contingent upon their success in winning it."

Mr. Chapman.
p. 65, l. 3–10.

(43) "You made promises in 1898 that you have not kept. You may have tried to keep those promises, but you know what was said and what was done on the floor of the convention in 1898. I was a participant in it, as I have been in the preceding interstate movements. You know what the understanding was, and you know that at every session of every convention that has been held from that time down to the present we have asked you to carry out and make good what you said you would do at that first conference. In my opinion the only way you can ever hope to succeed in putting the union fields on a competitive basis in cost with the non-union fields, the only way you can give your people more work and the other fellows less is to reduce your wages to enable the operators to produce their coal at a cost that will enable them to take the trade. It can be done in no other way. You have tried the other process for twelve years and it has been a total failure; you are weaker now in the non-union fields than you ever were."

Mr. Chapman.
p. 65, l. 44–51.
p. 66, l. 1–9.

(44) "It has been intimated by some of the gentlemen to me—and I took Mr. Lewis' remarks to indicate when he was speaking on the subject of railroad freight reductions to mean this—that should the operators of Ohio succeed in getting discriminating freight rates removed to some extent you would feel you were entitled to part of it."

Mr. Chapman.
p. 66, l. 17–22.

(45) "In 1907 and 1908 the miners earned more money in West Virginia at the prices they were paid there than were earned by Ohio. In fact they earned from one

hundred to one hundred and fifty dollars more to the man. That tells the tale concerning that matter."

Mr. Chapman.
p. 66, l. 27–31.

(46) "'The controlling influence in Ohio has been the competition of West Virginia coals with the domestic product, unhampered by the restrictions that hamper states in which the miners are thoroughly organized, such as Ohio, and also because of the conditions of mining. The coals of West Virginia are said to be mined at about one-half the cost of producing Ohio coals and the West Virginia product has taken the Ohio markets to the full extent permitted by the difference in transportation expenses, leaving Ohio coals only such markets as may be near the mines, and as the means of transportation increases by which West Virginia coals are put farther into Ohio markets, the prospect of the Ohio mines is not bright.'"

Mr. Chapman.
p. 66, l. 40–51.

(47) "It is not surprising that West Virginia is on a mine-run basis. Why? Because a large per cent of all the fine coal that is produced in that State is made into coke. They even crush the lump coal after they produce it to make coke, which is much more valuable product to them and yields them more returns than the raw coal will. We haven't any of those coals in Ohio or Indiana and they have none of them in Western Pennsylvania outside of the coking coal as it is known there."

Mr. Chapman.
p. 68, l. 2–10.

(48) "The demands you make will mean the disruption of the joint movement."

Mr. Chapman.
p. 68, l. 17, 18.

(49) "West Virginia seems to be the stumbling block, the great obstacle in the way of bringing about an adjustment in the wage scale. Yesterday evening I met President Davis of the West Virginia miners' organization in the hotel lobby and asked him how many miners were here. He said there were quite a number of miners' representatives, and I told him I was going to make a proposition today to the operators, in view of the fact that West Virginia has been the subject of discussion here, that the operators and miners had both received a severe scoring, that President Davis and his miners be admitted. We have enough from the other side, from the Pittsburg District and Ohio who have interests in West Virginia to represent that State also for the operators. Let President Davis and his delegates who are here be admitted, become a part of the joint conference, make a scale for them, and then let the operators and miners jointly pledge themselves to go out after the agreement has been consummated and enforce its provisions on the operators who have not come here to be represented. I think in all fairness to both the operators and the mine workers that should be done. They should be given representation or they should not be the subjects of such severe criticism."

Mr. Feehan.
p. 78, l. 7–27.

(50) "I said yesterday that the mine workers of Western Pennsylvania, Ohio and Indiana who were represented here, were not going to permit either the miners or the operators of West Virginia to set a scale of wages for them or a standard of living. We are unwilling to accept their prices or conditions, although I have reason to believe there is not so much material difference as some of you would try to make it appear. I am unwilling, however, that they should be referred to, or that their conditions

of labor or prices should govern the working conditions or the prices of the mine workers of the districts here represented.

"There is one point I want to bring out that has not been made clear, and that is the disadvantage the operators of Eastern Ohio are put to in competing for the markets against the operators who have interests in West Virginia, and that is the character of the veins. In West Virginia it is not an uncommon thing to have them develop from six to ten feet of clean coal. There is no slate to remove; it is easily mined; it is a good grade of coal; it can find a market; and when you take into consideration the cost of producing a ton of that coal compared with the little five-foot vein of coal in Eastern Ohio with its many impurities and its thick slate, and the Pittsburg District, with its weak roof, where in many cases it is difficult to operate a machine, as well as many other natural disadvantages the operators have, herein lies the cause of the competition more than in the cost of labor. The cost of labor is not the important factor that is crowding the Eastern Ohio operators out of the market on the lakes or elsewhere. It is the natural disadvantages that is doing it. There is one advantage the operators in Eastern Ohio have, and that is their geographical situation. They are nearer the lake markets and other markets, and I believe they have an advantage of from 15 to 25 cents a ton in freight rates. I understand that when the decision of the Interstate Commerce Commission goes into effect they will have even greater advantages in freight rates. It is fortunate for them that they have these advantages. Were it not for their advantages in the matter of freight rates I am positive that many of the veins of coal now being worked in Ohio and elsewhere would be abandoned, and they would wait until the big veins with the greater natural advantages in

West Virginia were worked out before they would again operate there. These factors have not been seriously enough considered heretofore."

Mr. Feehan.
p. 78, l. 28–51.
p. 79, l. 1–17.

(51) "A demand has been made for the run-of-mine system. I am not expressing the opinion of the Pittsburg operators now, I am speaking as an individual. If I had the power of the Czar of Russia and could enforce what I wished, I would have all the coal in the United States mined on the run-of-mine basis, provided the miners would be a little less human, provided they would be fair and give us the same grade of coal they are now giving us when on a screened coal basis. That would do away with the trouble. But our experience in years gone by and our experience now is quite the reverse of that. In 1898 we found where we were on run-of-mine our coal was simply shattered and shot to pieces. The increase in fine coal that is going through the screen after run-of-mine is a very large per cent. You know as well as I do that nobody will do work that he does not have to. We are all after short cuts, and after the easy way. The miner is not going to shoot his coal so carefully when he is paid for everything he brings down and loads out, as when he is on a screened coal basis and he knows he will be paid on what comes to him after screening. The kind of coal we want in the Pittsburg District, by reason of trade conditions, is clean, good, large lump coal, and that we must have to retain our trade.

Mr. Schleuderberg.
p. 84, l. 29–49.

(52) "If there are any men going from Western Pennsylvania to West Virginia is it not because they want to

get where some of them at least feel they will be free men, where they will not be subject to the authority of the organization, and subject to the payments that some of them are required to make? Is not that perhaps just as good a reason as any that have been advanced?"

Mr. Schleuderberg.
p. 85, l. 48–51.
p. 86, l. 1–3.

(53) "Every mining locality has certain local markets that are designated as particularly their own. I presume that is true of every district represented in this joint conference. Western Pennsylvania, Ohio and Indiana have markets that are designated as their own. That is proper and right. These markets are contiguous to the railroads traversing their property, and by reason of natural conditions, favorable location, freight rates and other things that are advantageous to them, these markets can be claimed as their own. I think any man must admit that so far as West Virginia is concerned her markets within her borders are very limited compared with the great production of coal in that district. It is an admitted fact that West Virginia must seek a market for practically the entire product outside the borders of that State. Ohio, by reason of her peculiar location perhaps suffers to a greater extent than the other districts. The great markets of the Northwest are sought by both the West Virginia producers of coal and by the producers of coal in Ohio. There is keen competition for those markets, and practically 90 per cent of the tonnage that seeks a market in the Northwest from West Virginia traverses the State of Ohio."

Mr. Green, Ohio.
p. 88, l. 25–44.

(54) "The railway systems of this country are the great consumers of coal, and it is a notorious fact that, notwith-

standing they are better able to pay for the fuel they use than are the men who consume the coal that goes to what is ordinarily known as the domestic trade, these great railway corporations get their fuel cheaper than anybody else who buys coal. There is where a lot of trouble on this proposition is, and I repeat what has been said by my colleagues in support of my proposition, that one way by which you can pay us this advance in wages is to compel these great corporations that are getting their coal at ridiculously low prices to pay more for it. That will prevent you from longer giving away your product to those who are able to pay for it."

Mr. Green, Ohio.
p. 90, l. 27–39.

(55) "There is too much of a tendency existing in the minds of the men connected with the mining industry to see how much coal they can pick out of the hills and convert, as they believe, into value in the form of property or money, and in their anxiety to do it they go to work and take contracts at prices that they should not even consider. As a result some one has to suffer. When some of the operators suffer I do not blame them at all for their efforts to try to convince us we ought to bear the burdens and responsibility and share in the mistakes they have made. If they can convince us we ought to do that, I haven't a single word of complaint to make; but there will have to be more than mere statements made to convince me that that is the correct way of bargaining in selling and buying labor in these joint conventions."

Mr. Lewis.
p. 102, l. 15–28.

(56) "I agree with Mr. Green that the great State of West Virginia is reaching out in every direction. The gentleman that preceded him on the floor from the miners'

side stated that, as far as Eastern Ohio was concerned, we had such a coal that we could not hope to market it, or something to that effect. If we cannot market our coal, what becomes of the 15,000 miners in our employ? That does not apply only to Eastern Ohio coal, but to every ton of coal that is produced in the State of Ohio. Our domestic coal is being supplanted by West Virginia coal. You know what district formerly supplied the great Northwest with its dock coal for domestic consumption—the Hocking district of the State of Ohio. Where is the great supply of domestic coal for the great Northwest coming from today? From the splint coal fields of West Virginia. It is not the cheap coal you refer to, but it is the domestic coal, it is every coal in the State of Ohio that has been supplanted by the product of non-union labor from West Virginia."

Mr. Maurer, Ohio
p. 104, l. 6–22.

(57) "And I want to say to you that it is not the railroad corporations of the State of Ohio or any other State that pay the lowest price for coal. The lowest-priced coal that was sold in the State of Ohio was the coal that went on the docks to the great Northwest to hold the market in competition with West Virginia coals. When West Virginia named the price, $1.75 f. o. b. docks, Lake Erie ports, either Ohio had to meet it or go out of business in the Northwest. The operators of Ohio met the price and went into the markets and have protected them up to this time. If this is a partnership agreement that condition must be met, and for that reason I say the cost of living is but an incident. The cost of materials for the mines has increased, the cost of iron and lumber and locomotives and machinery has increased; but the price of coal has not increased and

it has not increased because of the ruinous competition from West Virginia and Kentucky."

Mr. Maurer, Ohio.
p. 104, l. 30–45.

(58) "Now the question is this: Do the miners, 60,000 of them in the State of Ohio, who are in partnership with the mine owners of this State, expect to maintain their market or not? I want to say to you in all fairness that if the price of coal in Ohio is increased 10 cents or 5 cents per ton, two years from today the West Virginia competition in Ohio will not be 8,000,000 tons but 15,000,000. Now let's get down to the meat of the cocoanut, and what is it? Is it the cost of living? It is the best price we can get for the commodity we have to sell. It is your commodity and it is our commodity. It is your bread and butter and it is our bread and butter. It does not belong to West Virginia; it is ours. Are you going to stand with us and protect it?"

Mr. Maurer, Ohio.
p. 104, l. 46–51.
p. 105, l. 1–6.

(59) "Keep one thing in mind—keep the facts staring you in the face that for two years your mines have laid idle while West Virginia non-union tonnage took the markets that belonged to you and to us. We stand next to these markets. In order to maintain our markets we on this side invested our money in the great Northwest and built docks to keep the market for you. That market today is in jeopardy on account of the competition from West Virginia."

Mr. Maurer, Ohio.
p. 105, l. 35–42.

(60) "I called attention the other day to the fact of what we believed the railroads of this country ought to do. What was that? That they ought to pay a higher price for fuel. That is not the first time I have talked about that. We have talked higher price fuel to the railroads in public more than all the operators in the United States put together. I don't know what they have talked behind the scenes. I made the statement also, as far as my memory serves me, that the Ohio operators had gone before the Ohio Railroad Commission and had secured a decision reducing freight rates 20 cents a ton from Eastern Ohio to lake points. I pointed out where, in my opinion, the transportation industry and the mining industry ought to be closer together than they are. I pointed out where, in my judgment, the operators should say to the railroad men, instead of having each other hauled into the courts, before railroad commissions and the Interstate Commerce Commission, fighting each other and paying large legal fees, they should get together and the mining industry ought to impress upon the minds of the railroad interests the necessity of paying a higher price for fuel. That is in substance what I said. And if the other interpretation was placed upon it, I am sorry for it, but it does not change my opinion in regard to the matter.

"Now let me tell you something else. In the face of the fact that Ohio has secured a reduction in the freight rates for lake points as against this non-union competition, in the face of the fact that they have secured a reduction of 20 cents a ton, I would not even take advantage of that and say you ought to give us half of that. I said you would probably have to fight that in the courts for a year. I pointed out all of those things in my discussion so there would be no element of unfairness in what I said. This is the first time in a joint conference, so far as I know,

where the operators have undertaken to say I have resorted to unfair methods of discussion. I am sorry that has been said here. That is not my way of negotiating contracts. I tell our people when they are wrong just as quick as I do you."

Mr. Lewis.
p. 109, l. 38–44.
p. 110, l. 1–28.

(61) "So far as the railroad interests are concerned, and so far as I am concerned, if I had my way—and perhaps it is a good thing for the railroads I have not—they would not be able to buy a ton of coal anywhere in the United States for less than $1.25."

Mr. Lewis.
p. 110, l. 44–46.
p. 111, l. 1, 2.

(62) "Mr. Savage, Ohio: I was surprised a minute ago to hear that some of the operators were not in sympathy with the men in trying to get a readjustment of their freight rates in Ohio. I know as one miner we did all we possibly could in giving testimony before the commission in Columbus, and from what I heard then I believed, and I believe now, that the operators were absolutely right in asking for this readjustment. I believe I can assure you that we will help you in every manner that we can to get that readjustment. But we would ask you, on the other hand, if we are willing to help you—and by helping you we agree we are helping ourselves—if you operators from Ohio and Pennsylvania will lend us the same assistance in West Virginia in getting the mining price up so that competition will not prevail. When we ask that what do we find? Operators have told me in years past that they were willing to have the miners organize in Ohio, but they were not willing that their miners should

be organized in West Virginia. We find as great opposition on the part of the operators from this State who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union State. Go down there and practice what you preach in Ohio. Help us get the protection of the law in that State and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that State. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of those men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe those contracts as religiously as the miners in Ohio, Pennsylvania, Indiana or any other State."

Mr. Savage, Ohio.
p. 112, l. 41–50.
p. 113, l. 1–23.

(63) "You men are in a position to get for the product of the mines a fair profit. You are the men who make the prices, and if you do not make the prices it is not the fault of the miners. If the miners had the power to make prices on your product, I assure you Eastern Ohio would not be selling 85-cent coal. As long as you continue to do as you are, you are the people who are responsible. If you want any assistance from the miners to raise the price of coal, we are at your command any time, but we are not going to raise it by taking a reduction in wages or working for the wages we are now getting. That is our position, and I believe you men understand it. As Mr. Lewis has stated

to you, we know that selling coal at 85 cents a ton is not a very profitable business, and as long as you continue to do it you are going to be the losers. It is in your hands to remedy this condition and I hope you will do it or turn over the selling of your coal to the miners. If you do that the railroads of this country will not get 85-cent coal."

Mr. Savage, Ohio.
p. 114, l. 17-34.

(64) "We believe in doing all we can to rectify the wrongs that now exist between the different coal competing states. We believe in the operators in Virginia bringing up the standard of the miners there. If the operators would put their shoulders to the wheel and do what they could to make it possible for us to go over there and talk to them we might be able to do something with them. You may say, 'Oh, you may say we can do that now.' Are you not all members of the great political parties which control the politics of West Virginia? How many of you have appealed through the press of the country against the outrageous assaults and murders of our men? I have never seen a protest coming from you men in regard to the conduct of the operators in West Virginia when they hire men to kill our people, and where the law makers and the law executors of that State sit by and say nothing of the assaults and murders. If you men did half as much as we have done toward organizing West Virginia and making conditions better, I believe there would be a change in the coal industry of this country. But we are not going to compete the way your proposition presents itself; we are not going to compete along those lines until first you have wiped out every vestige of organization there is in this country, and then we are not going to do it. If it were done, from the ashes of the organization you destroyed, would arise another organization more compact and power-

ful that would resist any such thing as that. The law of evolution is working along social and industrial lines, and we must place ourselves in position to accept the inevitable. The miners, like all the working men of this country, through the medium of machinery increasing the productiveness of the working people, have reached the point where we produce more than the world consumes."

Mr. McCullough.
p. 118, l. 49–51.
p. 119, l. 1–27.

(65) "A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one State to another to furnish fuel for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon them burdens in the organized fields that do not exist in the unorganized fields. By reason of the fact that you cannot control in the production of this commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self-defense find it necessary, in order to carry out contracts and fulfill their obligations to those who take this commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated."

Mr. Zerbe, Ohio.
p. 122, l. 21–40.

(66) "We might argue this up one side and down another for a year and we would be no nearer a solution of this proposition. We are, when we get through, right up against the one proposition we cannot get through which has been created by the competition brought to bear against us by the operators and the miners of West Virginia in the unorganized field."

Mr. Zerbe, Ohio.
p. 123, l. 46–51.

(67) "Chairman Kolsem: The question now is on the adoption of the motion to accept the proposition of the miners. If you are ready to vote the Secretary will call the roll.

"Secretary Brooks called the roll of States. The operators of Western Pennsylvania, Ohio and Indiana, voted in the negative; the miners of Western Pennsylvania, Ohio and Indiana, voted in the affirmative.

"Chairman Kolsem declared the motion lost for want of a unanimous affirmative vote.

"Mr. Lewis: I move that the entire proposition be referred to the Joint Scale Committee.

"The motion was seconded by Mr. Schluederberg and carried by unanimous viva voce vote."

p. 125, l. 18–30.

(68) "Mr. Lewis: In order to settle one matter I would like to know whether this is to be an open session. One or two newspaper representatives have asked me. I am not sure whether our Scale Committee meetings have been open or not.

"Mr. Zerbe: I move that the Scale Committee meet in executive session. (Seconded and carried.)"

p. 127, l. 6–11.

(69) Mr. Penna, Indiana: "I am going before this meeting is through, in very many instances, to accuse the miners of a lack of integrity, of absolute dishonesty, and having made the accusation I am going to prove it, and anybody that does not like it will have to dislike it; and if I am guilty, either through misunderstanding or wilfully so, I expect the miners to put it to me just as raw as I put it to them.

"Mr. Lewis: I expect we will."

p. 134, l. 42–49.

(70) "I don't believe in that. We must make up our minds that we are all friends and that we are working together against the common enemy."

Mr. Jones, Pennsylvania.

p. 135, l. 25–27.

(71) "Let us make up our minds that our interests are mutual and are not two sided. We have got to agree here upon a price at which we can market our goods as against the other fellow. Let us feel that we are one in negotiating this wage agreement."

Mr. Jones, Pennsylvania.

p. 135, l. 31–35.

(72) "Mr. Chapman, Ohio: Mr. Chairman and Gentlemen: I have only a few words to say this morning on this mine-run proposition that has been discussed in all the conventions we have held for many years. The reasons why we oppose it have been given. I desire to state, as I did on the floor of the convention that when an investigation was held in the State of Illinois by the operators there they reported that by reason of going on the mine-run basis, their coal had deteriorated in value from 14 to 21 cents per ton. The purpose and object should be to get out of the coal that is produced the kind that will yield

the most revenue in the selling of it to the purchaser. There are districts—as the gentleman who has preceded me knows, many of them in the State of Ohio, where it would be an impossibility upon any basis of mine-run to produce that coal for the markets it has to reach. And I say as one of the representatives of the Ohio operators that under no circumstances will they consider a proposition of mine-run coal for the product of Ohio."

p. 137, l. 16–32.

(73) "Prior to 1898 Indiana was based on the Hocking Valley price, and it was assumed, whether it was true or not, that we received the equivalent of the Hocking Valley screened coal price as a mine-run price. When we came into the Chicago convention a flat rate of 49 cents for mine-run coal was made for the Indiana district. The fact was brought out that the price made for mine-run was a better proposition to the operators than the Hocking Valley price, and it was so thoroughly believed by the operators of Indiana that they persistently insisted on remaining on a flat mine-run basis. I mean by this, regardless of whether they made screened coal or mine-run coal, they paid the miners of Indiana on a flat mine-run scale, when they could have had for their screened coal the Hocking Valley price.

"Now this condition remained in Indiana for a period of two years, over the protest of the miners, and was changed in 1900 in the city of Indianapolis by the adoption of a double standard, putting a clause in the contract that provided that where coal was shipped as mine-run it should be paid for on the mine-run basis, and where it was shipped screened coal it should be paid for on the screened coal basis. Since that time the miners of Indiana have been paid on a double standard. It is a fact in a majority of the mines in Indiana today that the miners do not know whether they are going to run screened coal one hour, two

hours, all day, or half a day, or whether they are going to run mine-run. That is the situation in Indiana."

Mr. Lackey, Indiana.
p. 141, l. 14–39.

(74) "The fact is that the Indiana coal operators as an association have always stood, and are standing today, flat-footed in opposition to the mine-run system. The last time that the matter was discussed our association determined to avoid it carefully and get as far from it as we could. In Indianapolis, the time the gentleman refers to, we simply bought the settlement. Indiana had to pay the price, as she usually has had to do in those interstate meetings."

Mr. Penna, Indiana.
p. 142, l. 21–28.

(75) "Regardless of the argument presented against the mine-run system, if we were in a position to definitely state—and I admit I am not—the amount of coal that is sold mine-run and paid for on a screened-coal basis, I believe it would be astonishing to everybody here—astonishing from the large amount of coal that is sold run-of-mine and paid for on a screened-coal basis. In many places the coal is screened, weighed and run back together again. I have no knowledge of just how much coal is sold in that way."

Mr. Lewis.
p. 160, l. 9–17.

(76) "But I do desire, for the sake of correcting the records, to challenge the statement made by my friend on the other side of the house that the Indiana miners paid for the Chicago agreement. I deny, gentlemen, that the Indiana miners, or the Ohio miners, or the miners of Pennsylvania, or any other miners involved in the Chicago

agreement paid for the settlement reached at that convention."

Mr. Ratchford, Ohio.
p. 166, l. 24–30.

(77) "Mr. Ratchford, Ohio: I have stated, Mr. Chairman, that I challenge the statement made this morning by a gentleman on the other side of the house that Indiana miners paid for the Chicago agreement. That is specific, I think. The statements made on the floor of the joint convention in connection with the Chicago agreement, and its relation to certain districts or parts of districts covered by this agreement, were made by Mr. Lewis. That I will discuss, and shall be glad to discuss with Mr. Lewis at any time, but I do not believe this is the proper place to discuss it. To be specific, Mr. Lewis stated, as I believe the records will show, that the Chicago convention was a matter of sale and barter and that the eight-hour work day secured at that time did not mean a material reduction in the hours of labor to certain miners in Ohio. That is what I referred to."

p. 166, l. 41–47.
p. 167, l. 1–7.

(78) "There were premiums paid by the operators and miners in Chicago to get an agreement. I do not care what other name you give it, that is the proper name. In Chicago the miners of Illinois got an advance of 3 cents in the mining rate on the mine-run basis, while in the other districts on screened coal they got 10 cents a ton, so far as Indiana and Ohio were concerned. In the Pittsburg District they wiped out an inch and a half screen—and what else? They accepted an inch and a quarter screen, accepted the rate and wiped out the 9-cent differential that existed between the Pittsburg thin-vein and Ohio. I do not care what you call it—there were premiums paid

for certain things. In Indiana, where there was a fixed differential made for Illinois in the Danville field of 10 cents, Indiana was placed in a position, wedged in between the two districts, where they accepted a 12½-cent differential. In Indiana the miners had been forced on the mine run system, and with the prices fixed on account of the relation of Indiana to Illinois, and Ohio to Pennsylvania, it would have been a reduction to our men in that state. On the other hand, Indiana operators, had they accepted the other end of the proposition and placed all their mines on a machine mine-run system, would not have secured the same advantage the Danville District of Illinois did under the Chicago agreement.

Mr. Lewis.
p. 167, l. 24–46.

(79) "Mr. Lackey stated that Indiana paid for the settlement in Chicago. I want to deny that in as positive language as I can and say to Mr. Lackey and to other gentlemen here from Indiana that no condition was imposed upon that State, intentionally or unintentionally, that was calculated to be a detriment to it. No condition was imposed upon the Pittsburg people, although they were called upon to yield 9 cents of their wages. The miners of Ohio might say with equal force that they paid for the Chicago agreement for several months of a strike. If what Mr. Lewis says of the Massillon miners is correct, they might say they paid for it by sacrificing a half holiday. The Hocking operators refused to become a party to the Chicago agreement until some time just prior to the first of April. Upon that general principle the miners of all the districts covered by the Chicago agreement were called upon to make some sacrifice somewhere to effect that agreement. The truth of the matter is—and you must all know it—that prior to the Chicago convention conditions

in the mining districts lacked uniformity to a very great extent, and in order to effect an agreement, it goes without saying, that they all had to give up something in order to be brought together. Indiana did its share. Ohio did its share, and Pennsylvania did its share. If the miners of any of those districts refused to do for the general good that which they were asked to do, there could have been no Chicago agreement."

Mr. Ratchford, Ohio.
p. 168, l. 38–50.
p. 169, l. 1–11.

(80) "In order to fix basing prices in the different districts and establish a general scale that was uniform in its application, with the purpose in view of bringing together all of the mine workers of the different States and all the day labor in the mines we had to make concessions here and there and everywhere in order to bring about that uniformity. In the Chicago convention, although it is made the subject of criticism more or less, more was accomplished for the mine workers of these states than has been accomplished by any convention since or before. The admission was made on the floor of the convention two years ago that the only advance you received since 1903 was 12½ per cent. The Chicago convention, saying nothing of any other considerations, secured a greater increase for you, besides equalizing the size of the screens—which were different sizes, lengths and breadths—made a uniform day wage scale and established an eight hour work day. It did more, it established the greatest co-operative association perhaps of employers and employes in the world, an association that has worked successfully for a greater number of years than any other similar organization, and has been of mutual advantage to both sides. The Chicago convention secured an advance of

nearly 18 cents. I hope in your criticism of it and of the proceedings of that meeting, both here and elsewhere, you will at least be fair and represent the facts as you know them."

Mr. Ratchford, Ohio.
p. 170, l. 1–23.

(81) "When I said that the outcome of the Chicago conference was a bargain and sale I told the truth. What else was it?"

Mr. Lewis.
p. 170, l. 38, 39.

(82) "I believe the Chicago convention was a great affair, I believe it was one of the greatest economic affairs that ever transpired in this country up to this time;"

Mr. Lackey, Indiana.
p. 172, l. 15–17.

(83) "The chairman stated that the question before the house was a motion to adopt Section 1 of the miners' proposition.

"Secretary Brooks called the roll of states, both operators and miners. The representatives of the miners all voted in the affirmative, the representatives of the operators all voted in the negative and the motion was declared lost.

"Secretary Brooks read the second section of the miners' proposition as follows:

" 'An advance of ten cents per ton for pick mining and an equivalent advance for machine mining and a corresponding increase for all day work, dead work, yardage, etc.'

Mr. Feehan, Pennsylvania: "I move the adoption of the section as read.

"The motion was seconded by Mr. Greene, of Ohio.

"Secretary Brooks called the roll of States, both operators and miners. The representatives of the miners all voted in the affirmative, the representatives of the operators all voted in the negative, and the motion was declared lost."

p. 173, l. 7–24.

(84) "I think the fundamental basis on which this movement is established is to bring about as near as possible equal competitive opportunities and relations between the different districts. I cannot understand by what process of reasoning you can say in one district, or part of a district, that a certain price shall be paid for a certain class of work, and in another district, or in another portion of the same district, that a different or lower price shall be paid. I believe our movement has for its purpose that the labor cost of a ton of coal shall be about equal in the different districts."

Mr. Green, Ohio.
p. 175, l. 34–44.

(85) "I maintain that if a trimmer trims one hundred tons of coal in Eastern Ohio at a certain rate of wages, another man trimming the same amount of coal in the Pittsburg district should be paid the same rate of wages. It is a fair proposition. And the same is true in the different sub-districts within the district. I believe that from a competitive standpoint we ought to be paid, because it enables you to each be on the same footing, with competitive equality, and competitive opportunities. The labor cost for the production of a ton of coal, when a uniform rate of wage if paid, is the same to all and no man should expect any more than a square deal and an equal opportunity with another man."

Mr. Green.
p. 176, l. 27–39.

(86) "Mr. Lewis: I would like to ask a question. You desire to dispense with the labor of those so-called inefficient men, whether drivers or any other class of labor. Does that carry with it that such an individual can get employment in the mine if he desires?

"Mr. Penna: Sometimes, and sometimes not.

"Mr. Lewis: That is the point I wanted to bring out. As an organization we have not insisted on the retention of men who were inefficient and incompetent. We have asked and I might say we have insisted, that under our contract provisions, when a man is taken away from his employment because of his incompetency or inefficiency, he ought to in all fairness have a job mining coal, or loading coal, or whatever employment of that kind the operator has for him."

p. 180, l. 45, 46.
p. 181, l. 1–11.

(87) "Mr. Penna: There could not very well be any exception taken to the statement of Mr. Lewis that their association has not insisted on the retention of men because of incompetency and inefficiency in the class of work they are performing. And I do not know but that can be said truthfully of every branch of the mine workers' association, but the local officers assume to decide upon the competency and the efficiency and the management is denied the right to decide that question. And invariably when there is an attempt made to move or to change men because of their incompetency or inefficiency, or because of common, ordinary laziness, we are accused of being prompted by ulterior motives, and it means a fight in the mines, a long drawn-out squabble, investigations, meetings of committees, argument—in fact, it is easier and cheaper for a coal operator oftentimes to keep a good for nothing cuss in his employ than it is for him to tread the devious course he

is required to do to get rid of him. That is the situation, and yet the fact remains that we do not insist on retaining incompetent men. I have said to our people, and have insisted as far as I have been able to, that if a man came to build a fence for me and I had to pay for it I would decide absolutely and without interference as to his competency or as to whether I wanted to continue him to do that work. If I hired him to drive my wagon I would be the same, and if I was running a coal mine I would do the same or I would not run. The man who pays the price is the man who should be satisfied with the character of the work performed, and he alone should be permitted to decide whether or not that man is satisfactory to him in the performance of that work. If not, he should be permitted to remove him, and remove him promptly. If the coal operators were permitted to do that they would with profit, not only agree on your demands for a uniform day wage price, but they could afford to pay you more wages. That is not the case; they are not allowed to. That work is delegated to a committee and the committees are not usually, or not always at least, the most intelligent men in the mine."

p. 181, l. 12-46.

(88) Chairman Whetzel: "Are you ready to vote on the motion before the house? The motion pending is that the third section of the miners' proposition be divided. If there are no objections, we will vote on the motion to divide the proposition.

"Secretary Brooks called the roll of States. All the operators voted in the affirmative, all of the miners voted in the affirmative, and the motion to divide the third section of the miners' proposition was declared carried.

"Chairman Whetzel: The vote will now be on the first part of the proposition, 'That we demand a uniform rate

of wages for all classes of inside and outside day labor.' The Secretary will call the roll.

"Secretary Brooks called the roll of states. All the miners' representatives voted in the affirmative, all the operators' representatives voted in the negative.

"Chairman Whetzel: Lacking a unanimous vote, the proposition is lost.

"Mr. Lewis moved the adoption of the second portion of the section, 'That time and a half be paid for over-time, Sundays and legal holidays.' (Seconded.)

"Secretary Brooks called the roll of States. All the miners voted in the affirmative, all the operators voted in the negative.

"Chairman Whetzel: Lacking a unanimous vote, the motion is lost."

p. 185, l. 12–35.

(89) "There being no further discussion on the proposition, the roll of States was called by Secretary Brooks. All the miners voted in the affirmative, all the operators voted in the negative, and the motion to adopt the fourth section of the miners' proposition was declared lost for want of a unanimous vote."

Mr. Lewis.
p. 186, l. 32–36.

(90) "I think the time is coming in the development of the coal industry of this country when we will be able to agree upon a minimum basis for mining and make it a perpetual contract. That is the kind of plan I have in mind. I do not know how soon it will come. There is only one thing in the way, and that is the lack of such an organization among the operators and the miners as we ought to have to govern the industry. I think if our friends on the other side could have a national organization

and we could have a complete national organization on our side the time will come when we will establish the relative mining prices in the different districts, and we can afford to fix a minimum basis as a wage scale and make it a perpetual contract. We could go from that up, but not below it. If anybody tried to get below it we would attempt to find out who was trying to injure the trade."

Mr. Lewis.

p. 187, l. 5–19.

(91) "Secretary Brooks called the roll of States. All of the operators voted in the affirmative, all of the miners voted in the affirmative, and the motion to defer action on the fifth and sixth sections of the miners' proposition was declared carried.

p. 188, l. 22–25.

(92) "Back in about 1870 and up to about 1880 the most prominent coal field in Ohio was that known as the Mahoning Valley. The coal was mined on the run-of-mine basis. It was in the No. 1 seam. About that time the Mining Department was organized. There were a great many accidents for the amount of coal produced in the State. That field began to diminish in output and the Hocking field began to increase in output. As the Hocking field began to increase and the Mahoning Valley to go down the Tuscarawas came up and accidents began to decrease. The Mining Department took credit for better supervision and for the reduced number of accidents. In my judgment it was a matter of natural conditions. In the early days of the Hocking Valley and up to within a few years I never saw a safer seam of coal for men to work in. In the largest mine in the Mahoning Field there were men killed frequently, in fact there were more men killed than in the entire Hocking Field for years. When

the Hocking Field was at its best the Eastern Ohio Fields were not very largely developed. There were a few mines around the Wheeling District, I believe, and there were a great many accidents. They had a bad roof. As the Eastern Ohio Field increased in production accidents began to increase. After the anthracite strike a great many coal mines were opened in Ohio."

Mr. Thomas, Pennsylvania.
p. 190, l. 14–36.

(93) "If we had secured legislation that would impose hardships on the operators during a contract, it would have been different. We obtained no new legislation, however, and the operators introduced these things without our consent."

Mr. Feehan.
p. 194, l. 8–12.

(94) "The operators were in no way responsible for the changing of the explosives. They were commanded to do it by the mining department of the State of Pennsylvania."

Mr. Dempster, Pennsylvania.
p. 194, l. 19–22.

(95) "The seventh section of the miners' proposition was voted on. All the miners voted in the affirmative, all the operators voted in the negative, and the motion was declared lost.

"Secretary Brooks read Section 8 of the miners' proposition as follows:

"'There shall be no limit to the amount of deductions for the organization.'

"Mr. Bitner, Pennsylvania: I move the adoption of the section.

"The motion was seconded by Mr. Rollins, of Indiana.

"There being no discussion on the motion, Secretary Brooks called the roll of States. All the operators voted in the negative, all the miners voted in the affirmative.

"Chairman Whetzel: The proposition not receiving a unanimous vote, under the rules is declared lost.

"Secretary Brooks read the ninth section of the miners' proposition as follows:

"'That no district under the control of the United Mine Workers be permitted to enter into an agreement to reimburse the operators for any money expended for labor, directly or indirectly, wherein the law says the expense shall be borne by the operators.'

"Mr. Donovan, Pennsylvania: I move the adoption of the section.

"The motion was seconded by Mr. Laverick, Pennsylvania.

"There being no discussion on the motion, Secretary Brooks called the roll of States. All the operators voted in the negative, all the miners in the affirmative, and the motion was declared lost."

p. 196, l. 47–49.
p. 197, l. 1–25.

(96) "Mr. Lewis: In order to get this before the committee, I move that we refer the entire subject matter we have had under discussion to a sub-committee of two miners and two operators from each of the districts represented in this conference.

"The motion was seconded by Mr. Zerbe."

p. 198, l. 13–17.

(97) "Mr. Green, Ohio: I believe this motion should be amended to provide that the commissioners from each district and the International officers from our side should be made members and participate in the work of the sub-

committee. While there may be two members from each district in the sub-committee from the miners' side, I am sure we want also the International officers.

"Mr. Chapman: They have always been in the committee.

"Mr. Green: If we ask to have them in I think it is no more than right that you should have on your side such commissioners as you may designate.

"Mr. Zerbe: Change that to commissioners of parties interested.

"Mr. Chapman: If that is understood there is no necessity of an amendment.

"Mr. Green: If there are no objections the motion is not necessary.

"Chairman Whetzel: In the Joint Convention you adopted the rules that governed the Toledo meeting. In this committee you adopted the rules that governed the Joint Committee in Toledo. When we say International officials, let it be understood as it was in Toledo to include the President, Vice-President and Secretary-Treasurer.

"The motion offered by Mr. Lewis was adopted."

p. 199, l. 17–40.

(98) "The miners announced the appointment of the following members of the sub-committee: Ohio, G. W. Savage, William Green; Pennsylvania, Francis Feehan, S. A. Whetzel; Indiana bituminous, W. P. Rollins, G. W. Lackey; Indiana block coal, George Morgenthaler, J. D. Holden."

p. 200, l. 6–10.

(99) "Mr. Sullivan, Ohio: Before you put the motion, I desire to make a statement. Yesterday afternoon in discussing the question of the men who are found to be incompetent to take charge of the different parts of the

work in the mines, I stated, and so did Mr. Lewis, that we had no objection to the removal of men if they are not competent, or if their habits are such that in handling dangerous machinery they would endanger their lives or the lives of others. We would certainly not object to the removal of such men. If a driver or a day man is found not doing his duty or neglecting his duty we will not object to his removal. We followed that up with a statement that you had a right to remove such men, but we hold the right to investigate as to whether or not the removal was correct. I want to remove a wrong impression the Indiana operators may have in regard to this matter. You give us an investigation at all times in regard to those men.

"Chairman Whetzel: We will take notice of that later on.

"Mr. Sullivan: I want to have the record clear on that question.

"Mr. Lewis: Whatever I said stands on the records. I am not going to ask the operators whether or not we are to have a right to investigate. If we make a contract that contract will determine the matter."

p. 200, l. 14–36.

(100) REPORT OF SUB-SCALE COMMITTEE.

"Secretary Brooks, for the committee, reported as follows:

"To the Scale Committee of Western Pennsylvania, Ohio and Indiana, Miners and Operators:

"Gentlemen: Your sub-scale committee, appointed by you Saturday, March 12, 1910, met at the Assembly Room of the Hotel Sinton on Monday, March 14, at 2 o'clock p. m., and organized by electing

Mr. S. A. McCullough, Chairman.

Mr. F. S. Brooks, Secretary.

Mr. Edwin Perry, Assistant Secretary.

"After this and further sessions through the mornings and afternoons of Tuesday and Wednesday, March 15 and 16, they now report that they have been unable to agree.

S. A. McCullough, Chairman.
F. S. Brooks, Secretary.
Edwin Perry, Assistant Secretary."

p. 201, l. 9–25.

(101) "Mr. Lewis: It is quite evident the sub-committee was not able to agree on anything. I think we have about reached the period in our deliberations now where we will probably have to report to the Interstate Joint Convention, unless it is the desire of the parties to take up for discussion the questions we have had before us. I realize that we have discussed practically every phase of the situation and have reached that point, according to the report of the sub-committee, where our business is practically at an end. I realize the seriousness of the situation. I realize what it means to the mining industry of this country. I appreciate the fact that if we go away from here without an agreement it means industrial war, with all the attendant hardships that naturally follow in the wake of such a condition. I think for that reason, even at this time, we can afford to make haste slowly. Unless we are going to take up again the discussion of the matter before we decide to adjourn and report to the Interstate Convention we desire to report to our own convention. The operators may wish to do the same. However, I am not speaking for the operators, but for our own people. There is nothing left for us to do but report the action of this Joint Committee to the Joint Convention. That is the body that created this committee, but before we report to them the miners would like to report to their own convention. We will then be able to join you in reporting to the Interstate Joint Convention."

p. 201, l. 31–43.
p. 202, l. 1–11.

(102) "Mr. Zerbe: I want it understood that this is not an Interstate Joint Convention; it is a Tri-State Conference. The Interstate Joint Convention is a thing of the past. We have not recognized it during the present meeting.

"Mr. Lewis: I do not want to split hairs, but in discussing this matter I want to use any language I wish to express my ideas. This is an Inter-State meeting. If you want to call it a Tri-State meeting it is all right; I have no objections, but I fail to see where there is any difference in the position taken by Mr. Zerbe and myself, but out of deference to his wishes we will call it the Tri-State Convention after this."

p. 202, l. 28–38.

(103) "One thing is certain, and that is that we would like to have an agreement; that we would like to avoid a suspension of operations in the mining industry. We are going to do everything in our power to avert such a contingency; but if we are unable to reach conclusions the natural outcome will be that you gentlemen will endeavor to fix the responsibility upon us and our people will endeavor to fix the responsibility upon you."

Mr. Lewis.
p. 204, l. 18–25.

(104) "I do know as a general proposition that men will buy where they can buy the cheapest, counting quality and quantity; and when it comes to coal it does not matter where it is mined, it does not matter by whom it is mined, the consumers of coal in this country are after cheap coal and they will buy it where they can get it for the least

possible price. They always have done that and they always will.

"I do not wish to refer to anything that was said in the sub-committee; but you gentlemen know that the difference between the cost of production in the union fields and the non-union fields is not what is paid to labor alone. After you have paid the laboring man in the union field more for mining coal and the day man more for doing their work, there is an additional cost in the union fields that they do not have in the non-union fields. There is a cost of production, and, whether you account for it or not, it is there and it must be charged up to the fact of the existence of the union and the union's meddlesomeness and unwarranted interference with the operation of the property. That is not a small item. I say to you people here now that the United Mine Workers, as we meet you here face to face as men doing business, are not the United Mine Workers we meet at home around the mines. You are two separate and distinct organizations. Here we meet you as men who profess to be fair and who try to be fair; but when we go home and undertake to operate the mines with union labor we meet with the criminally inclined, with the men who have no respect for law nor order nor the rights of others, who have no respect for anything but their own desires, with or without reason. And we meet with district officers who are depending upon that kind of votes to perpetuate and continue them in office, and they are ready to wink at the dishonorable conduct of the men, if not openly and squarely endorse it. In some instances they do that. Ten cents a ton advance for mining in a non-union field would not mean the same as it would in the union fields. Ten cents a ton advance in a union field in excess of a non-union field, with an additional cost for other labor around the mines, only represents a part of the in-

eased cost of production of coal in a union field as against non-union field. I don't know how many of you know ese things, but I know that some of you know them."

Mr. Penna, Indiana.
p. 207, l. 21–51.
p. 208, l. 1–8.

(105) "I don't know whether this institution is going live or die. I have loved it and have worked for it. iave worked for it as faithfully and arduously as anybody uld; but if in this institution we have reached a point iere we are invited to go up against ultimatums, where are met with propositions dubbed conservative—and ou gentlemen the judges absolutely as to whether or not ey are conservative—if we are to be told that things e reasonable, and you are to be the absolute judges of e correctness of that statement, then this institution ght to die. If it has reached that state it has ceased to useful and thereby forfeited its right to life."

Mr. Penna, Indiana.
p. 208, l. 24–34.

(106) "The very inception of this movement was a mpetitive basis, competitive abilities, competitive rela-nships—these are the very fundamental principles on ich this thing was organized many years ago and on ich it was continued. All we say now is, 'Put us in a sition where we can market our coal in competition with r mutual enemies and with each other and we ask no re.' Your position is, 'Competition or no competition, want an advance, and we want it because we are big ough to take it.'

'Now I am not going to express any regret or sorrow the breaking up of this institution. If it has to break on this proposition, the breaking up ought to be a year ubilee, because we cannot be any worse off and we may

possibly be better. At least we will get to squirming around and try to get something else as a substitute. We cannot find anything worse, and anything we find will have to be as good, if not a little bit better. If the movement has outlived its usefulness it ought to die. It will die, and the only sorrow I shall feel in connection with it will be the sorrow I would naturally feel at the passing of an old, old friend who could not, in the ordinary course of things, expect anything else and who, in the course of the law of nature, must die. This will pass the same way if it has to pass."

Mr. Penna, Indiana.
p. 210, l. 5–26.

(107) "Secretary Perry: I want to answer a few of the statements made. I am not ready to say that this joint movement has outlived its usefulness. For a number of years I have maintained the belief that it was founded as a result of linking together modern thought and advanced ideas to add stability to the mining industry. I believe it has, and I believe it will continue, if these latent forces exercise their function, to be a power for good in the future."

p. 211, l. 21–28.

(108) "The price paid for mining in West Virginia is not the only cost of production. Those men have bills to pay that you do not, and you know it. It is not necessary that I should mention what they are. As a result of the organization trying to organize that field there is an added cost to the production of those operators. In my judgment, as far as the unorganized fields are concerned, if the miners are paid an advance in the organized fields I do not believe it will be possible for the mines in West Virginia to operate and pay the present rate of wages."

Secretary Perry.
p. 211, l. 38-46.

(109) "The miner is not consulted about what coal is going to be sold for, and if we undertook to say to our friends on the other side what they should sell their coal for, if we were not told it in plain language, the intimation would be strongly conveyed to us that it was none of our business—and very properly so. On the other hand, we are unwilling for any operators to attempt to invade markets, when it comes to a standpoint of competition, and reduce the selling price of coal in order that that market may be enlarged, and then come back to us and tell us we must foot the bill. We are not going to do it.

"It is recognized that we have some right to help fix the standard of payment for our labor, and when the gentlemen on the other side agree with us on that standard, or fail to agree and we fix the standard ourselves, in order not to go out of business it becomes necessary for them to be a little more careful in regulating the selling price of coal."

Mr. Lewis.
p. 215, l. 12-28.

(110) "The extra cost in producing a ton of coal outside of contract provisions referred to in this meeting is recognized by myself as one of the representatives of the United Mine Workers. If a mine stops one single day when there is work to be done, contracts to be filled and cars on the sidings to be loaded, if everything is prepared to go ahead with the day's work, there is an unnecessary added cost in producing coal under such conditions."

Mr. Lewis.
p. 216, l. 3-9.

(111) "You have too much politics in the organization in the United Mine Workers of America. You are not

here in good faith; you are not here asking it because you need the advance in pay; you are asking it because some one committed himself by saying the miners would get it. We stand here in good faith and say that we have raised your pay from the time we started negotiating with you to the present, and now we have got to that level of the value of your labor where we cannot go any further and compete with those who do not pay the same."

Mr. Zerbe, Ohio.
p. 221, l. 28–36.

(112) "I recognize that there is competition from West Virginia; I recognize also that there has been keener competition between the operators making contracts with us than between them and the operators of West Virginia."

Mr. Lewis.
p. 224, l. 25–28.

(113) Mr. Feehan: "I know the miners I represent, and if they are going to starve, they will not starve in the mines. If they take my advice, they will get the advance they are asking for in these demands or the mines will be idle. It will be unprofitable for us to work, and we will find out whether or not it is unprofitable for the operators to operate under the figures we state.

"Mr. Dempster: I do not understand fully what you said about the profits and the stoppage of the mines.

"Mr. Feehan: I said if the miners take my advice they will get the advance they are asking for or the mines will be idle. It will be unprofitable for us to work, and we will find out whether or not it is unprofitable for the operators to operate at the figures we stated."

p. 226, l. 10–23.

(114) "You are going to give us an advance and you are going to give us better conditions because you can afford

to do so. You are going to get greater prices for your coal, and there is not going to be a suspension. If you do not sign an agreement here, you will realize before the first of April that it will be cheaper to pay the advance."

Mr. Feehan.
p. 227, l. 48.
p. 228, l. 1–5.

(115) "Mr. Dempster, Pennsylvania: Do you mean that you will take the position of laying down an ultimatum for us that we must sign a scale for run-of-mine, an advance in the price, and pledge ourselves to carry out certain conditions that may be included in that scale?

"Mr. Feehan: Those are the demands of the miners of our district.

"Mr. Dempster: Is that your ultimatum?

"Mr. Feehan: So far as I am concerned the ultimatum is the demands of the miners.

"Mr. Dempster: That is the ultimatum—either swallow that or choke?

"Mr. Feehan: So far as I am concerned."

p. 228, l. 14–26.

(116) "Mr. Zerbe: I did not state that any information was derived from any of the United Mine Workers when I spoke of politics in your organization. I am pleased to say I never heard a United Mine Worker express himself in that way yet; they have been always loyal to the organization. An advance was given you at one time in Indianapolis because one gentleman, I have good reason to believe, hoped to be made a United States Senator."

p. 230, l. 3–9.

(117) "Mr. Chapman: I have very few statements to make now; but I want to correct one statement made by Brother Lewis when he said there had been no serious com-

plaint from any part of Ohio concerning competition with West Virginia except from Eastern Ohio. If you will read the records you will find the statement I made was that the business of the Hocking Valley and other districts of Ohio was being absorbed and taken from every part of the territory in which Ohio coal had been sold, and I cited by name many sections of the country ranging from the Ohio River to the lakes where the business was being taken by West Virginia coal. That is the statement I made on the floor of the Joint Convention, in the Scale Committee and everywhere else."

p. 230, l. 20–31.

(118) "Secretary Brooks read section 8 of the miners' proposition, as follows:

"'There shall be no limit to the amount of deductions for the organization.'

"Mr. Bitner, Pennsylvania: I move the adoption of the section. (Seconded by Mr. Halapy.)

"Mr. Feehan: I believe this is a question that has not been given very much consideration. There have been practically no arguments on their demand for an unlimited deduction for the organization, and I want to say for the miners of the Pittsburg District that we believe we should regulate the amount of deductions, either for the organization or for other purposes, charitable or otherwise. This matter should be left exclusively with us. In view of the fact that it is a part of the agreements in other States that are represented here, we believe it should become part of the Interstate Agreement. I hope to see this part of the miners' demands agreed to.

"Secretary Brooks called the roll of States on the motion to adopt Section 8. All the miners voted in the affirma-

tive, all the operators voted in the negative, and the motion was declared lost for want of a unanimous vote."

p. 235, l. 6–26.

(119) "During our deliberations on the question of conceding to the mine workers an advance in wages the operators' strongest argument was their inability to pay an advance because of the alleged competition from certain sections of West Virginia. Our answer to that argument has been that it was not competition from West Virginia that caused the low selling price of coal in the districts represented in this meeting. Our arguments and our statements have been that because of the competition among the gentlemen who are in this convention the selling price of coal is as low as they claim. We have challenged the operators to refute that statement, and up to this time they have not been able to successfully do so. We claim, Mr. Chairman, that we are on the eve—no, we are right in the midst—of the beginning of one of the most prosperous industrial periods this country has experienced in the last twenty-five or thirty years. We claim that the operators will share in this era of prosperity; we claim that every manufacturer in this country of ours will do likewise; we claim—and there is every evidence to support our proposition—that the railroad companies controlling the transportation systems, the men who purchase the largest part of the commodity we produce, will share likewise in this prosperity that now is here and that will grow brighter and better for the next few years. We claim that because of these conditions we, as mine workers, must share in these improved conditions, and we are unwilling to renew a wage contract that will not carry with it an advance in our wages. Our friends on the other side of this proposition have been compelled to acknowledge

the abnormal increase in the cost of living. There is no disputing the fact that our men, as far as their earning power is concerned, coupled with the purchasing power of the results of their labor, are not as well off today as they were ten years ago, or at any time between that period and the present.

"We have weighed well the consequence of failure to reach an agreement in this convention. We know what a suspension of work means to us, and we know what it means to the mining industry of this country. We know what inconvenience may result to all other branches of industry; we fully realize that we must discommode the American people. We have weighed all phases of the question carefully, and, having done so, we have made up our minds that any contract fixing the wages and governing our employment must carry with it an advance. (Applause.)"

Mr. Lewis.
p. 240, l. 29–49.
p. 241, l. 1–21.

(120) "We are entitled to the first consideration in these matters, and other people, outside of the mine workers, and the mine owners, are entitled to second consideration. I know that in making that declaration it may be hurled across the country that the mine workers are selfish men; that they are not mindful for the interest of other people. We have to consider that phase of the situation and count the cost in the event we are compelled to resort to a suspension of work in order that we can secure an advance in wages and meet our honest obligations."

Mr. Lewis.
p. 241, l. 44–51.
p. 242, l. 1, 2.

(121) "Mr. Lewis says that the present condition of the industry is due to unwise competition. The Government of the United States and the Government of the State of Ohio says that we must compete. There are probing investigations all over the United States today trying to find out whether or not there are combinations in restraint of trade, whether there are combinations being formed for the purpose of getting high prices. Do you think that in the face of that the operators sitting on this side of the house can in any manner or in any form get together and say, 'Our price is so and so'? I am free to admit that if it were not for this condition, and if the law of the land permitted it, if there were no restrictions, no complications, we might get together and fix the price of coal."

Mr. Maurer, Ohio.
p. 243, l. 5–17.

(122) "Every miner in the Hocking Valley knows that a few years ago your products went on the Great Lakes to supply the domestic markets of the great Northwest. The docks were filled with it. The homes and the business places of the Northwest were supplied with it. Who supplies them now? The splint coals of West Virginia. These coals are mined so cheap that Hocking coal cannot touch them. Is that competition? Tell me, Mr. Lewis, are the operators on this side of the house doing nothing to meet these conditions? They have invested millions in the Northwest in docks so that our coal can be placed there, so that we can take care of that market. People sitting on this side of the house, through their industrial efforts, have induced the great railroads of the Northwest to handle their coal and buy it for steam purposes. I went to the mines with one of the purchasing agents of one of those roads, Mr. McDonald. I went there with him to

demonstrate the value of our coal, and we supplied a million and a half tons of that coal to the Northwest for that trade. For the past two years, however, in order to keep those docks and protect our interests we sold that coal at 80 cents a ton to meet the competition of West Virginia. Is that competition? Every dock owner on this side of the house, were not his mining properties of more value than the docks, would have put Virginia coal in there because it was cheaper; they would not have put a pound of Ohio coal there. They have done their share to protect the industry.

"Have we no markets left that can be protected? Go to the city of Columbus, right in the heart of the Hocking District, and how much Hocking coal do you find there? Go into Marion, go into the little town of Lima, Ohio, and you will find a 100,000 tons of West Virginia coal supplying a contract there. Go into Toledo and what do you find? There was one contract of 60,000 that I went after myself, and if I could have made a price of 75 cents to meet the competition I could have had the business. And your President dares to tell me there is no competition from West Virginia! I know what I am talking about. I know what we sold coal for, and I know that every ton of coal we sold to meet those market conditions was sold at an absolute loss."

Mr. Maurer, Ohio.
p. 244, l. 10–46.

(123) "Am I fair? Gentlemen, there may be States in the Southwest, there may be other States and districts that are able to pay an advance; but do not crush this State between the upper and the nether millstone of high wages on the one side and non-union competition on the other."

Mr. Maurer, Ohio.
p. 245, l. 16–20.

(124) "I do say, however, that there is no law in this country to compel you to sell your coal or to give it away. There is no law in the United States that will compel us to labor if we don't want to."

Mr. Lewis.
p. 246, l. 35–38.

(125) "I do not propose to attempt to defend the non-union fields of West Virginia. I know, as do the other miners on this side, that the non-union product of West Virginia is a serious proposition. As evidence that we recognize that fact, out of the meager earnings of the men on this side we have contributed month after month and year after year to try to organize that field and bring them up to a competitive basis with our friends on this side."

Mr. Green, Ohio.
p. 251, l. 39–45.

(126) "Unfortunately we do not regulate the selling end of it. We have nothing to do except with the producing end of it."

Mr. Feehan, Pennsylvania.
p. 256, l. 32, 33.

(127) "I am not talking to the great American public, and I don't want to. I know what the American public will do for you and for this side of the house. The American public will get its fuel where it can get it cheapest, and the fact that your children are crying for bread will not influence the purchase of a single ton of coal if the American public can purchase the same amount of coal for five cents less. The American public will buy coal from the gentlemen on this side just as long as they can sell it a little cheaper than someone else, and they will pat them on the back while they do it; but when the other fellow comes

along and offers the same coal for a fraction of a cent less, regardless of the location of the market, regardless of wages or anything else, they will buy it from him. I admit no responsibility to anybody anywhere except from that side of the house to this, and from this side to that."

Mr. Penna, Indiana.
p. 259, l. 18–32.

(128) "The production of coal in itself is not a peculiar thing to those who know how to produce it. Marketing coal is not in itself a mysterious proposition. To secure a fair price when selling coal is not a difficult thing when those who have charge of fixing the selling price will endeavor to get together for that purpose."

Mr. Lewis.
p. 260, l. 12–16.

(129) "I pause, however, long enough to inquire, 'What is the use?' It is true that in every joint convention I have ever attended—and I believe that I have attended all of them that have been held—the miners formulated their demands, then came in and presented them; the operators formulated other and opposite demands sometimes and presented them; but in the miners' demands were no ultimatums and in the operators' demands were no ultimatums. Throughout the entire negotiations there was a position on both sides of flexibility—for want of a better term. If I could find a better term I would use it. Even my friend Lewis in attempting to refute my statement has said, and he has done persistently, that the contract must carry with it an advance in wages. Heretofore I have never seen the miners come into a joint convention in such a position and assume such an attitude."

Mr. Penna.
p. 262, l. 6–21.

(130) "What is the matter that we haven't the opportunity to work? Men who are producing the same commodity you are, cause your lack of opportunity to work."

Mr. Chapman.
p. 267, l. 44–46.

(131) "Isn't it time, gentlemen, that the industry in Ohio and in other States that are unionized should be protected? With more than half the entire product of the country produced by non-union men, if we are to protect and perpetuate our industry in Indiana, Ohio and Western Pennsylvania, we should call a halt. Do you want to destroy the industry in Ohio that in the past has been equal in value to all the wheat produced within the State? If you continue your demands you will bring that result to the industry."

Mr. Chapman.
p. 268, l. 11–19.

(132) "Mr. Chapman, Ohio: I ask by what authority any gentleman has the right to offer upon the part of Ohio a proposition for an advance of 5 cents a ton, except he be an Ohio man?

"Mr. Lewis: We have made contracts in the past for Ohio, even when the Ohio operators were not present. We have made agreements after the block coal operators of Indiana had taken part in the deliberations and withdrawn. We have agreed on the terms of a contract, and it was up to the miners then to see that it was carried into effect. Is there any motion before the house?"

p. 272, l. 3–12.

(133) "Mr. Lewis: In moving the adoption of the report of the committee I recognize that it brings this conference face to face with a crisis in the mining industry of our country. I recognize that the adoption of this motion

may carry with it a suspension of work in the mines of this country from one end to the other. The adoption of this motion, unless there is some method found to negotiate the provisions of a contract that may be reasonably satisfactory to the miners and operators, will carry with it the withdrawal of every proposition that has been under consideration, so far as the mine workers are concerned. It may mean the formulation by the convention of the United Mine Workers of a policy that will mean industrial war, with all the attendant hardships that are incident to such a condition in our mining affairs. I recognize that there are some men in the mining industry on the mine owners' side who may temporarily benefit by reason of a suspension of work. I know that there are men in the mining industry, as there are in Wall Street, New York, who are gambling in a commodity that is so important in the life of the industries of this country. I have every reason to believe there are some mine owners who have stocked a certain amount of coal contingent on being able to earn a large profit as a result of a suspension of operations. I recognize also the possibility of some of those men doing everything they can in their power, directly and indirectly, to force a suspension of the operation of the mines. I recognize in addition to that—and I want to state the position of the miners plainly and positively—that it has been the hope, the desire, the ambition and the work of some operators to prevent a settlement, with the expectation that the mine workers of this country would tie themselves up with a policy that everyone would have to sign a contract before anyone would be permitted to sign.

"I have said before, and I repeat now, that those operators can eliminate from their minds any such delusions as that, if they now possess them. I want also to emphasize the fact that in the event of these three States adjourning

this Joint Tri-State Conference without an agreement, it will not prevent the miners' representatives from inviting the representatives of the operators of a less number of states or a less number of districts than are here represented to come into a joint meeting for the purpose of endeavoring to negotiate the terms of a wage contract. And if we, as miners, and the operators of some districts are able to negotiate the terms of an agreement that will be reasonably satisfactory to the miners and the operators who may become parties to such an agreement. I want to emphasize another fact, and that is that the operators who may retire from this meeting and take no part at this time in negotiating a wage contract cannot expect to have the assurance that they will be able to negotiate a contract on the same basis as operators who may sign the agreement in this city before we leave. In other words, operators who retire from the movement do it of their own accord, accepting with it all the responsibilities, and must if they engage in a struggle, be governed by the conditions of that contest. If they are successful in an inevitable contest that will take place, I am willing to admit that they will fix the terms of any settlement that may be agreed upon between them and their employes. But if the mine workers are successful in that contest, then I want to say now, in order that our position may be clearly understood, that we will dictate the terms upon which any settlement is made with us. We want this understood at this time, in order that the people of this country will know our position as mine workers."

p. 285, l. 6–49.
p. 286, l. 1–17.

(134) "It must be borne in mind also that the mining industry of the country is depending upon the outcome of he negotiations in this city. It must be understood—

and it is known to the operators, whether they will admit it or not—that the operators of the outlying districts who are not represented in this conference will pay such an advance in wages as may be agreed upon by the operators and the miners of this Joint Convention. The operators who will cause the adjournment of this joint meeting are assuming more than the responsibility of causing a disagreement in this instance. They are assuming the responsibility of a possible suspension of mining operations from one end of the country to the other, and they will not be permitted to shirk that responsibility so far as we are concerned."

Mr. Lewis.
p. 286, l. 29–42.

(135) "The unfortunate situation is this—and that is why an inter-state or a tri-state agreement sometimes works a hardship upon both parties—but the situation is that upon the wage scale adopted here the whole bituminous fields of the country base their wage scale; and whether the miners of this particular field or this particular State are entitled to an increase or not, if they fail to get the increase then that result follows all over the country."

Mr. Maurer.
p. 296, l. 39–46.

(136) "Turn the Ohio operators and miners loose from this convention, say that you will not handicap them."

Mr. Maurer.
p. 298, l. 15, 16.

(137) "There are but four more working days left, and as one I do not want to go up to the ragged edge of the expiration of our contract, because if we are going to do that by preliminary, or a continuance of negotiations, then as a representative of the miners we will be required

to formulate a circular notifying our entire membership that if they do not get word to the contrary before the end of the month there will be a suspension of work."

Mr. Lewis.
p. 300, l. 11–18.

(138) "If this partnership continues there must eventually be a time when we must either adopt some fair method or we must part company."

Mr. Maurer.
p. 304, l. 2–5.

(139) "Mr. Lewis: I do not know whether I have made our position clear. I have tried to. We have reached the point now where we are going to waste no more time. I do not want to be understood as saying we have wasted any up to this time, but our people think we have. I recognize that we have been unable to reach an agreement up to this time. It seems to be absolutely hopeless for us to reach an agreement here, from the statement made by one of the gentlemen on the other side to me a moment ago. I want to make it clear now that if we can adjourn this joint conference of the three districts we still have left an opportunity to see whether or not we can negotiate a contract that will be reasonably satisfactory to all parties concerned. And when this convention adjourns—and it is going to adjourn quite soon— we are going to ask all the operators of Indiana and Western Pennsylvania to remain. We will also ask all the operators of Ohio to remain who will do so with the distinct understanding that any agreement that will be finally negotiated will carry with it an advance in wages. We may just as well talk out in the open. I have been trying to do it all the time. I would rather that the operators and the miners of the three States would agree. If there is the least hope that by the representatives of the three States going into a scale

committee, or even if there is the least hope of their agreeing here, I would favor such a procedure. There is a limit to how long we can stay here, because there are only four days left in this month, and if our men suspend work on the first day of April—and that is what they will do if there is no agreement—then the time would be passed for talking about negotiating, especially with the mines in operation, for they will then be idle. I have always been opposed to negotiating contracts or settling disputes while the mines are idle. Our friends from Ohio say, 'Let us go out of the conference.' While I am going to say it as kindly as possible—and I dislike very much to say it at all—there is nothing to prevent the operators who are unwilling to negotiate a contract with an advance in wages from retiring from the meeting. However, it is preferable to move an adjournment of this Tri-State Convention in order to see whether anybody else wants to make an effort to negotiate a contract.

"We are not going to precipitate a suspension of work or a strike without exhausting all reasonable efforts at our command. We are unwilling to go into a scale committee meeting for the purpose of prolonging discussion, and I might say that we will not do it. This thing must be settled one way or the other, and that very soon. The limitation of time itself will settle the question. Much as I would like to spend to-morrow as other people will spend it, we are going to occupy our time tonight and tomorrow in outlining our plan completely to meet any emergency that may develop in the mining industry of this country on and after April 1. We are going to be ready to negotiate a wage contract, or, if compelled to, we are going to be ready to the best we can to defend our rights as wage earners to sell our labor at the best possible price in order to get sufficient to meet our obligations and take care of

our families as American families ought to be taken care of."

p. 310, l. 8–48.
p. 311, l. 1–12.

(140) "I concede to you gentlemen, the same rights that I claim for myself. I have no right to say to you, 'You shall work at less wages than you want to,' you have a right to quit any time you desire, and we have a right to say that we will not operate our properties if we do not want to. We have a right to say further that if we find men who have heretofore been in our employ who are willing to work in our properties at the wages we can afford to pay, if they say they can make a good living at those wages and that their earnings are sufficient to support themselves and their families under the laws of this country we have a right to employ them and they have a right to work for us.

"I hope that your President, representing your body of men, not only here but in various other fields of this country that he says are depending upon whatever adjustment may be made here to fix their scale of wages, will present for our consideration a clean-cut proposition covering all the points at issue between us."

Mr. Chapman, Ohio.
p. 312, l. 48–51.
p. 313, l. 1–13.

(141) "We have been at this work now since January. We are tired, just as tired as you gentlemen are, and the only expression we have been able to get from you gentlemen is, 'agree to an advance in wages, and we are going home without strings to us to increase that advance twofold if we can.' We know what it means! We are not going to agree to an advance in the mining rate and then take the chance of going back to our respective States and have it

duplicated, or have to go into the same industrial war we would have to go into if we failed to agree here. We would just as soon fight, if fight we must, as the result of a disagreement here as to fight for a disagreement in our own respective districts. It is war all the same, and there is not any more hell in it if it is inaugurated in the districts than if it is inaugurated here."

Mr. Penna.
p. 317, l. 17–31.

(142) "This movement cannot continue if we pursue the kind of policy I think I have observed here, that of seeking to take advantage, that desire to gamble by making the rules and playing the game."

Mr. Penna.
p. 318, l. 38–40.

(143) "I fail to see where there is any necessity of prolonging the sessions after what has been said by the operators this morning. When I say a thing myself I mean what I say and am willing to support that position to the limit. I want to say now that whatever policy is outlined by the miners in separate convention, that policy will be carried into effect so far as I am concerned until victory is perched upon the banner of the United Mine Workers, or until we are completely routed from one end of this country to the other. I want to say that under like circumstances, if it shall fall to the lot of the miners to be defeated, then I shall recognize the right—because I shall be compelled to—of the operators to name the terms under which we will be permitted to labor. On the other hand, if we are successful everything within the power of human agency will be done to make this impending conflict a success.

"Then as the victors we will say to those on the other side that we will dictate the terms upon which we will be employed, or upon which our labor will be sold to those who operate and manage the mines of this country."

Mr. Lewis.
p. 356, l. 44–49.
p. 357, l. 1–13.

(144) "CHECK OFF.

"17. Operators will make collection for the miners dues of 50 cents per month, with an addition to this of one-half of 1 per cent of the gross earnings, which shall be collected when the miners so request. Special assessments for the National Body to be deducted as requested by the miners. Initiation fees to be taken off, but not to exceed one dollar per man in any one pay. This to apply to employes inside the mine only.

"Notice of such collection to be given at the mine on the first and sixteenth day of each month for the succeeding pay.

"Collections for the Union shall follow checkweighman, accident and death benefits, rent and smithing."

p. 374, l. 1–12.

| TWENTY YEARS RECORD OF HOCKING VALLEY MINING. | | |

(146) "PICK MINING.

"Screened lump, per ton.....$0.95
Run of Mine, five-sevenths, lump price, per ton.. 0.6785"

DETAILED MINING SCALE FOR HOCKING VALLEY.

[Sub-District 1 of District 6.]

Effective from April 1, 1910, to March 31, 1912.

p. 376, l. 13–15.

(147) "Fourth.—That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time."

p. 377, l. 38–45.

RULES AND CONDITIONS.

(148) "Whenever the provisions of this contract in regard to clean coal are not observed the operator has the right to close down the mine until the miners will observe the contract to produce clean coal."

p. 378, l. 37–40.

6. CLEAN COAL.

(149) "19. DAY LABOR ON IDLE DAYS.

"When necessary, day men shall work on idle days, or, in cases of emergency, overtime; but such work shall be distributed as equally as possible among employes. The operators reserve the right to work skilled labor upon days when mine is idle, or, in cases of emergency, extra shift."

p. 381, l. 22–27.

(150) "22. WAITING FOR CARS.

"Where cars are promised and are on the way between the yards and mine at starting time in the morning, the men shall wait up to and not exceeding thirty minutes; provided, however, that where satisfactory local arrangements exist for waiting for cars the same shall remain in force and be observed."

p. 381, l. 39–44.

(151) "27. MINE IDLE ON ACCOUNT OF IDLE MEN.

"If four men are out of cutting or drilling at work time in the morning and, upon investigation by mine boss and committee, it is found to be the fault of the company, the mine shall be laid idle the next day at the discretion of the committee. But this shall not prevent the company's furnishing employment to the men so idle, in preference to the mine's being rendered idle. But in no event shall a breakdown or unavoidable accident be considered the fault of the company."

p. 382, l. 20–28.

(152) "31. BOYS.

"All things being equal, sons of members of the United Mine Workers of America, when becoming of proper age, shall be allowed the preference of going into the mines."

p. 383, l. 42–45.

(153) "33. ENGINEERS AND FIREMEN.

"In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep mines in shape, shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or

supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 384, l. 12–24.

(154) "CHECK OFF.

"The system of checking off for the United Mine Workers' organization remains in force and must be observed; the same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization."

p. 384, l. 25–30.

(155) "All controversies arising under the terms of this agreement shall be taken up for adjustment as herein provided, without delay, and in case of a man being discharged or suspended, he shall have a hearing within three days from date of his discharge."

p. 386, l. 19–22.

DETAILED MINING SCALE FOR THE COALTON AND WELLSTON FIELD.

From April 1, 1910, to March 31, 1912.

GENERAL RULES.

(156) "Rule 11. The system of checking off for the United Mine Workers' organization remains in force, and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' Organization."

p. 388, l. 43–47.

(157) "Rule 15. That when the men go into the mine in the morning, they shall be entitled to two hours' pay,

whether or not the mine works the full two hours; but after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof."

p. 389, l. 20–24.

(158) "Rule 27. It is understood and agreed that when a miner receives a car from the driver in time to load before time for quitting work, that the miner is supposed to load same, provided he has coal enough mined to do so. If the car should be derailed by complying with the above the company shall take charge of it."

p. 390, l. 44–48.

(159) "Rule 33. In case of a local or general suspension of mining, either at the expiration of this contract or otherwise, the men necessary to keep the mines in shape shall not suspend work, but shall, when mining is suspended, fully protect and keep in repair all of the company's property under their care; but it is understood and agreed that the operators will not ask them to hoist any coal for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 391, l. 18–26.

(160) "Rule 7. The system of checking off for the United Mine Workers' organization remains in force and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization."

p. 394, l. 30–34.

SUB-DISTRICT NO. 2 OF DISTRICT NO. 6, OHIO.

GENERAL RULES.

Rules to govern mining in the Pomeroy District from April 1, 1910, to March 31, 1912.

(161) "Rule 10. That when the men go into the mine in the morning, they shall be entitled to two hours' pay, whether or not the mine works two full hours, but after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof."

p. 395, l. 3–7.

(162) "Rule 19. It is understood and agreed when the miner receives a car from the driver in time to load before time for quitting work, that the miner must load same, provided he has coal enough to do so. If the car should be derailed by complying with the above the company shall take charge of it."

p. 396, l. 8–12.

(163) "Rule 24. In case of local or general suspension of mining, either at the expiration of the contract or otherwise, the men necessary to keep the mine in shape shall not suspend work, but shall, when mining is suspended, fully protect and keep in repair all the company's property under their care, but it is understood and agreed that the operators will not ask them to hoist any coal for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 396, l. 34–42.

(164) "Rule 29. Two men shall have two working places. When the company fails to provide two working places for two men, they shall not employ more men until such time as each two men shall have two places."

p. 397, l. 23–26.

(165) "Where there are four men out of cutting or drilling, working after the same machine or drill, when

work is commenced in the morning, and the same is not caused by accident, the mine shall remain idle that day; but in no case shall the mine be stopped before the matter is brought to the attention of the mine boss and mine committee, and only on their order."

p. 401, l. 42–47.

Massillon Joint Agreement.

Detailed mining, day labor and dead work scale agreed to by and between the Joint Committee of Miners and Operators of Sub-District No. 3 (Massillon) of District No. 6, U. M. W. of A., at Massillon, Ohio, June 15, 1910, effective from April 1, 1910, to April 1, 1912.

PUNCHING MACHINE.

(166) "When a miner is called upon to do company work in the mines, he shall receive scale rate of wages. When called outside, he shall receive inside day wages; but in no case shall he be compelled to leave his place of work against his will."

p. 403, l. 6–9.

SUPPLIES.

(167) "That in case sufficient cars are above the tipple at starting time to last until such time as others that are promised by the company shall arrive, then in that case men shall go down at starting time. If, after above cars are loaded, by any accident promised cars have not arrived and are not in view from the mine, then the men shall go home. In case no cars are at mine at starting time, but are promised and are on the way between yards and mine, men shall wait one-half hour for cars to come."

p. 403, l. 10–17.

SUPPLIES.

(168) "In case of a disagreement on the scale or any portion thereof at any time hereafter, or of any local difficulties during the scale year, and after the expiration of the scale term until a new scale is agreed upon, the engineers, firemen, pump tenders and as many miners as may be required to keep the boilers supplied with fuel, shall be required to remain at their posts for the purpose of keeping the mines free from water, and the engineers shall hoist such coal, men, mules and material as may be necessary for the protection of the same and for supplying the boilers with fuel. But in no case shall the engineers be required to hoist coal for sale or shipment while such disagreement is pending. The rates to be paid for such work to be those in effect at the time of suspension and then subject to any subsequent settlement."

p. 404, l. 21–34.

SUPPLIES.

(169) "SECTION 3—CHECK-OFF.

"The system of check-off for the United Mine Workers' organization remains in force and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization only."

p. 408, l. 45–47.
p. 409, l. 1–3.

SCALE FOR MACHINE MINING AT NO. 3 VEIN OF COAL.

[Sub-District No. 4.]

From April 1, 1910, to March 31, 1912.

(170) "SECTION 11—LOST COAL.

"If the company insist on machine men cutting places, then the company shall pay for all coal lost by places falling in."

p. 410, l. 8–10.

(171) "Section 22. All dues to be checked off by the company and collections to be made once per month, miners' check off coming first. If the miner has coal then the dues are to be taken in coal by the checkweighman, and a list of all day men with the amount to be collected by each shall be furnished the company. Where no checkweighman is employed, the company does the checking off."

p. 412, l. 20–26.

SCALE OF PRICES, NO. 3 VEIN PICK MINING.

From April 1, 1910, to March 31, 1912.

(172) "Coal, mine run, per ton of 2,000 lbs.....$0.66⅔
Coal, screened, per ton of 2,000 lbs..... 1.00"

p. 413, l. 14, 15.

SCALE OF PRICES FOR NO. 6 VEIN.

From April 1, 1910, to March 31, 1912.

(173) "Run-of-mine 5-7 of lump price.....$0.67½"

p. 416, l. 4.

DETAILED MINING SCALE FOR BERGHOLZ DISTRICT.

Adopted at Bergholz, Ohio, May 25, 1910, Effective April 1, 1910, to March 31, 1912.

PICK MINING—Thick Vein.

(174) "SECTION I—TURNS.

"There shall be no free turns allowed to either rooms or entries. The entries may be driven as fast as operators desire, or conditions permit. But in no case shall entry miners be allowed more cars per week than room miners, and at least once each week the turn shall be made uniform for the time previously worked. However, should the operator desire to drive entries faster than the single shift with the aforesaid uniform turn permits, the operator shall be privileged to increase the number of shifts in said

entries, but in no case shall either shift receive more cars than the uniform turn throughout the mine permits. Should miners refuse to double shift said entries, the operators are to have the right to give regular entry men free turn, or to increase the number of men in such entries. Nothing in this section to prevent fast turns."

p. 417, l. 39–47.
p. 418, l. 1–6.

(175) "SECTION III—CHECKOFF.

"The system of check off for the United Mine Workers' organization is to remain in force, but it is understood that the check off applies only to assessments and dues. In order to be honored, the check off must be furnished to the company not later than 5 p. m. on the 3d and 18th day of each month."

p. 418, l. 16–21.

(176) "SECTION VI—WORKING PLACES.

"All machine loaders shall be accorded two rooms for each two men, and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming scarce through a squeeze, striking a horseback or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine. The operators further agree to keep in reserve one room on each butt entry, so that same can be used by any loader who is unable to work in his own place on account of a fall of slate or water."

p. 419, l. 5–14.

(177) "SECTION XIII—LOST COAL.

"If the company insist upon machine men cutting places, then the company shall pay for all coal lost by places falling in or from any other cause within thirty days from time coal is cut."

p. 420, l. 14–17.

(178) "SECTION XIX—WAITING ON CARS.

"That the miners of this district will wait one hour for cars to be placed at the mine when the mine management has been informed that cars are on their way and will be placed."

p. 421 l. 40–43.

(179) "SECTION XX—CUTTING ON IDLE DAYS.

"Operators shall be permitted to require regular machine runners to cut on idle days in case of breakdown, unavoidable accidents, or four places being out of cutting in any one territory."

p. 421, l. 44–47.

(180) "SECTION XXIII.

"Engineers, firemen and pump men, in case of suspension, are to continue at work, if the company require them, until the mine resumes operation under agreement, and shall be paid the same price they were getting before mine ceased operation, after which the advance or decline shall be made right. It is understood that they are not to hoist any coal for shipment during said suspension."

p. 422, l. 16–23.

(181) "SECTION XXVIII.

"All day men shall do any class of work in or around the mine that the management may require of them, provided, however, he is paid scale price for such work. No man transferred to other work shall be paid less than his regular wages, except when there is none of his regular work to do. Man not to be transferred at any time for more than one day without his consent."

p. 422, l. 38–44.

(182) "Run of Mine 5-7 of Lump Price."

p. 424, l. 6.

DETAILED MINING SCALE FOR SALINEVILLE DISTRICT.

April 1, 1910, to March 31, 1912.

(183) "SECTION 1—TURNS.

"There shall be no free turns allowed to either rooms or entries. The entries shall be driven as fast as operators desire, or conditions permit, but in no case shall entry miners be allowed more cars per week than room miners, and at least once each week the turn shall be made uniform for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work. If, however, the room men decline to take their places in the entries when requested to do so by the operators, then the entry men shall have free turn until the entries are driven required length, nothing in the foregoing to prevent fast turn."

p. 425, l. 11–25.

(184) "SECTION 3—CHECK-OFF.

"The system of checking off for the United Mine Workers' organization remains in force and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization only."

p. 425, l. 35–40.

(185) "SECTION 13—LOST COAL.

"If the company insists on machine men cutting places, then the company shall pay for all coal lost by places falling in."

p. 427, l. 9–11.

(186) "SECTION 15—MEMBERS' SONS.

"That all things being equal, sons of members of the United Mine Workers of America when becoming of proper age shall be allowed the preference of going into the mine."

p. 427, l. 17–20.

(187) "SECTION 19—WAITING ON CARS.

"That the miners of this district will wait one hour for cars to be placed at the mine when the mine management has been informed that cars are on their way and will be placed."

p. 427, l. 37–40.

(188) "SECTION 22.

"Engineers, firemen and pumpmen in case of suspension are to continue at work if the company require them until the mine resumes operation under agreement and shall be paid same price they are getting before the mine ceased operation, after which the advance or decline shall be made right. It is understood that they are not to hoist any coal for shipment during suspension."

p. 428, l. 13–19.

(189) "The inside day wage scale shall be increased 5.55 per cent, with the conditions of the Columbus day wage scale of 1898."

p. 429, l. 34, 35.

COLUMBUS AGREEMENT—SUB-DISTRICT NO. 5.

Columbus, Ohio, April 5, 1910.

Agreement between the Association of Pittsburg Vein Operators of Ohio for their mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America.

(190) "Mining, run of mine coal, per ton . . . . . .6785"

p. 430, l. 8.

OFFICIAL MINING SCALE.

Of Association of Pittsburg Vein Operators of Ohio, for Their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America. In effect April 1, 1910, and ending March 31, 1912.

RULES AND REGULATIONS—PICK MINING.

(191) "All present outside day labor not satisfied with the wages to be paid according to this scale, shall be given an average place in the mine."

p. 431, l. 14–16.

OUTSIDE DAY WAGE SCALE.

(192) "Rule 2—That the eight-hour day of forty-eight hours of six days per week is hereby reaffirmed."

p. 433, l. 27, 28.

(193) "Rule 4—That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operator may furnish other than the regular labor for the unexpired time."

p. 433, l. 39–46.

(194) "Rule 12—Any man called from inside to perform outside day labor shall receive inside day wages."

p. 434, l. 35, 36.

(195) "Rule 13—We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union.

However, should either the operator, the local union or the party upon whom the fine is imposed, object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. In order to be honored the check-off must be furnished to the company not later than 5 p. m. on the 2d and 17th day of each month."

p. 434, l. 37–46.

(196) "Rule 18—There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit, but in no case shall entry miners be allowed more cars than room miners, and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that, by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length."

p. 435, l. 42–49.
p. 436, l. 1–6.

(197) "Rule 21—Members of the pit committee and local officers shall remain at their working places the same as all other employes unless a miner and a mine boss fail to agree on prices to be paid for extra work, when they may be called into confer with the superintendent to decide the dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union."

p. 436, l. 18–27.

(198) "Rule 29—In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep the mines in shape shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension and then subject to any subsequent settlement."

p. 437, l. 17–28.

(199) "Rule 30—The conditions, employment, duties, hours of labor and membership of the U. M. W. of A., of the engineers, firemen, electricians and machinists existing prior to September 1, 1903, continue and remain in force during the life of this contract.

"It is further agreed that any interference on the part of any member of the U. M. W. of A., of a mine committee, or local officer, with the duties of engineer, fireman, electrician or machinist shall subject such member or members of the U. M. W. of A., of a mine committee, or local officer, to suspension or dismissal by the operator, with the understanding that the engineers, firemen, electricians or machinists who are now members shall remain members

of the U. M. W. of A., and those who are not members shall not be compelled to join."

p. 437, l. 29–41.

(200) "Run of mine, 5-7 of lump price . . . . . .6785."

p. 441, l. 17.

DETAILED MINING SCALE FOR CAMBRIDGE DISTRICT—SUB-DISTRICT NO. 6.

Beginning April 1, 1910, and ending March 31, 1912.

PICK MINING SCALE.

(201) "SECTION 2—FREE OR FAST TURNS.

"No miner shall be permitted to load double turn or free turn under any circumstances, and there shall be no fast turn except when one or two cars are needed to clean up a place for the machine, and provision regarding fast turn not to be held to apply in such case. There shall be an equal turn kept throughout the mine and all differences between entries be equalized once each week. In case of loader being idle on account of fall of slate, no cutting, breakdown of machinery, or other unavoidable circumstances, he shall receive his turn for lost time."

p. 442, l. 48, 49.
p. 443, l. 1–8.

(202) "SECTION 5—WATER.

"The company shall have the water out of working place at starting time and keep same out of working place during the working hours, unavoidable accidents excepted.

"Where loaders bail water they shall be paid 10 cents per barrel for same. The company shall furnish barrels, when needed by loader, sufficient to hold the water."

p. 443, l. 19–25.

(203) "SECTION 10—DRIVERS.
"Spike team drivers shall harness but one mule."

p. 443, l. 44, 45.

(204) "SECTION 11—ENTRIES.
"There shall be but one loader in each entry."

p. 444, l. 1, 2.

(205) "SECTION 17—CHECK OFF.
"The system of checking off for the United Mine Workers' organization remains in force and must be observed. The above to include all dues and assessments for burial fund and United Mine Workers' organization.

"No fine shall be collected except it is ordered by a majority vote of the members present at a regularly called local meeting.

"However, should either the operator, the local union or the party upon whom the fine is imposed, object to such fine, each of them shall have the right to appeal to the Sub-District President and the operator or the operators' committee for final ruling."

p. 444, l. 39–46.
p. 445, l. 1–3.

(206) "SECTION 20—SUSPENSIONS.
"In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep the mines in shape, shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union

labor, for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 445, l. 15–27.

(207) "Rule 9—There shall be no free turns allowed to either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit, but in no case shall entry miners be allowed more cars per week than room miners, and at least once each week the turn shall be made uniform for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry so that by giving to each the regular turn the entries shall be driven as fast as two miners could drive them at full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operators, then the entry men shall have free turns until the entries are driven the required length. Nothing in the foregoing to prevent fast turns."

p. 449, l. 26–39.

DETAILED MINING SCALE FOR COSHOCTON DISTRICT SUB-DISTRICT NO. 6.

(208) "Rule 10—That the checking off for the United Mine Workers' organization shall remain in force and be observed, same to be checked off by per cent of earnings. This is to include all dues and assessments for the organization."

p. 449, l. 40–43.

(209) "Rule 17—The company have the right to put two men in entries where isolated, to cut and load coal and move their own machines."

p. 450, l. 39–41.

(210) "Rule 21—In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep mines in shape shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension subject to any subsequent settlement."

p. 450, l. 48–51.
p. 451, l. 1–8.

(211) "Sec. 1. That the bituminous coal district of Indiana shall pay fifty-eight (58) cents per ton for all mine-run coal loaded and shipped as such. All other coal mined in that district shall be passed over regulation screen, and be paid for at the rate of ninety-five cents (95 cents) per ton of two thousand (2,000) pounds for screened lump."

p. 452, l. 12–17.

ARTICLE I.

TERRE HAUTE AGREEMENT.

Arranged and adopted by and between the United Mine Workers of District 11 and the Indiana Bituminous Coal Operators' Association, effective during the scale years from April 1, 1910, to April 1, 1912.

(212) "Sec. 2. The standard height of coal in Indiana shall be three feet three inches in mines open prior to April 1, 1901, and in mines opened since April 1, 1901, the standard height shall be three feet, six inches. All coal

less than three feet three inches in thickness and over two feet nine inches, the price shall be 103 cents per ton for screened lump coal, and 67 cents per ton for mine-run coal. All coal less than two feet nine inches and down to two feet six inches, the price shall be 111 cents per ton for screened lump coal and 68 cents per ton for mine-run coal."

p. 452, l. 18–26.
Article I.

(213) "Sec. 9. All day laborers working at the mines, excepting weighmasters, head flat-trimmer, dumper, fire-bosses and boss-drivers who shall be regarded strictly as company men, shall be recognized as members of the U. M. W. of A. In emergencies or in the absence of any regular employe the right of the operator to employ men not members of the U. M. W. of A. for outside day labor shall not be questioned. Any and all flat-trimmers shall dock for dirty coal."

p. 455, l. 36–43.
ARTICLE V.

(214) "Sec. 3. In case of either local or general suspension of mining, either at the expiration of this contract, or otherwise, the engineers shall not suspend work, but shall, when mining is suspended, fully protect all of the company's property under their care, and operate fans and pumps, and lower and hoist such men, mules or supplies as may be required, and any and all coal required to keep up steam at the company's coal plants, but it is understood and agreed that the operators will not ask them to hoist any coal produced for sale on the market, and there shall be no change in engineers' wages during the suspension."

p. 456, l. 25–34.
ARTICLE VI.

(215) "Section 1. When the coal is paid for mine-run it shall be mined in as good condition as when paid for on a screened lump basis, and when loaded on the miner's car, it shall as nearly as possible be free from slate, bone coal, or other impurities. Any miner loading impurities with his coal in such quantities as to show intent or gross negligence, shall for the first offense be fined fifty cents; for the second offense, seventy-five cents; for the third and each subsequent offense in the same pay, one dollar. Such penalties to start with each pay. The fine so collected to be held in the office of the operator until the local votes a donation to some member who has been injured, ill or has met with some misfortune, which will entitle him to assistance from the local. In case of dispute, the impurities will be kept until the case is settled."

p. 458, l. 9–22.
ARTICLE VIII.

(216) "Sec. 17. No more than three places for two men nor two places for one man shall be allowed. In mines where the coal averages 6 feet high or over, rooms 30 feet wide or over equipped with two tracks shall be considered double places, and two loaders may be limited to two such places."

p. 459, l. 46–48.
p. 460, l. 1, 2.
Article VIII.

(217) "Sec. 22. All local rules regarding the number of cars required above the tipple south of the Vandalia are hereby abolished, and in lieu of which it is agreed that the operators shall blow the whistle at 8 o'clock in the evening when intending to work the following day, and again at 5 o'clock in the morning if cars are there or promised by the railroad company to be there at 7 o'clock, or starting time. If the company blows the whistle at 5 o'clock a. m.

without the promise of cars and the miners report for work at 7 a. m., or starting time, and there are no cars, the company shall pay to the local union a fine of $25.00."

p. 460, l. 24–33.
Article VIII.

(218) "Sec. 28. Where any company operate more than one mine on the same line of road in the same vein of coal, the work between the respective mines shall be as nearly as business conditions will permit equally divided."

p. 461, l. 3–6.
Article VIII.

(219) "Sec. 30. Every miner shall be given an opportunity to load an equal turn with every other miner doing the same class of mining. Where pick and machine miners are working in the same mine the turn shall be in proportion to the ratio between pick mining prices and machine loading prices."

p. 461, l. 9–13.
Article VIII.

(220) "Sec. 31. The checkweighman shall furnish the boss driver or mine-boss from day to day a turn sheet, and he shall cause the turn to be regulated. Provided, further, that no run or entry in machine mines shall be permitted to get more than five cars in advance of another run or entry, and in pick mines not more than two cars, except in case of accident."

p. 461, l. 14–19.
Article VIII.

(221) "Sec. 32. It is further agreed that the operators shall offer no objection to the check-off for the check-weighman, and for dues for the U. M. W. of A., provided that no check-off shall be made against any person until he shall

have first given his consent in writing to his employer. This applies to all day work as well as miners."

p. 461, l. 20–25.
Article VIII.

(222) "Sec. 4. It is agreed that in the event of an inside employe being wrongfully discharged, and it is so discovered by methods herein provided, and by the same methods is reinstated, he shall be paid for time lost at the rate per day prevailing for inside day labor; provided, however, that the company shall have the option of permitting the accused to continue at work pending the investigation and the same shall apply to outside day laborers, except the outside day labor scale shall be paid."

p. 462, l. 17–24.
Article IX.

(223) "22. The operators agree to give each miner as near as possible an equal turn of cars for coal, and not to allow any day hands to load coal on idle days, but in no case shall a turn apply to the handling of dirt, except in entries unless otherwise specified in our agreement, but the operators agree to put in the mines a sufficient number of mules to remove all the coal and dirt therefrom. It is agreed that nothing herein shall conflict with the gobbing of dirt as hereinbefore provided. The operators will give an equal turn of work to all inside day men as near as practical, who are competent, excepting track layers and timbermen, adjustment of turns to be semi-monthly."

p. 466, l. 40–48.
p. 467, l. 1, 2.

CONTRACT—PICK MINING SCALE FROM APRIL 1, 1910, to APRIL 1, 1912.
BRAZIL BLOCK AGREEMENT.

(224) "23. No miner shall be discharged or discriminated against because of his refusal to do work by the day when called upon by the pit boss. If, by the absence or refusal to work of any day man, or men, work is likely to be interfered with, the mine committee when called upon, shall assist the mine boss to furnish competent men in case he fails to secure them at the scale rate, so that the mine shall continue work."

p. 467, l. 3–9.

(225) "25. Should the mine boss or superintendent at any time discharge a miner or mine laborer and upon investigation by the mine committee they believe there were not good and sufficient causes for so doing, they shall at once notify such boss or superintendent of their decision, and pending the matter being decided upon by the final board as provided in such cases, the management may at their option retain in their employ such person so discharged pending the final decision. If said board finds that the man was discharged without sufficient cause, he shall be reinstated, and shall be paid his regular wage, for all time lost by such discharge, but days which the mine was not in operation during this period shall not be reckoned as lost."

p. 467, l. 15–26.

(226) "26. It is understood and agreed that when any of the workmen in and about a mine stops the same for the purpose of redressing a grievance, real or supposed, thus shutting the mine down contrary to this agreement, each employe shall pay to the owner of said mine the sum of $1 per day during such shut down. The payment shall be deducted from each person through the pay roll and this agreement is authority for making such deduction. It is further agreed that no coal company, because of any

grievance with any employe, real or supposed, shall stop the mine, and any company so shutting down its mine shall pay to each workman in and about the mine $1.00 per day during such shut down."

p. 467, l. 45–49.
p. 468, l. 1–7.

(227) "32. In case of emergency work the mine boss shall consult with the mine committee, and if they approve of the work being done on overtime, the men engaged thereon shall not be required to lay off until their time is equalized with the others working in such mine."

p. 468, l. 44–48.

(228) "42. It is fully understood and agreed upon the part of the United Mine Workers of America that the engineers will not under any circumstances allow affiliation with any labor organization to interfere with or prevent their being on duty at any and all times required by the operators, and that they will not suspend work in sympathy with any organization, and further, that they will, during the continuance of this contract, at all times fully protect all the company's property under their care, and that they will operate fans and pumps, and lower and hoist such men or supplies as may be required to protect the company's property, and any and all coal that may be required to keep up the steam at the company's plant. But it is understood that the operators will not ask them during this period to hoist any coal produced by non-union labor for sale on the market."

p. 470, l. 19–32.

(229) "46. It is also agreed upon the part of the operators that they will enforce a rule forbidding the entering of the engine room by loafers and disinterested parties,

and that they will have cards printed and placed in conspicuous places to this effect."

p. 470, l. 44–47.

(230) "There shall be no discrimination against any employe.

"That the system of loading coal in machine mines be on the following basis, to-wit:

"1. That one man shall have the right to two places where he can take care of the same.

"2. That two men shall have the right to three places where they can take care of the same.

"3. All others one place.

"When a man is off work for more than one day the mine boss shall have a right to put a man in the places if it is necessary providing the man leaves the places in the same condition as near as possible as he found them."

p. 472, l. 3–14.

MACHINE MINING SCALE.

Contract between the machine operators of the Block Coal District and the Executive Board of District No. 8, United Mine Workers of America, governing prices and conditions of mining in machine mines, Block Coal District.

(231) "CHICAGO AGREEMENT, 1898.

"Chicago, January 28.—Contract between the operators of the central competitive coal field and the United Mine Workers of America.

'The following agreement, made and entered into in Joint Inter-state Convention in this city (Chicago, Ill.) January 26, 1898, by and between the operators and miners of Illinois, Indiana, Ohio and Western Pennsylvania, known as the Pittsburg thin vein district, witnesseth:

'1. That an equal price for mining screened lump coal shall hereafter form a base scale in all the districts above

named, excepting the State of Illinois, the block coal district of Indiana to pay 10 cents per ton over that of Hocking Valley, Western Pennsylvania and Indiana bituminous district; and that the price of pick run-of-mine coal in Hocking Valley and Western Pennsylvania shall be determined by the actual percentage of screenings passing through such screens as is hereinafter provided, it being understood and agreed that screened or run-of-mine coal may be mined and paid for on the above basis at the option of the operators, according to market requirements, and the operators of Indiana bituminous shall also have like option of mining and paying for run-of-mine or screen coal.

'2. That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the bituminous district of Indiana shall be uniform in size, six feet wide by twelve feet long, built of flat or akron-shaped bar of not less than five-eighths of an inch surface, with one and one-fourth inches between bars, free from obstructions, and that such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

'3. That the block coal district of Indiana may continue the use of the diamond screen of present size and pattern with the privilege of run-of-mine coal, the mining price of which shall be determined by the actual screenings; and that the State of Illinois shall be absolutely upon a run-of-mine system, and shall be paid for on that basis.

'4. That an advance of 10 cents per ton of 2,000 pounds for pick-mined screened coal shall take effect in Western Pennsylvania, Hocking Valley and Indiana bituminous districts on April 1, 1898, and that Grape Creek, Ill., and the bituminous district of Indiana shall pay 40 cents per ton run-of-mine coal from and after same date, based upon 66 cents per ton screened coal in Ohio, Western Pennsylvania and the Indiana bituminous district, same to continue in force until the expiration of this contract.

'5. That on and after April 1, 1898, the eight-hour work day with eight hours' pay, consisting of six days per week, shall be in effect in all of the districts represented, and that uniform wages for day labor shall be paid the different classes of labor in the fields named, and that internal differences in any of the states or districts, both as to prices or conditions, shall be referred to the states or districts affected for adjustment.

'6. That the same relative prices and conditions between machine and pick mining that have existed in the different states shall be continued during the life of this contract.

'7. That present prices for pick and machine mining and all classes of day labor shall be maintained in the competitive states and districts until April 1, 1898.

'8. That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from a failure to maintain scale rates.

'That this contract shall remain in full force and effect from April 1, 1898 to April 1, 1899, and that our next annual inter-state convention shall convene in the city of Pittsburg on the third Tuesday in January, 1899. Adopted.

In Behalf of the Operators:	In Behalf of the Miners:
Illinois.	
J. H. GARAGHTY	J. M. HUNTER
E. T. BENT	W. D. RYAN
Indiana Bituminous.	
WALTER S. BOGLE	W. G. KNIGHT
	J. H. KENNEDY
Indiana Block.	
C. B. NIBLOCK	J. E. EVANS

Ohio.

W. E. FARMS
T. L. LEWIS

Pennsylvania.

J. C. DYSART PATRICK DOLAN
F. M. OSBORNE EDWARD McKAY

For West Virginia Miners—Henry Stephenson.

Members National Executive Board, U. M. W. of A.—Fred Dilcher, John Fahy, Henry Stephenson, Edward McKay, J. H. Kennedy and W. D. Ryan.

M. D. Ratchford, President U. M. W. of A.

John Mitchell, Vice President U. M. W. of A.

W. C. Pearce, Secretary-Treasurer U. M. W. of A."

p. 472, l. 33–47.

p. 473, l. 1–47.

p. 474, l. 1–24.

(232) "COLUMBUS DAY WAGE SCALE.

INSIDE DAY WAGE SCALE FOR AN EIGHT-HOUR DAY.

Columbus, Ohio, March 10, 1898.

"The following resolution was adopted at a meeting of the scale committee of the Interstate Convention at Chicago January 22, 1898:

Resolved, That two operators and two miners from each state meet at Columbus, Ohio, on the second Tuesday in March (or March 8), 1898, at the Chittenden Hotel to formulate a uniform day work scale based upon the district upon which the mining prices are based.

In accordance therewith, the representatives of the various competitive districts met at the Chittenden Hotel, Columbus, Ohio, March 8, and agreed upon the following scale of wages and conditions to govern all inside day labor for the year begining April 1, next, and ending April 1, 1899.

INSIDE DAY WAGE SCALE.

Tracklayers	$1.90
Tracklayers' Helpers	1.75
Trappers	.75
Bottom Cagers	1.75
Drivers	1.75
Trip Riders	1.75
Water Haulers	1.75
Timbermen, where such are employed	1.90
Pipemen, for compressed air plants	1.85
Company men in Long Wall Mines of Third Vein District, Northern Illinois	1.75
All Other Inside Day Labor	1.75

The above scale was arrived at by taking the average of the wages paid in all of the competitive districts and reducing said average to an eight-hour day, then adding the advance to said average to correspond with the advance in price of mining to be paid April 1 next.

RESOLUTION I.

The above schedule of day wages applies only to men employed in the performance of their labor, and does not apply to boys unless they can do and are employed to do a man's work.

RESOLUTION II.

Whereas, We have failed to agree upon a uniform rate of wages for the different classes of outside labor for the entire competitive field, owing to the variations of conditions over which we have no control;

Resolved, That the employing of outside day laborers around the mine, and wages to be paid the same, shall be left entirely to the employers and such employes in all the competitive districts, and the question of uniform wages for outside labor be referred to our next Interstate Joint Convention.

Resolved, That where any members of the present force of outside day labor in the competitive field prefer to work in the mine in preference to accepting the wages offered for their services as outside day laborers, they shall be given places in the mine to mine coal.

RESOLUTION III.

Resolved, That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

RESOLUTION IV.

Resolved, That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than regular labor for the unexpired time.

The above was agreed to after the most careful discussion of each item, and we believe it to be the best and most equitable solution of the questons involved, taking into consideration the various interests to be harmonized in order to reach a uniform scale.

It is expected that all the prices and conditions shall be strictly adhered to by both operators and miners.

S. N. DALZELL, Chairman Committee.
T. L. LEWIS, Secretary.

In Behalf of the Operators:	In Behalf of the Miners:
Illinois.	
S. M. DALZELL	JOHN M. HUNTER
A. J. MOORSHEAD	W. D. RYAN
Indiana.	
J. H. McCLELLAND	J. H. KENNEDY
P. H. PENNA	W. G. KNIGHT
W. W. RISHER	BARNEY NAVIN
Ohio.	
J. S. MORTON	W. E. FARMS
W. J. MULLINS	T. L. LEWIS
Pennsylvania.	
G. W. SCHLUEDERBERG	P. DOLAN
JOHN A. O'NEIL	WM. WARNER.

On Behalf of the U. M. W. of A.—
M. D. RATCHFORD, President.
W. C. PEARCE, Secretary.

p. 474, l. 25–45.
p. 475, l. 1–47.
p. 476, l. 1–32.

Excerpts from book entitled "INTERSTATE CONVENTION OF 1908—JOINT CONFERENCE OF COAL MINERS AND OPERATORS OF WESTERN PENNSYLVANIA, OHIO AND INDIANA HELD AT TOLEDO, OHIO, APRIL 14-17, 1908."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 3. [Record pp. 706, 291.]

(233) "Francis Feehan. There is no one more pleased than I that the interstate joint convention has been re-established, and that we are assembled to at least make an effort to negotiate a wage scale. This has been brought about after months of effort on the part of the mine workers' organization."

p. 21, l. 41-45.

(234) "H. L. Chapman, of Ohio: Mr. Chairman and Gentlemen—In making this motion on behalf of the operators for this length of time for this contract, I do not know that I can emphasize our reasons for making it more than I have done in the past. But the operators of the three states feel that they would not be justified in the present conditions that prevail in the coal trade throughout this competitive field, and with the outlook for the present year of the business, they do not feel that they could be justified in making an agreement for one year, but they are hopeful that the conditions of the country will change from what they now are and have been for the last four or five months, during the year following this year. Presidential election coming on this year, and whatever may take place as a result of that, it matters not whether one side is successful or not, we hope that such a condition

will prevail in the business affairs of the country that it will be settled, and that there will be a revival of the conditions of business that the operators of the competitive field would have a fairly remunerative business for the last year of the contract if it was made until the date that I have named. I do not believe that there is an operator today in this competitive field that is producing coal that believes that there is a show for the year 1908 and a part of 1909, the time that this contract, if only made for one year, would run, and they cannot hope to more than break even in their business for this year on the present prices. And you gentlemen know just as well as the operators know that in the non-union fields that in the place of paying the present wages, or the wages that have been paid in this field in the past two years, reductions have taken place already, and more reductions will probably take place. And the operators of this competitive field who are acting with you want to continue and act with you people, and you cannot expect but what they have got to meet this competition that comes from that source during the year, because with the restricted trade that is necessarily going to exist the efforts that are being made by those in the non-competitive fields are marvelous to secure the trade that the organized sections have heretofore had, and they are being successful already in many instances.

"Now in brief, gentlemen, these are the reasons why the operators of the competitive field of Western Pennsylvania and Ohio and Indiana feel that they cannot do otherwise than make that contract to extend for the period that I have named. In all justice to you people and to ourselves we believe from our standpoint that it is to the interest of both of us that it should be maintained. You are now receiving the highest price that has ever been paid for any considerable time in the bituminous coal field, and

you people ought to be more than satisfied if you can get a renewal of that agreement with the operators of this field of a contract of this character for two years."

p. 52, l. 10–47.
p. 53, l. 1–11.

(235) John H. Jones, of Pennsylvania: "You want to point your guns at your enemies. You want to point your guns at the operators who in the past have not proved by their actions that they are friends of yours or of organized labor. This is the thing you should do in the next two years. Do not point them at your friends; turn them on the men who are not your friends.

"At the present time there is coal being mined in non-union districts, and it is encroaching upon our markets; even in places where they have differences between them they are dropping them and taking away the contracts from the union fields. The question has been asked, why haven't we had this state of affairs during the past two years? The reason is, we have had very prosperous times, and there was plenty of trade for all. This is not the case at the present time; and if the operators mining in non-union fields in this district can maintain their present position, *i. e.*, have their coal mined at ten cents to twenty cents per ton less than operators employing union labor, and are enabled to market their coal at the prices at which they are marketing it, it is going to place both operators and miners in a very embarrassing position in the very near future.

"In the Pittsburg district, which is the greatest industrial center in the world, the largest number of operators who are mining coal with non-union miners have already forced a reduction of from ten to twelve per cent. Now you should make a settlement for two years and turn your guns where they belong."

p. 58, l. 18–43.

(236) Francis Feehan, of Pennsylvania: "Now I have very little to say in reply to Mr. Jones of the Pittsburg district. I am very desirous of lending all of my efforts to prevent, if possible, the production of non-union coal. I know that it has been my policy as an officer of the organization to try if possible and agree along with the operators who have entered into a contract with us and are dealing as business men should do, and if I had any fighting to do I would want to fight the fellow that was unfair and who was taking advantage. We feel that this should be done. However, it is well for me to remind some of the Pittsburg operators at this time that our guns were kept very warm in the Pittsburg district trying to force some of them to live up to their contract, which they had entered into without devoting any of our time and attention to the non-union business."

p. 59, l. 45–50.
p. 60, l. 1–8.

(237) "President Lewis: All of the membership of the organization of miners of this country gave these instructions. If it were only a question of the three states we could settle it right here in this convention, but not being a question of the three states it will go to the entire membership with these recommendations."

p. 63, l. 15–20.

(238) "H. L. Chapman, of Ohio: Mr. Chairman and Gentlemen: Speaking for myself and the Ohio interests, this question of stopping the mines upon a little local difficulty and causing them to become idle, whether it is the fault of the miners, or the fault of the operators, or rather the mine bosses, or some one else, there ought to be some way in the interest of both sides that could prevent this. I agree with Mr. Lewis in his statement that at times there

are men at fault who have charge of the mines, as well as the miners sometimes. I have no case of that kind myself; but the company I represent in the Hocking Valley, that the time we were not at work on June 23, 1906, to December 3, 1907, taking all of the stoppages at our mines, and counting them as if they were at one mine, and counting the hours and the days and everything of that kind over these trivial differences that in my judgment no man or mine ought to have stopped at all, the difficulty ought to have been adjusted in a businesslike, sensible way between the operators and the representatives of the miners, according to the statement that I have, all of mines put together which would be for one hundred and seventy-six days.

"G. W. Savage, of Ohio: Enumerate the causes.

"H. L. Chapman, of Ohio: There were scores of causes; and I could not give them without having the paper on which I have it. They were questions of local character pertaining to the mines; but I know that it foots up to one hundred and seventy-six days. It seems that the fault in some of the cases was with the company, and in other cases the fault was with the miners; but it don't make any difference whose fault it was, the fact remains that the miners were stopped. In these mines taking them all together, I figured at them a little while today, and I found that these mines stopped over two hundred men, and maybe more than that, and they were probably getting about $2.55 per day, as the average earning power of the men during that time, and this would amount to $80,000.00 that the miners of the Sunday Creek Company lost during that period over what they would have had if they would have continued at work.

"Mr. Sullivan: Did you lose any contracts, Mr. Chapman?

"H. L. Chapman, of Ohio: I am not talking about that. On the other hand, the mines lost, for it undoubtedly lost to the company whatever profit they might have made on the coal that they would have produced during that period of time if it had been put into the market; this in addition to all of the men who were employed to take care of the property, and the monthly salaries of other men. Putting the profit on the coal that would have been dug from the mines in that period at fifteen cents a ton lump coal, then it undoubtedly cost the company thirty thousand dollars during that period."

p. 68, l. 25–47.
p. 69, l. 1–25.

(239) P. H. Penna, of Indiana: "And then I want to add that there are unorganized fields in this country today that could be named that have cost you people hundreds of thousands of dollars, and lots of work, and pretty near cost the hide of some of my friends; there are cases in that shape."

p. 73, l. 44–48.

(240) "President Lewis: Before this report is voted on I have a resolution which ought to be read, and I will read it with your permission.

"Whereas, We, the representatives, of the operators and miners of Western Pennsylvania, Ohio and Indiana, believe that the Illinois operators and miners should be a part of the Central Competitive Field Joint Movement:

"Resolved, That we, the operators and miners in this joint convention, extend to the operators and miners of Illinois an urgent and cordial invitation to join with us in the next interstate joint movement in the next joint convention in February, 1910.

"I move its adoption.

"Chairman Zerbe: It has been moved that we adopt the resolution just read by President Lewis.

"P. H. Penna: The Illinois operators and miners are in joint convention in Springfield at this time, attempting to make a scale, and I think it would be a graceful thing to do if Mr. Lewis would endorse it; that in addition to the resolution he has prepared that our President and Secretary be instructed to forward that resolution to their meeting in Springfield, together with the congratulations of this joint convention and the expressed hope that they may be able to reach an amicable settlement.

"President Lewis: If Mr. Penna will make that as an amendment to my motion, I will accept it.

"P. H. Penna, of Indiana: I offer it as an amendment to be added to the motion of Mr. Lewis.

"Mr. Kelly, of Illinois: I believe we have a right to be heard in this matter yet. We from Illinois are not here today asking for anything except that which we believe we are entitled to, and I want to say to you that we have a few things that we are entitled to at this time. The President of the National organization has expressed the absolute views of the Illinois miners, and we have no desire to contradict any report that he has made. I do want to say for the Illinois miners one thing, and I would be doing myself an injustice if I failed to do this. This man has come here and made this same speech in every convention that we have had for the past ten years, and—

"Chairman Zerbe: The gentleman is out of order.

"Mr. Kelly of Illinois. I believe we have as much right to the floor as Mr. Chapman, and with all due respects to his views we have a right to come here nevertheless, and we are asking you now if you are going to leave us here to fight our battles through in making local agreements? I have this to say to you gentlemen, and that is all I have

to say—I appeal to you now because of the fact that there are more of you than there are from Illinois. I do appeal to you now and ask you to hold up your hands in this attempt to re-establish and bring about what Tom Lewis calls the Interstate Joint Movement. If it is not possible for him to bring the Illinois operators and miners into this joint conference, when in God's name can you bring them in?

"I want to go further and call attention to the statement made not over sixteen days ago, when he said that the Ohio operators had something like three million tons of coal they wanted to sell, and then they would make an agreement with us and not until then. I said the other day on the floor of this convention that there was a collusion between the operators of the three states, and I want to repeat it now, notwithstanding my friend Penna wants to deny it."

p. 107, l. 15–45.
p. 108, l. 1–30.

(241) "Chairman Zerbe: Now the question before the house is on the motion of Mr. Lewis, amended by Mr. Penna, in regard to the message to be sent to Illinois. That is not debatable. All in favor of this resolution will signify it by saying 'Aye.'

(The motion was voted on and carried.)"

p. 110, l. 20–24.

(242) "President Lewis: Several delegates have asked me, and I want to explain the discussion on this question of the referendum vote. It will not be just the districts represented here, but will be a vote of the entire membership."

p. 114, l. 26–29.

(243) "Tenth: That the renewal of the mining rates, day wage scale and general prices existing in 1907 is on condition of the approval of a two years' contract by referendum vote of the United Mine Workers of America."

p. 120, l. 21–24.

INTER-STATE AGREEMENT OF 1908–10 between the Operators' and Miners' representatives of Western Pennsylvania, Ohio and Indiana.

Excerpts from book entitled "INTERSTATE CONVENTIONS 1906—JOINT CONFERENCES COAL MINERS and OPERATORS of WESTERN PENNSYLVANIA, OHIO, INDIANA AND ILLINOIS—INDIANAPOLIS, INDIANA, January 25 to February 2, and March 20 to 29, 1906."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 1. [Record pp. 706, 291.]

(244) "Fifth. That no vote be declared carried unless upon the affirmative vote of the miners and operators of each State. That upon all questions of mere procedure the ordinary rules of parliamentary procedure, as stated in any standard manual, shall be the rules of this convention, and that in no event shall the rule requiring unanimous vote on all main and principal questions be suspended. Main and principal questions mean all questions affecting the proposed scale and agreement."

p. 4, l. 21–27.
Readopted to govern Joint Interstate Convention of 1908.
McKinley's Exhibit No. 3.
p. 16, l. 36–39.

(245) "Mr. John Mitchell: I move to amend the report of the Committee on Credentials by inserting the following: That the miners and operators of the states of Kansas, Missouri, Arkansas, Texas and Indian Territory be admitted to the joint conference and granted the same privileges accorded to operators and miners from the States composing the Central Competitive Coal Field. (Seconded.)

"Mr. Robbins: Until the report of Committee on Credentials is adopted there can be no convention. The call for the convention was for the representatives of the operators and miners from the four states of Illinois, Indiana, Ohio and Pennsylvania. The report brought in establishes this convention members of those four states on the part of the operators and miners. I submit that until that is acted upon anything else is out of order.

"Mr. Mitchell: I think that the point of order should not be sustained, for the reason that the Joint Convention of miners and operators is a continuous body. There is no final dissolution of our sessions at the end of our conventions each year. We adjourn to meet a year from the date of the convention then closing. Consequently the organization of this convention does not mean the organization of a new convention. This is a continuation of a convention held two years ago, and it seems to me it is perfectly in order to extend the scope of our work to invite to participate with us in this convention the representatives of the operators and miners of other districts. I therefore believe the motion is not out of order.

"Mr. W. S. Bogle: Mr. Mitchell has made the strongest argument possible in favor of the report of the Credentials Committee. The original call that inaugurated this movement included these four states, and the call since that time has not been changed. Therefore no credentials committee can consider the credentials of any states or districts outside of the call. It is perfectly outside of the province of a credentials committee to take cognizance of credentials from a body of men who were not included in the call. I will admit that it is a part and parcel of the convention to take up and consider whether or not it will enlarge its scope and take in additional territory. That is a matter that may properly come before

this convention at any time; but to attempt to put it into the report of the Credentials Committee is absurd. Mr. Mitchell himself has given the best argument against it. I will ask the secretary to read the original call for the convention in Chicago and at the same time the call for this convention. No Credentials Committee can go outside of the call. I have been informed that the original call included West Virginia. The operators at all times have been willing to welcome West Virginia.

"Mr. Mitchell: Why don't you bring the operators from West Virginia here?

"Mr. Bogle: Why don't you bring them? If it was not for the check-off system granted you by the operators of these four states your organization would not last two years. We are giving your organization its strength here today. It is not you; it is not these delegates; it is the gentlemen seated on this side of the hall that are making your organization what it is.

"Chairman Traer: Mr. Bogle, the motion is in regard to the admission of other States.

"Mr. Chris Evans: Mr. Bogle made the statement that he understood the original call included West Virginia. For the information of this convention I wish to state that the original call included all the States and territories. At the convention that adopted the first scale of prices, Pennsylvania, Ohio, Indiana, Illinois and West Virginia were all represented. The original call, however, included all the states and territories. I make this statement because I sent out the first circular for such a convention.

"Mr. Bogle: I would like to have the secretary read the original call for the Chicago convention of 1898. Mr. Evans is confusing the record; he is going back to some ancient history, to some other movement that died a natural death and was revived in 1897, followed by a convention

that met in 1898. If there is any question about that I would like to have read the call for this convention.

"Chairman Traer: Mr. Lewis has asked for the floor. The chair will recognize Mr. Lewis if he will postpone his argument until the secretary has read the call for this convention.

"Secretary W. B. Wilson read the following:

" 'Further, in pursuance of the authority vested in us, we hereby call a Joint Convention of the coal operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois to meet at Indianapolis, Indiana, at 10 o'clock a. m., January 25, 1906.'

"Mr. Bogle: I renew my point of order. The Committee on Credentials, in making its report, can take cognizance of no other credentials than from the operators and miners included in the call. I will ask the ruling of the chair on that point.

"Chairman Traer: A point of order has been raised upon which it will be necessary for the chair to rule before discussion is in order. The Interstate Agreement for the two years beginning April 1, 1904, and ending March 31, 1906, provides, in addition to the various numbered articles which it contains, the clause which has just been read by the secretary.

"Gentlemen, the agreement upon which this meeting was called leaves the chair no option as to the decision as to who the preliminary members and as to who the members entitled to participation in the organization of this convention shall be. Plainly, from the agreement which has just been read, the original organization of this convention contemplates the admission only of the members from the operators and miners of the States mentioned in this agreement. If it is desired by either the operators or the miners of either or all of the states to introduce into

this organization additional members, that is a matter which should be brought up and passed upon the same as any other matter, submitted to this convention. The chair has no option but to rule that upon the report of the Credentials Committee the point of order is well taken. The organization of this convention must be based upon the agreement under which it was called.

"The motion is upon the adoption of the report of the Credentials Committee.

"Mr. T. L. Lewis, Ohio: I would like to ask a question of the chair.

"Chairman Traer: Proceed, Mr. Lewis.

"Mr. Lewis: According to the ruling of the chair this convention must first pass upon the report of the Committee on Credentials with reference to the four States.

"Chairman Traer: That is correct, Mr. Lewis.

"Mr. Lewis: And the admission of any other state is to be an after consideration? Is that correct?

"Chairman Traer: That is correct. The motion is upon the adoption of the report of the Credentials Committee. The secretary will call the roll.

"(Secretary Wilson called the roll of the States. All the operators voted in the affirmative; all the miners voted in the affirmative.)

"Chairman Traer: The vote is unanimous, and the report of the Credentials Committee is adopted.

"Mr. Mitchell: I now renew my motion not as an amendment, but as a motion. I move that the miners and operators of the States of Kansas, Missouri, Arkansas, Texas and Indian Territory be admitted to the joint conference and granted the same privileges accorded to the operators and miners from the States comprising the Central Competitive Coal Field. (Seconded by Secretary Wilson.)

"Mr. Mitchell: In support of this motion I wish to make a few remarks. This is not the first time that the operators and miners of the Central Competitive Coal Field have departed from the rule which limits participation in this conference to the four districts which have been accorded representation here. A few years ago the operators and miners of Central Pennsylvania came to Indianapolis, made application for a seat in our joint conference, and were accorded that right. Mr. Robinson, of the Buffalo, Rochester & Pittsburg Coal Company, of Central Pennsylvania, was not only admitted to the conference, but served for a short time on the Scale Committee. So that in asking that the scope of our work be extended so as to include the miners and operators of the Southwestern States we are establishing no new precedent. But, aside from that it seems to me that it would be to our mutual advantage if we can bring into this conference the representative operators and miners of not only the Southwestern states, but the operators and miners of every coal-producing State in the Union.

"These States west of the Mississippi River—and I want to speak particularly of Iowa—are competitive with coal produced in the States east of the Mississippi River. Coal mined in Pennsylvania, in Ohio, in Indiana and in Illinois is sold in the same market as the coal produced in all of these states seeking admission here. There can be no doubt in the minds of either operators or miners that it is desirable to establish a wage scale that will be practically the same in every State and in every territory where coal is mined and sold in a common market. And it seems to me that incalculable benefit will accrue to the coal industry if we can bring into closer affiliation and harmonius co-operation at least the men who own the mines of these various States, to say nothing of the benefits

that will come from bringing into co-operation the men who work in the mines. The trouble too often has been that you gentlemen have not worked in harmony one with the other, and too often we have had to suffer because of friction among the men who employ us. I trust, Mr. Chairman, that the proposition to include these Southwestern States, whose operators and miners are here, will be adopted, and that we shall hereafter invite to meet us the miners and operators of every State where the men are organized and where coal is mined and meets your product in competition."

p. 5, l. 7–66.
p. 6, l. 1–66.
p. 7, l. 1–18.

(246) "Mr. H. L. Chapman: It has been now twenty years since I started out with John McBryde and Chris Evans, both of whom are here, I believe, although many of the others have passed over the river, to attempt to organize, carry on and perpetuate the Interstate Agreement for the benefit of the operators and miners of the four competitive States. We have met here this year, after a two years' recess, for the purpose of again seeing if we can, in this competitive field, establish and retain the present relations that have existed between us for so many years. Each of you operators and each of you miners who have participated in these conventions know full well the difficulties that have attended this movement. On several occasions it has well nigh gone. It has required the patience, the conservatism and the arguments of the level-headed operators and miners to perpetuate it. It will require the same in the future to perpetuate it. As you all know, it has been demonstrated in the past that whenever you add another State to the movement it makes it that much more difficult for the four States to get an

agreement. While I have been connected with the movement for a great many years, I am today not familiar with all the conditions even in my own state, nor am I familiar with all the conditions in Pennsylvania, Illinois or Indiana; much less do I know the conditions that exist in any of these outlying districts. What does an Ohio operator or an Ohio miner, except those who have been in those outlying districts, know concerning the matters there? What business have we to attempt to fix a scale of wages for men a thousand miles away from us, and for operators a thousand miles away from us? The conditions are entirely different; the markets are entirely different. We in Ohio do not come into competition to any extent with any of the districts named. If the miners would bring in our sister States of Virginia and West Virginia, we would admit them. We have tried to bring in the operators, but have failed. Let us look at the conditions there. In 1903 the State of West Virginia produced 26,882,000 tons of coal; in 1904, 30,222,000 tons, and the estimated production for 1905 is 35,000,000 tons. In Ohio in 1903 we produced 24,573,000 tons; in 1904, we produced 24,583,000 tons, an increase of 10,000 tons in one year. Although the statistics for 1905 are not yet out, I do not think Ohio will show an increase of anything in 1905. What does this argue? That this State of West Virginia is taking away steadily the trade of the miners and operators in Ohio. Our people undoubtedly would be in better condition today, so far as the operators are concerned, if they had a free rein against West Virginia, with the cheap labor they have over there, but we do not want it. We want the conditions of our people in our State to be just as good as we can make them, and we are willing to stand by the movement, and trust in the future that something may occur to bring those people in, or to prevent their taking away any more of our trade.

"You miners want to consider this proposition carefully and seriously. Consider whether or not you are not, by increasing this territory, bringing about a condition of things that will eventually ruin the movement that has done so much for all in the competitive field. These people in the Southwest that you are seeking to take in have an organization with which you meet and fix a scale. You have your organization there. We have no objection to it. We say God-speed in your movement in the Southwest, but do not make this thing so big and difficult to handle that you destroy it. That is what the operators fear, to say nothing about the business proposition connected with it. These gentlemen have no right to come in here, and we have no right to let them in. We are a close corporation so far as these four States are concerned, between the miners and operators. Unless you can demonstrate by different arguments from those you have presented on this and on former occasions, that there is something in it, we will continue to object to the admission of those States. As Mr. Robbins has said, our convention has voted against the proposition today as a solid wall. In the interest of the men that are laboring for us in the competitive field, we refuse to let these districts in. It seems strange to me that this question should be brought in year after year. It was threshed out years ago. The same arguments have been used year after year by the miners and the operators. We have not changed in any respect. I do not question your sincerity in the least; you cannot question the sincerity of the operators from their side. I think that is all I desire to say at the present on this proposition."

p. 10, l. 44–67.
p. 11, l. 1–40.

(247) "I may be an idealist or a dreamer, but I hope to see the day when every coal-producing field in the United States will participate in this joint conference."

Mr. Green.
p. 12, l. 40–42.

(248) "The gentleman on the other side spoke of what we are doing in West Virginia. I desire to answer that question by stating that we have men in that State trying to organize the miners. While doing so we meet with opposition from people who claim they are law-abiding citizens, who claim that they respect the law, and they respect it to the extent that they hire thugs to assault the men we put in there to organize that field."

Mr. Lewis.
p. 19, l. 14–19.

(249) "Mr. Mitchell and Mr. Lewis make the great mistake of always talking as though the organization controlled all the coal mined in this country, when, as a matter of fact, you do not control it, and there is where the increase and the low prices are coming from, and that is what we are meeting."

Mr. Robbins.
p. 25, l. 57–60.

(250) "I might say, while I am on my feet, in reply to one statement made here, that the miners' representatives discussed these questions on the assumption that we control all of the coal mines in the country, that I have never attempted to discuss these questions from that standpoint. I know we do not control all of the mines in the country, or at least we have not in the past; but we are in better

position now in case we fail to agree, to control the mining industry of this country than we have ever been before."

Mr. Lewis.
p. 27, l. 50–56

(251) "Mr. Dolan: Haven't you the power to discharge a man over in Ohio if he does what is wrong, or if he does that which is not for the best interests of the company?

"Mr. Chapman: I question that proposition.

"Mr. Dolan: Then it is up to the officials of that district to see whether or not a man who loads dirty coal cannot be discharged. I know they discharge them in the Pittsburgh District if they do wrong.

"Mr. Haskins: Whenever men do anything wrong, of course they are discharged. A superintendent, while he is angry, of course, does not decide the question. Any man who does wrong in Ohio is discharged, but it isn't all one-sided. The man has a hearing."

p. 38, l. 32–42.

(252) "Mr. Dolan: I don't agree with the way Mr. Haskins answered my question when I asked if the operators of Ohio had the power to discharge a man if he did wrong. He said the men there had a hearing. The men in the Pittsburgh District get a hearing, but we have sense enough in Pittsburgh to let a man go when we know he has done wrong.

"Mr. Haskins: I will say for Ohio that we have as much discretion as they have in Pittsburgh. I answered the question as well as I knew how. I meant that in Ohio when the operators desired to discharge a man the matter is taken up with our people. We will not, as a general proposition, permit operators to indiscriminately dis-

charge our men, and if they do so, we will strike for that as quickly as we will for 10 cents a ton."

p. 39, l. 40–50.

(253) "Mr. Mitchell: I never, either officially or personally, said to Mr. Schleuderberg or anyone else that I was not in favor of a uniform scale for outside labor. If I have been one thing I have been consistent in a demand for a uniform scale for outside day labor; so much so, so much concerned have I been about the outside day men, that I went to Pittsburgh to attend two different meetings, and served notice on the Pittsburgh operators that I would stop every mine in the Pittsburgh District if I had to fill the mines with organizers, in order to get a 20 per cent advance for outside day labor."

p. 58, l. 49–56.

(254) "Mr. Penna: I don't see why the miners should inject such a proposition into this meeting. The eight-hour day was conceded in the Chicago convention, and it has never been enforced by you people. You have never kept your contract in that particular. The keeping of your contract has been the exception; the violating of it the rule. A minority of the miners work the eight-hour day, and you have not done anything to enforce the eight-hour day at all. Your treatment of the eight-hour day has been such as to endanger it and make it repulsive to men who opposed it at that time and predicted just what would come of it. The advocates of the eight-hour day in Chicago were confronted with prophecies as to how it would be enforced. It has been demonstrated that those prophecies were true. We are surrounded by men working nine and ten hours a day, and the coal they produce competes with ours. Before you have made that proposition of the eight-hour day an established fact you want to

shorten the hours. If conditions are not bettered it will only be a question of opportunity before you lose the eight-hour day. You are not making converts to the eight-hour day proposition, and to come in here and try to enforce a seven-hour day I think is very poor policy, and comes with poor grace from you gentlemen. Every attempt has been made to destroy the eight-hour day in a local way. The first thing the Indiana miners did, after coming from the Chicago convention, was to declare that under no circumstances would a miner go into a coal mine on an idle day. They had no right to do it; the contract did not prohibit them doing so. The contract had been made on the same basis that other contracts had, and such a change would embarrass the operators. In a subsequent year we were able to get a clause making it compulsory upon them to go in and timber their places if it was made necessary by shooting at the quitting time the night before. This same restrictive policy, the same meddlesome interference is what brings the eight-hour day into disrepute. A machine man is allowed to work in the mine eight hours a day, and if for any reason he stays out and the loaders after a machine have to go home, the next day that man is not allowed to go in and do cutting so his loaders will have work on the following day. The whole tendency of our people has been to restrict and restrict, cut down and establish themselves as watchmen to see how little could be done and how many restrictions could be made to prevent work. If we have a scale made in this convention we ought to have something to say about that eight-hour day. We want it arranged so that there will be no dispute about it between operators and miners anywhere when we leave here. We believe the consent of this side of the house to require the miners to work eight hours per day or forty-eight hours per week does carry with it an

obligation on the part of the miner to work that forty-eight hours when the work is provided. If that is not the case, then the operators have not taken advantage of their rights to work more than forty-eight hours without any consideration. When we agree not to ask the miners to work more than forty-eight hours in a week they ought to be willing to work that many hours, and if for any reason they do not work one day they ought not to be prevented from working the following day, even though the mine is idle, when their absence is going to decrease the output of the mine."

p. 63, l. 20–65.

(255) "Mr. J. H. Walker: I offered a substitute, providing for six hours a day and five days a week. I am satisfied if this movement is going to continue it will come to that some time. I want it understood that I agree with Mr. Robbins that I don't want to enter into any agreement with the operators to defraud the public. There is one question that is a bone of contention, and we can trace every argument of the operators to it. I refer to the competition from the unorganized fields. I don't care whether it is the eight-hour work day, the mine-run system, the day wage scale or the tonnage rates, we find in every argument made by the operators this competition from the unorganized fields as the main factor. Now, that question has got to be met. In my opinion the amount of coal that is produced, and the method by which it is produced in the organized fields, is the one thing that we are going to have to handle in order to be able to meet competition from unorganized fields. We have two methods of meeting it. One is to agree with the operators in their contentions along these lines, taking as a basis for the present contract, prices, rates and conditions, which will allow them to compete with the coal coming from the fields where the

men are unorganized. You know what that means. You know if there was a reduction in wages here now, as there was two years ago, that would not insure you from competition from those fields. Just as soon as they could do so they would rearrange their prices in order to be in the same relative position they were before. No matter how much you would increase the hours of labor in the organized fields, thereby indirectly lowering the cost of your coal, it would only be a short time until their conditions would be rearranged and they would be ready to meet you on the same old basis. There is another way. Recognize the amount of coal you have got to meet in competition and handle the output in the organized fields in such a way that the best results will follow. Then we must try the best methods for getting those fields into the organization. The miners and operators must go in partnership to the extent of entering into a mutual arrangement—you may call it a conspiracy, but I don't believe it is, and I don't believe the people of this country would consider it as much an injury for the operators and miners of the bituminous fields to get together and agree on what would be a fair living wage for every man dependent upon that industry, at the same time allow the operators a fair return on their investment, as they would if you gave us the conditions now in force in the unorganized fields. I think we should simply restrict, or by some method control, the entire output from the organized fields in such a way that you will be able to pay us a living wage, allow us to work under decent conditions and get a fair return on their investment. The only way to do that is to have control of the output and put it in such a condition that you can get the prices necessary to enable you to do this.

"I think if you were to enter into a contract for a six-hour work day, and work five days a week, and use that

as a basis for your present contract, if you work together, instead of going into cut-throat competition, you will get the best results for everybody concerned. I think in this way you can get the results you are now seeking for, and they would be secured at a less cost to you and less labor for us. I think it will also bring about an organization in the unorganized fields. I am satisfied this can be done, and whether you do it now or not, later on in this movement it will have to be done in order to get what we should get out of this industry.

"Mr. Taylor: Mr. Chairman and Gentlemen: The remedy Dr. Walker has prescribed for the coal trade might have some worth if all the coal that it was possible to develop was at present developed, and all the capital that could be invested in the coal industry was invested. If we were to follow his suggestion and restrict our business to the hours and days mentioned, if we were to curtail the output of our mines in that way, inviting the competition of this vast territory of undeveloped coal and the large supply of uninvested capital we would have an oversupply that would wipe us out of existence.

"Now, gentlemen, let us go back to the eight-hour day. We have suffered under the eight-hour day as much as any other State. We haven't the eight-hour day in Illinois. I am not saying that a large number of men do not live up to their contract in regard to the eight-hour day to the best of their ability; but the operators in the State of Illinois, when they want coal, cannot get eight hours' labor from their men, and especially since the shot firers' law has been in force. This morning in our own conference one of our large operators showed from carefully kept records that out of 285 men who went down in the mines in the morning, an average of only 160 were hoisted out, showing that 125 men came out during the working hours.

Give us a fair competitive wage scale and work eight hours a day and we will look after competition.

"Mr. Mitchell: I would suggest that Mr. Walker's remarks on competitive prices be eliminated from the record.

"Mr. Robbins: I object. I want those remarks to go into the record.

"Mr. Mitchell: Mr. Walker, in offering the suggestions he did, did not reflect the desires of the United Mine Workers of America. The United Mine Workers of America have no intention or desire to enter into an arrangement with the operators that will control the selling prices of the coal to the detriment of the general public, for whom we are very solicitous.

"Mr. Lewis: If there are any objections to eliminating that part of the record, I want to say, as one representative of the mine workers' organization, we won't agree at any time to enter into a partnership with the operators to raise the price of coal in this country.

"Mr. Robbins: I want to say, Mr. Chairman, on behalf of the operators, that they have never asked the miners to join with them to make any agreement to put up the price of coal, or to put any unfair conditions on the public in any manner."

p. 67, l. 12–66.
p. 68, l. 1–29.

(256) "Mr. J. H. Walker: I should like to have a correction to go in following my statement. I want to disabuse the minds of the gentlemen present of the impression they appear to have received, that I want to enter into an agreement with the operators to raise the prices of coal to the public. I did not intend to convey any such impression. The impression I did want to convey was that you should enter into an arrangement that would enable

you to pay us living wages, that would permit us to live under decent conditions, and at the same time to give you a fair return on the money invested in your property."

p. 69, l. 61–66.
p. 70, l. 1, 2.

(257) "Lately we had the mine idle because the local established a rule that the cars were to be above the tipple the night before at 8 o'clock. This is the sort of thing that is in vogue throughout the Linton District, and has been for a long time. The officials of the organization will come there and have the locals strike those things off the books. I believe the officials do the very best they can in this respect, but there is no penalty attached for doing such things, and no one suffers except the man who is running the mine. We lost three straight days in the last instance, and I don't suppose it will be two months before we will have to do it all over again. The local passes some rule, the men come out in the morning and the mine stops. After two or three days' fussing we get the mine started, but that does not help the interference with our trade."

Mr. Siefert.
p. 70, l. 15–26.

(258) "The question of the cars not being above the tipple at starting time has been up in Ohio at different times, but we did not care to bring it in here."

p. 70, l. 59–61.

(259) "Mr. Moorshead: In many locals in the State of Illinois they have an arrangement by which if there is less than a half-day's run of cars when they reach the mine they go home. In many cases where a train has just pulled by and has gone to push the empties in from the sidetrack, because the cars were not actually there on the track ready

for loading, the men have gone home. Should we pay for the two hours in a case of that kind?

"Mr. Perry: Not if the men go home. If men draw the line so close as that they are not living up to the spirit of our agreement and I don't believe the officials of the State of Illinois would back them up in any such thing.

"Mr. Moorshead: I am glad to hear that.

"Mr. Ogle: I am glad to hear that said. They go a good deal farther than that in Indiana.

"Chairman Ryan: Indiana must be an awful place.

"Mr. Ogle: It is a good place. We are not only required to have the flats there in the morning, but we are required to have them there the night before. Even when they are on the part of the switch below the tipple, though they may have been there for hours, the men will not work. In case the whistle blows for work they go so far as to punish the operator by refusing to work the next day, or any other day, until there is a full day's run of cars above the tipple the preceding night. I am glad to hear Mr. Perry say what he does.

"Mr. Mitchell: Is not that a local arrangement? Is it not made by agreement with the operators?

"Mr. Ogle: No, sir.

"Mr. Mitchell: It is by agreement with the operators that the companies have not a right to blow the whistle the night before for the men to go to work in the morning unless there is a certain number of cars at the mine at 8 o'clock at night.

"Mr. Ogle: Several years ago at one mine such an arrangement was made, and the miners have systematically tried to force it on every other mine in the State. They have had a great deal of success. This solicitude for the day men is really quite unnecessary. In our district when the machine man comes to work and wants to work, or

if it is absolutely necessary for him to cut his coal so the men may work next day, he is forbidden to do so."

p. 77, l. 30–62.

(260) "Mr. Taylor: Before the Illinois coal operators will vote on an advance in the present price, or on any other price for the coming year, they desire to have incorporated in any agreement that could be made or is made by this convention the following:

" 'That the mining rate shall include the mining, shooting and loading of the coal, and timbering of the working; place; and, that where shot firers are employed, the miners shall reimburse the operator for the entire expense occasioned thereby. That in machine mines it shall include the proper snubbing of the coal.

" 'That this scale is based upon existing mining laws, and in case new laws are enacted, increasing or decreasing the operating cost of producing coal, the contract scale rates affected thereby shall be increased or decreased to compensate therefor.

" 'That the scale shall embody specific provisions for suspending the check-off in case of suspension of work in violation of contracts, and providing for adequate compensation to the operator for loss occasioned thereby, the same to be paid by the miners' local offending and to be insured by the retention of a suitable portion of the union dues collected."

p. 82, l. 32–49.

(261) "Mr. Taylor: In making this demand the Illinois operators do so from the fact that when we made our contract two years ago we thought we knew what our coal was going to cost us. We had a clause in our contract which provided that no demand should be made locally which should increase the cost of our coal. After our miners had

made an effort in our convention to have a shot-firers' clause inserted in our contract, and having failed to do so, they appointed a legislative committee to lobby a shot-firers' bill through the Illinois legislature. That committee went before our legislative body, affiliated themselves, as I understand, with a lobby appointed by the Federation of Illinois, and by trading votes in cities for votes in mining districts they carried such weight in the legislature that they carried the law through. It was against all fairness and against the contract they had with us, and imposed upon us a condition which absolutely changed the provisions of our contract. In fact, it changed our contract to such an extent that it was entirely abrogated. We had meetings with the legislature and with different committees of the legislature; we had meetings with committees of our miners; we argued, pleaded and threatened, and finally the law was enacted and we were forced to suspend work in the State. We had no contract to work under, the action of our men having abrogated it. Then the men began to see light, and we got together and eliminated by agreement part of the iniquities they had imposed upon us. The matter of shot firers was left to arbitration. Two miners and two operators were selected, and they selected Judge Gray. He decided that the miners, having contracted to mine, load and shoot coal and take care of the working places were bound to do it. He further ruled that the inspection of the shots was not part of the contract, and therefore the operators must bear that additional expense under the police laws of the State. He took the stand that he found that law on the statute books of Illinois. The miners have not denied that they had that law passed. They were proud of it then, but I don't think they are now. Judge Gray's decision will carry until the first of April,

but it expires with the present contract. He simply ruled under the contract.

"Now, the operators of Illinois do not intend to agree upon anything in this Interstate Agreement that will send us back to our own State with a condition confronting us which will absolutely change every condition of mining in our State and throw us out of line anywhere from 5 to 10 cents a ton with the other States."

p. 82, l. 52–67.
p. 83, l. 1–20.

(262) "We will not agree to a settlement on the basis of the prices we now receive for our labor. We expect to receive an advance in wages, and we will not vote in this committee for a settlement except on a basis of an advance in wages. We did not require from 9 o'clock this morning to 4 o'clock this afternoon to make up our minds. Our minds and our policy is irrevocably made up. There will be no settlement by agreement except upon a basis of an advance in wages."

Mr. Mitchell.
p. 91, l. 50–56.

(263) "Mr. Mitchell: I want to approach this subject with an entire realization of what it means to me personally; because after all, every man in this world feels personally how things will affect him. I believe there is not one man in this meeting, either miner or operator, whom a disagreement will affect more personally than it will affect me. I trust you will pardon me for discussing this from a personal standpoint, but I think I have done as much to build up a relationship between the miners and the operators that has been mutually advantageous as any man in America. But I want to emphasize this one point: If this is the end, if this is Utopia for the coal miners, then

this movement means nothing for us. Is there no hope for us? Is the present wage scale the best we can have? Is there no condition of industry that means more for the miners than they now have? I am not willing to agree that the coal miners of this country shall have no more wages, no more favorable conditions of employment than now prevail under our present contract.

"What is the condition of industry? Our entire country is prosperous. The iron trade, railroads, stocks, commerce, everything is at its maximum—and what have we got? A proposition to live under a reduction of wages while every other class of industry is getting an advance in wages. The iron men have been advanced 25 cents a day. Stocks have advanced 100 per cent. I say, gentlemen, it is not fair and it is not equitable to ask us to do it. And, so far as I may by my influence determine the policy of the miners' convention, there will not be a renewal of the present agreement.

"Mr. Robbins: I do not believe that Mr. Mitchell personally or that the United Mine Workers of America can afford to take an arbitrary position in this matter. Through this movement their wages have been increased practically 100 per cent. What under Heaven does Mr. Mitchell mean when he asks if this is all there is in the movement? If you will hold what you have got you will be mighty lucky. What other industry can show such an increase in wages? Your conditions have been improved just as much as your price has been improved. And yet you come in here, when you can show no argument to show that the selling price of coal has been advanced, and ask for an increase in your wages. The selling prices of coal are away below the prices of two years ago. This decline in prices has been borne by the operators. The fields that are in this interstate movement have

reached their maximum of tonnage as compared with last year, while the fields that are unorganized are constantly increasing their output. Your day labor is higher today than in any other field. The day labor in the anthracite field is anywhere from 40 to 60 cents a day less, and yet you belittle the movement. As I said in the operators' meeting today, the operators had stood for the movement for humanity's sake, rather than for any personal or financial advantage. Has this been wasted? Has what we have been doing been thrown away? Is it not appreciated by the other side? If it is not, it is time to terminate the movement. And I know of no better position on which the operators can stand before the public, with a depression in their business, with the small, very small, return of profit on their investments, when they offer to continue a rate of wages that is within 5 cents a ton of the highest that has ever been reached. I know of no better position we can take to go before the country than that, and I want, if this movement is broken up, to have it broken up by the miners, on such an unfair proposition as that made by Mr. Mitchell."

p. 93, l. 10–58.

(264) "You miners in Illinois agreed to do a certain amount of work for a certain amount of money and, as I understand it, it has not been denied that you have, after making this agreement, gone to your representatives in the legislature and got them to place a law on the statute books which practically abrogated your agreement and compelled the operators to pay more than you agreed with them to pay."

Mr. Jones.
p. 96, l. 57–63.

(265) "Mr. Chapman: In the remarks I shall make I do not intend to undertake to interfere in any way with the

right of any legislature in this country to pass all the police regulations and laws necessary to protect the lives of the miners or the property of the operators. It seems to me, however, that in States where laws are passed that require the operators to pay for something that is provided in the contract the miners shall do, in all future contracts that provision should be eliminated and prices that may be paid the miner for shooting and blowing down the coal should be eliminated entirely from the scale and not become a part of it, if by law the operators are required to perform that duty."

Mr. Chapman.
p. 98, l. 18–27.

(266) "When it comes to a question of competition between Ohio and other fields, we can show by actual figures that the increase in the State of Ohio for the past three years has not kept pace with the increase in other States; in fact, the production has not increased at all. From 1903 to 1904 it increased 10,000 tons, according to the report of the mine inspector. 1905 is not yet tabulated but my information is that the production for the year 1905 will be about a stand-off with the two previous years. Some sections of the State have lost tonnage; other sections have increased some. What has our sister State of West Virginia done in that period? She has gone up at the rate of five to six million tons a year. She is continuing to increase her production and it is only a question of the ability of the operators in that State to get transportation that determines the amount of coal they can get into the market. Two new railroads are now going into that State, one from the seaboard and the other from the North, connecting with all the distributing points in the Northwest. Those roads will scatter that coal, and what State, judging by the figures that are made up in

the various Bureaus of Labor statistics, will be most seriously affected? Our State of Ohio is the one; it will be affected in its every field. This coal can be found at almost every station upon every line of railroad that traverses the State of Ohio. It can be found in Indiana, in Chicago, and everywhere. It can be found in Michigan, in Cleveland, and we cannot meet the competition with our present prices. They can and do undersell us, and when I say to you that mine-run coal is produced in the Pocahontas field and put upon the cars at less than 40 cents per ton, including royalties, you will see what chance we have to compete with them. That is probably the best soft coal that goes into the market anywhere. Other mine run coals in West Virginia are put on the cars at 60 cents and 80 cents for lump coal, including royalties and everything, and I ask the miners of Ohio what in the name of conscience we are to do to give you work if the price of our coal is advanced? These are no idle statements, my friends. They go down to the bottom. If the operators are to continue in this line and give you work, how are we to do it if you put such an obligation upon us? If we try to do it we will be required to pay you out of the small savings of the past. We cannot do that; we simply close our properties down and hope for better things in the future. We are willing to continue in this movement, but we are not willing to take our past savings to keep up the pay rolls in Ohio. We are willing, as the limit we feel it possible for us to go, to continue a scale for 1906 upon the very terms and conditions of the past two years, without a single cent added to our cost of production and we will do the best we can to give you work and go along together."

Mr. Chapman.
p. 99, l. 64–67.
p. 100, l. 1–35.

(267) "The operators have not asked the miners to concede any right or to restrict themselves in any privilege before the respective legislative bodies. They can ask for any legislation they desire. Nor do we wish to curtail their rights to do so. We have not asked nor suggested, either directly or indirectly, a reduction in wages as a basis of settlement. The only contention we make is this: You have no right to come here and contract to shoot the coal for a cent a ton, or 2 cents a ton, or 3 cents, and then go and secure an act of the legislature to relieve you of the shooting, but continue to draw money for doing it. You have a right, if you want to, to ask the legislature, after you have made a contract for so much per ton for loading coal, to be relieved of that, but if the operators load it they should be paid for it. We don't attempt to restrict your rights, but we do say if you attempt to do that you ought not to draw the money for it. If it is worth 52 cents in Grape Creek for mine-run coal on the car, which carries with it the digging, loading, securing of the place and the shooting of the coal, then it is worth less than 52 cents a ton when the shooting is eliminated. It would be worth less if the timbering was eliminated, and still less if the loading was eliminated.

"We do not say you have not the right as American citizens to go to the legislature to seek for legislation you believe is for the common good; but we contend when you do that and disturb the competitive relationship established in this convention you have a right to come here and to correct it."

Mr. Penna.
p. 103, l. 4–25.

(268) "The only thing we ask is, when you contract with the operators to do a given piece of work for a stated price, that you will do that work as long as you can, and if at any

time the state prohibits you from doing it, that you will refuse to draw the pay. That is honorable."

Mr. Penna.
p. 103, l. 39–42.

(269) "There is no use attempting to draw parallels or to get out of this one fact, you are not doing the work you contracted to do and you are demanding the pay. It does not matter how you construe it, when you come down to the last analysis, that is the fact. You have no more right to draw the proportionate amount of the 52 cents that applies to the shooting of coal, unless you do the shooting, than you have to draw the entire 52 cents if the coal company should do the entire work. I am not saying it is 1 cent, I am not saying it is 5 cents; I don't know to what extent that law in Illinois disturbs the relative basis, but I do know that to whatever extent it does disturb them this institution ought to be big enough to correct it and do Illinois justice."

Mr. Penna.
p. 103, l. 59–66.
p. 104, l. 1, 2.

(270) "If there was ever an unlawful combination in this country it was formed in your convention yesterday. Talk about trusts! What trust can compare to the resolution adopted in your convention yesterday? It is simply a threat, a menace to the business interests of this whole country! You have threatened that you will compel an advance by reason of a combination of all the miners of this country, and British Columbia, anthracite and bituminous miners, and compel the people at large to suffer from that combination."

Mr. Robbins.
p. 114, l. 48–54.

(271) "I want to protest further against your methods here yesterday. When this interstate movement was formed the operators and miners of four states met together and in joint conference discussed and settled their difficulties. I object to your change. It is unfair and unbusinesslike, to bring in all the miners of this country and British Columbia, anthracite and bituminous, and ask them to vote upon the propositions of the operators of the States of Indiana, Illinois, Ohio and Pennsylvania. It is a thoroughly unbusinesslike proposition, and it is one we will not submit to. We propose to deal with our miners evenhanded, the same representation on each side. We don't propose to submit our questions to be settled by miners of other States that are competitive and that have absolutely different conditions and different purposes."

Mr. Robbins.
p. 115, l. 4–14.

(272) "You have tied your hands by your resolution which provides that there shall be a settlement in all the districts or in none. One little bit of a dinky mining interest up in Michigan can interfere with the mining interest of the whole country."

Mr. Robbins.
p. 115, l. 20–23.

(273) "So far as our unlawful association is concerned, my reply to that statement is this: We control our own labor and we have a right to sell that labor collectively at the highest price the conditions of this country will warrant us in demanding."

Mr. Lewis.
p. 119, l. 6–9.

(274) "Lorain Coal & Dock Co., Cleveland—Edward Johnson."

DELEGATES TO THE JOINT INTERSTATE CONVENTION, 1906.

Ohio Operators.
p. 132, l. 31.
Same in 1908.
McKinley's Exhibit No. 3.
p. 235, l. 14.
Same in 1910.
McKinley's Exhibit No. 4.
p. 358, l. 7.

(275) "INTERSTATE CONVENTION 1906.
(Second Conference)

"Coal Miners and Operators.
Western Pennsylvania, Ohio,
Indiana and Illinois.

Held in Indianapolis, Ind.
March 20th to 29th, 1906.

EXPLANATORY.

"The second joint conference was held pursuant to the suggestion of President Roosevelt, in the following letter addressed to Mr. Francis L. Robbins, of the Pittsburg Coal Company, a similar letter having been addressed to Mr. John Mitchell, President of the United Mine Workers of America:

"'The White House, Washington,
February 24, 1906.

"'Sir:—

"'I note with very great concern the failure in your late convention on joint interstate agreement, to come to a basis of settlement of the bituminous mining scale of wages. You, in your business, have enjoyed great industrial peace for many years, thanks to the joint trade agreement that has resulted from the action of your successive conventions.

A strike such as is threatened on April 1st, is a menace to the peace, the business interests and the general welfare of the country. I urge you to make a further effort to avert such a calamity. You and Mr. Mitchell are joint chairmen of the trade agreement committee of the National Civic Federation. It seems to me that this imposes an additional duty upon you both, and gives an additional reason why each of you should join in making this further effort.

Very respectfully yours,

Theodore Roosevelt.'"

p. 141, l. 1–29.

(276) "The shot firers' bill in Illinois was not passed jointly, as Mr. Mitchell quotes in the other States; it was passed at a time when our miners were under contract to do certain work. It was passed by the strongest labor lobby ever sent to the State capital, a combination of the State Federation of Labor, the United Mine Workers and other labor organizations. The miners have not denied this. It was an outrageous thing to do. As much as we have suffered under that bill it is not to be compared to what we would suffer if it was in full force. The bill, if in full force, would practically shut the mines of Illinois. It would absolutely destroy the competitive relations between Illinois and other States, and it would destroy competitive relations between mines in our own State."

Mr. H. N. Taylor.
p. 147, l. 66.
p. 148, l. 1–10.

(277) "Mr. Bent: The point you make overlooks the point that our scale is not made on the earning power of the men. It is a competitive scale."

p. 152, l. 26, 27.

(278) "Some operators in that State did not care to enter the movement, and we made rates that placed them at a disadvantage."

Mr. J. H. Walker.
p. 165, l. 44, 45.

Note.—Walker referred to Illinois.

(279) "The insterstate scale of wages, which was first framed in 1898 included a provision for the price to be paid for pick mining, so called in the contract, at Danville, Illinois. It included prices to be paid for the same general class of work in Indiana, in the Hocking Valley of Ohio, and in the Pittsburg vein of Western Pennsylvania. Those wages were conceded at the end of long argument, combined with the arbitrament of force in the field. Those relative scale of wages were fixed, and they were not only supposed and believed, but they were intended to place these various districts on a relatively equitable competitive basis. That was always understood. It was understood at the beginning of the formation of this scale, and it has been understood ever since, in theory, as the foundation for this movement."

Mr. Traer.
p. 166, l. 55–66.

(280) "As I understand it, this Ryan Resolution is so worded that if the anthracite people do not agree, or if the Southwestern people are unable to come to an agreement, or, in fact, if any class in connection with this interstate movement cannot come to an agreement, none of us can go to work."

Mr. Moorshead.
p. 179, l. 5–9.

(281) "Mr. Winder: We understand that when the original call was made for a joint conference some eight

years ago, it included only the operators and miners of these four States. It was the understanding of the operators at that time, and it is their understanding of the matter now, that no persons not engaged in the business in the four States have any right to participate in any way in the settlement of our scales. We feel that it is difficult enough, large as this meeting is, to reach an agreement, without being subjected to the interference of either operators or miners outside of the four competitive States. We seriously object to any propositions which we make being considered by other miners than those employed by the representatives of the operators here. The larger the scope given to this movement the more difficult it is going to be each year to reach a settlement. If you want to find an easy way of destroying the movement, I know of no better way than to permit any interference whatever from any operator or miner outside the Central Competitive Field."

p. 182, l. 37–50.

(282) "Mr. Winder: In a movement as great as this there must be periods when it is impossible for one district to be able to pay more for mining on account of local conditions that exist, than it is possible to be paid by other districts a part of the joint movement. We are confronted today with this kind of a proposition. The Pittsburg District announces the fact that they are willing to effect a settlement on the basis of a 5.55 per cent advance. It is to be presumed that if they are willing to make a settlement on that basis they are able and can afford to do so. Upon the other hand, the States of Ohio, Indiana and Illinois, with equal sincerity, have attempted to show to you the absolute inability on their part, on account of the conditions existing in their fields, to grant such an advance. I do not believe it can be argued with any justice that, because the Pittsburg District is in a position to pay this

advance, the other States must be made to suffer on that account. There are only two ways, it seems to me, this matter can be adjusted with fairness. We all recognize the principle that there are times in a great movement when some sacrifices have to be made in order to continue together. It is therefore only possible to reach an agreement under those circumstances, by a sacrifice being made by the minority in this movement, or else that a differential be agreed to that will enable that part of the field that is unable to pay the advanced scale to work.

"We have no desire in the world to prevent the miners in the Pittsburg District from obtaining an advance, and we regret exceedingly that we are not in a position to offer to our people a similar advance. I trust that this body will consider the propriety of permitting that part of the field that is unable to pay this advance to sign up a scale based upon a proper differential. I can find no other solution for our difficulties at this time, and nobody will regret more than I do the necessity for the suspension or a rupture of our joint relations, which have been of so much value to us in the past."

p. 183, l. 14–41.

(283) "Mr. T. L. Lewis: This discussion this morning is bringing out something of interest. It is of interest to both the operators and miners of this competitive field. It has brought out the fact that there are operators in this convention representing very large interests in the unorganized fields, and these unorganized fields have been mentioned as being a keen competitor of men who are represented in the interstate movement. It seems to me now that one obstacle in the way of arriving at an agreement can be removed by the gentlemen who are interested in the Irwin District agreeing that they will use their influence to bring the properties they represent into this joint

movement and pay scale rates at their mines. There can be no argument against it, because it is not the Pittsburg District alone, but there are other interests represented here on the one hand to make contracts with us, and they refer to the fact that we are not able to organize the men in these fields.

"The other day Mr. Cantwell asked Mr. Penna why he had not organized them when he was president of the United Mine Workers. Mr. Penna very properly answered because he was not able to organize them. We might add to that the reason the United Mine Workers have not organized them up to this time is because we cannot. Our failure is due to the opposition of the operators in the Irwin District, and some of those operators are represented in this convention. Now, if we want to be placed on a proper basis, let us all join hands and make those mines union mines, and I think the United Mine Workers can go into the Irwin field and lick the other fellows in very short order."

p. 200, l. 4–26.

(284) "We don't want an industrial fight, but we are not going to pay an increase in wages over those now prevailing until you have shown additional reason why an advance should be paid. The only reason you have shown is simply that you want an advance because you want it, and you are going to have it or paralyze industry in America. You say you want an advance because you believe you are strong enough to get an advance, and the operators have a choice between that and an industrial calamity. If there has been any other reason assigned in any of these meetings, we have not heard it. There have been other excuses, but not any other reason why the advance should be paid. There never was a time in the history of coal production in this country, and there is not

likely to be for a long time, when a request for an increased wage could be made with less propriety than at this particular time."

Mr. Penna.

p. 214, l. 43–55.

(285) "I don't know what can be done or how a strike can be avoided, unless perhaps when we cannot agree the people may interfere. It may be that we shall ask them to interfere. The anthracite strike was settled by a commission appointed by a representative of the American people, the President of the United States. I know of no reason why we cannot avert a calamity by the same means, either at this time or in the future. One thing is sure, the American people will not suffer any very great inconvenience because of a disagreement amounting to a paltry $5\frac{1}{2}$ per cent in wages. The difference is too small, it is too trifling to warrant a strike of such magnitude as that contemplated by you and feared more or less by ourselves."

Mr. Penna.

p. 215, l. 51–61.

(286) "It is my desire at this time in talking to you to state as plainly and in as few words as possible the contention and the things that led up to the contention between the operators of the State of Illinois and the United Mine Workers of America.

"The trade agreement which has been in existence between the operators and miners since 1898 has been at its inception considered the means of settling all future difficulties, and we believed that wisdom and common sense had finally found a way to outweigh force and strife. Being a voluntary contract, as this agreement is, it is worth only the endorsement on its back, namely, the integrity of the parties who are the makers of the contract. When we signed the scale two years ago and had worked

under it for several months the miners of the State of Illinois, through a legislative committee, sent a lobby to the State Capitol at Springfield. That lobby became affiliated with the lobby of the Illinois State Federation of Labor, and they were able to pass any bill they put before that legislature, right or wrong. It is not a nice thing to say that our law makers can be influenced by a body possessing a great many voters, but it is so. That bill disrupted the competitive relations between the States of Ohio, Pennsylvania and Indiana and the State of Illinois, in as much as it destroyed the differential at the basing point of Danville. It also disrupted the competitive relations between the different districts in the State of Illinois, and even disrupted competitive relations between mines in the same district. It created chaos. It took away from the miner part of the work he had contracted to do, and put the expense upon the operators, while the miners still continue to receive their pay for the work they did not perform."

Mr. Taylor.
p. 217, l. 21–44.

(287) "If you gentlemen upon that side of the house will provide means by which you can stop the competition from West Virginia, from Kentucky and from Tennessee coming into the City of Indianapolis and into Ohio cities and taking the trade of the Indiana and Ohio miners, then there would be some consistency in this thing. But there is no remedy proposed. This competition is going on, and it will continue to go on. And if the operators have to pay higher prices for the production of their coal in these states it means the closing, the shutting up, the destroying of the value of many of the properties."

Mr. Chapman.
p. 226, l. 17–24.

(288) "Mr. Moorshead: We are denied by law the artificial prices—if you are pleased to call them that—that could be gained by combining our business affairs as you gentlemen do yours. You can combine with impunity—I suppose you have a great number of votes—but if we combine we see the penitentiary pretty well staring us in the face for defying the law. I am very sorry you do not take that seriously, but I want to assure you that it is a very serious matter to the gentlemen on this side. There might be means by which we could control the coal industry if we had money enough to do it in the right way, by buying it all up, but we are unable to accomplish that. It is only a very short time ago, within the memory of our national President, that a number of coal operators in Northern Illinois, who saw fit to send out a schedule of price of coal which had been agreed upon in a meeting among them, were taken into court and fined $500 each for doing it. Is not that right, Mr. Mitchell?

"Mr. Mitchell: They didn't go to the penitentiary, did they?

"Mr. Moorshead: No; they did not go to the penitentiary, but it is a penitentiary offense if the court sees fit to exercise its authority properly. But whether it is or not, we are not going to be law-breakers in that sense; we are going to conduct our business in a reasonably honorable way."

p. 228, l. 43–61.

(289) "The gentlemen from Illinois have suffered so long from the powers of the pit committee, from the dictation of the locals and from conditions that have been placed upon them in one way and another, that it matters not to them whether they operate their properties or not."

Mr. Moorshead.

p. 230, l. 46–50.

(290) "It is a common thing in the State of Illinois to have our operations suspended, sometimes because the president of the local takes the stand to quit at 12 o'clock because they have had trouble among themselves; sometimes because the cars for the mines are on the main track and going by the mine ready to be put on the tracks; but a local has passed a resolution that half of the tonnage in cars must be on the track at starting time or they won't go to work. They say they are not on the side-track and they will not work. How would you like a dose of that kind if you were the owner of a coal mine? And yet those are common indulgences on the part of the miners in Illinois."

Mr. Moorshead.
p. 230, l. 66, 67.
p. 231, l. 1–8.

(291) "Gentlemen, I am not and never have been an apologist for conditions in the Pittsburg District. I have fought and antagonized—I believe justly—the policy of the Pittsburg Coal Company, and went so far some years ago as to threaten to fill that district with organizers and close their mines after we had signed a scale in this city."

Mr. Mitchell.
p. 257, l. 56–60.

Excerpts from book entitled "JOINT CONVENTION OF THE IILLNOIS COAL OPERATORS' ASSOCIATION and the UNITED MINE WORKERS OF AMERICA.....DISTRICT 12 HELD AT SPRINGFIELD, ILL., May 17 to June 1, 1906.

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 2. [Record pp. 706, 291.]

(292) "No doubt some of you think I am leading up to the proposition of asking you to agree with us that no one in the State of Illinois who is not a member of the Illinois Coal Operators' Association shall be given a scale. I am not going to do that because I don't believe it would be either legal or right. But we do ask you, in all fairness, to impose upon these scabs that you are doing business with an additional cost on their wage scale, which is equivalent to putting us on a basis to do business with you."

Mr. B. F. Bush.
p. 7, c. 2, l. 2–16.

(293) "Now, gentlemen, are you going to put us on a competitive basis with the scabs that are now producing coal in Illinois? That is the first thing we want to know. When that is settled we will know where we are at in the building of a scale. We don't want anything impossible from you, nor do we want anything from you that can be construed by the finest legal mind to be illegal, but we do want justice from you. If you look on us as being friends, or if you look on us as being of any benefit to your organization, we ask you to accord us fair treatment and put us

on a level with the people that are now making a little temporary gain on account of our failure to reach an agreement with you. When the time comes those people will throw you up in the air as far as they tried to throw us. Those gentlemen who are working their mines now and shirking their part of the expense of these trade agreements are welcome to the money they are making. I want no relations with them, but I want an assurance from you people that you are going to treat us right in this matter."

Mr. B. F. Bush.
p. 13, c. 1, l. 55–56.
p. 13, c. 2, l. 1–18.

(294) "Mr. Mitchell: This discussion is very much foreign to what I expected when I came here. I don't know whether my conception of right and wrong is as keenly developed as that of the other gentlemen present; but certainly my mind is not in accord with what has been said concerning the policy of this organization. The policy of making separate settlements was favored by me; I believed it then and I believe it now to be a wise policy. We gave no advantages to those men of whom you speak that we did not offer to you. We offered to give you a contract carrying with it the same advance in wages as was given to them. If we were giving them a contract more advantageous than the one we are offering to you, then you would have just cause for complaint. As for giving assurance of what we will do in the future, that cannot be done. Some of you gentlemen here, and Mr. Bush in particular, will remember that in the Southwest we did compel operators to join your association, and you in turn compelled miners to come into our organization. In one case there was an entire sub-district where the miners were receiving 5 cents above the scale made for them, and we were compelled to

force some thousands of our members to accept a reduction because you would not permit the operators in your association if they paid a higher scale than was made for them."

p. 13, c. 2, l. 19–57.

(295) "Mr. Newsam: I am one who believes in trade agreements. I have always believed in them. I joined this association in 1898, and I have been on the executive board and the scale committee ever since. I have always believed that these associations joined together would do good if carried on on right lines. I am sorry to say that the miners in the last convention in Indianapolis departed from a principle they had always upheld before. Since 1898 this scale has always been made and signed by the two organizations, not by outside parties who never paid a cent to the joint movement. I know of no organization that has ever done what has been done since we left Indianapolis. I believe that what was done was entirely wrong to both miners and operators. I have been helping to keep up the association, paying my dues to it, going to meetings and trying to make scales, while these other gentlemen have been staying at home and reaping the benefit of my money and my labor. Before this we have always let the majority rule. I believe the majority should rule. I don't believe the minority should rule, especially when the minority runs down to one man. I don't like the Czar, I don't like Witte; and I believe we ought to get together and stop this Czar and this Witte. He may have more money than I have, but I don't think he is a better man. He is a traitor to the cause of unionism from the top of his head to the soles of his feet. And I am not speaking of him alone; there are others in the State of Illinois. They are coming to your organization and offering to sign up, and the people who have been keeping your organization up, the people who have been spending their

money and doing the work that benefits both sides, are the ones who have their mines tied up, while these scabs, these miserable scabs, are allowed to go to work and gain an advantage over those who have been the mainstay of your organization. I think this thing ought to be ironed out; I think it ought to be explained. I think what has been done is wrong."

p. 14, c. 1, l. 27–66.
p. 14, c. 2, l. 1–16.

(296) "For myself personally I want to say this: I would rather do business with an association of employers than with individual employers, and as far as I am concerned I am willing to contract with you that no union miner will work for an operator who is not a member of your association if you will hire no one who is not a member of our organization. I am only speaking for myself, now, remember."

Mr. Perry.
p. 15, c. 1, l. 18–29.

(297) "I want the operators that made individual settlements with your people to pay 3 cents a ton more than we do, or 2 cents a ton, or whatever the cost of maintaining this organization is, and 3 cents does not pay for the cost of maintaining this association in the cash donations and the time the members give to it. I will put it on another basis. Make them pay what it costs you to maintain your organization. We don't ask you to give us this money; keep it yourselves if you want it. The competition in this business in Illinois is down to so fine a point that 1 cent a ton will mean our ability to give you work."

Mr. Bush.
p. 15, c. 2, l. 29–46.

(298) "Mr. Perry: I said I would agree, so far as I am personally concerned—and I think the miners will agree with me—that we will refuse to work for any operator in the State of Illinois who is not a member of the Operators Association, if you on your part will agree that none but union men will be hired by members of the Illinois Operators Association.

"Mr. Bush: I will agree to that."

p. 15, c. 2, l. 56–65.
p. 16, c. 1, l. 1.

(299) "I know we cannot get a legal agreement out of you to not work for operators who are not members of the association, and I know you can get no legal agreement from us binding us not to hire men who are not members of your organization. The open shop, although it has not been an open shop, has been a recognized part of our contracts. I trust in the new contract I hope will be drawn it will not only be a recognized fact, but a fact carried out."

Mr. Peabody.
p. 16, c. 1, l. 62–66.
p. 16, c. 2, l. 1–8.

(300) "Now a word as to the production in Illinois as compared with other states. You should take into account, gentlemen, that Illinois is located the best of any State, practically, in the United States to market its coal. It is right on the threshold of the great Northwest with its unlimited market, and the population there is increasing right along. The manufactories in Illinois are increasing rapidly. It is the center of distribution, and the natural one, for the different manufactured products, and that part of our industrial system is increasing very rapidly. The railroad interests in Illinois have grown and they are doing a tremendous business. The fact of the increase I have spoken of in manufacturing and railroad business is

the only reason why we have been able to maintain anywhere near the percentage of increase we should."

Mr. Lukins.
p. 47, c. 2, l. 30–52.

(301) "West Virginia is in the wilderness, with no local markets whatever, and the only reason on earth why they can sell their coal at all is on account of their low mining rates. It is a non-union state and is not hampered by the union restrictions as Illinois is. Of course they have a good grade of coal. The mining rate is not all of it. The restrictions thrown around the operations of the mines in Illinois mean a great deal more than a higher mining rate in many instances. After we went into the union we increased the wages of our day men in many instances substantially 50 per cent, but we found our cost had increased 300 per cent. That shows to some extent what the union did for Illinois."

Mr. Lukins.
p. 47, c. 2, l. 57–66.
p. 48, c. 1, l. 1–9.

(302) "Ohio is centrally located between the eastern markets and the western markets. For most of the coal they have to go out of the State to get a market. It can take care of its own home markets, but they do not keep up with its production, and its only other legitimate market is to the west, because east of it is the monster coal fields of West Virginia and Pennsylvania."

Mr. Perry.
p. 55, c. 2, l. 8–18.

(303) "All coal is going west after you leave the Pittsburg District, and one coal shoves the other along."

Mr. Mitchell.
p. 56, c. 2, l. 48–51.

(304) "Mr. Hammond: If it is admitted that the non-union mines increased their output 12,000,000 tons that must have been at the sacrifice of the union mines.

"Mr. Mitchell: That would be true if all this non-union coal went into the markets that were formerly supplied by union coal. I don't know where it went.

"Mr. Hammond: A large proportion of it went into the markets formerly supplied by union coal. Another thing struck me as an odd situation, to say the least, and that is the position we are in, practically as a result of dealing absolutely with union miners, as compared with Kentucky where part of the mines are operated by non-union labor and part by union labor. That is a situation that must be remedied in some way, either by the miners or by the operators, or by both in conjunction. That brings about an unfair competition and there should be some means of correcting it. My idea is that both miners and operators should do everything within their power to correct those matters and to get all the States on a fair competitive basis. I believe that both sides should make reasonable concessions in that direction. There are many of us who know we are out of line so far as competition is concerned with much of our coal with other States, and the indications are that Kentucky can continue, even after we have made an agreement here, to continue to send an ever-increasing amount of tonnage into a territory that rightfully belongs to Illinois. We certainly have a right, as a matter of fairness, to have Kentucky unionized and controlled the same as we are, or that we have a reasonable number of non-union mines in the State of Illinois as a menace against your organization to help us get some of the benefits they enjoy. I simply submit that as a reasonable proposition."

p. 59, c. 2, l. 5–55.

(305) "The fact that 12,000,000 tons more of non-union coal was produced last year than the year before—if it is true—is something that interests us as well as it does you. There is no question about that. I am thoroughly satisfied that if every operator in the joint movement had spent the same amount of money in proportion to his earnings in the coal industry, and the operators as a whole had spent the same amount of time and energy the United Mine Workers have since this movement started, it would have been an utter impossibility for that 12,000,000 in excess of the previous year's tonnage to have been produced. I don't care how we may deal with the details of the situation as we find it in Illinois, we are going to have that question to take up finally and we must solve it if this movement is to last. There is no way of getting around this. When a man we know is a member of our organization, goes into those fields to mine coal he is put out of the organization. I don't believe you can say that much for the members of your organization. I don't know that you have spent a dollar to get these fields in line. And not only that, you have men in your association who are not only not doing anything to help the situation there, but are using what power they have to make it as much worse for us as possible. You retain such men in your association, to say nothing of failing to spend time and money to help control the situation. You even refuse as an association to meet with us and help us get what we know would be a competitive agreement for all those fields, every one of them, non-union and union included, so we would know just what basis those men should be working on. You even refused to lend us your assitance to that extent, let alone coming together with us to make such a contract and have it enforced."

Mr. Walker.
p. 60, c. 1, l. 47–65.
p. 60, c. 2, l. 1–30.

(306) "I believe we ought to have a conference of the coal miners and the operators of the entire country and make a scale for every mother's son of them."

Mr. Walker.
p. 61, c. 2, l. 38–41.

(307) "Of course we cannot enter into an agreement to restrict the output, because that is illegal."

Mr. Hammond.
p. 65, c. 1, l. 45–47.

(308) "Now if you cannot go to the miners in West Virginia and the other non-union fields and convince them that affiliation with your organization will better their condition, not only in the hours of work but in the amount of work they render to the coal operators, when you show them it is without doubt a financial inducement to them to join with you, how in the world can you expect the operators if they have any allied interests in those fields, to go to their friends or anyone else and try to induce them to place themselves in the same position we are in? What inducement is there for us to try to strengthen your organization when we cannot make any money operating with your miners?"

Mr. Hammond.
p. 66, c. 2, l. 11–29.

(309) "Certainly if men in the non-union districts cannot be reached and shown the advantage of belonging to your organization when they are the ones to be benefited, you cannot expect us to do any missionary work among the non-union operators. You can rest assured those gentlemen have not marketed that 12,000,000 tons of coal at

a loss. A business does not grow and expand when it is worked at a loss. They are marketing that coal at a satisfactory price, and they have taken the market away from operators who are working with union labor."

Mr. Hammond.
p. 67, c. 1, l. 15–30.

(310) "Mr. Perry said, and I believe he meant what he said, that he had no more use for those people than we had. He said if we would make an argeement to hire no one except members of your organization, you on your part would make an agreement that your men would not work for operators not members of the association. I don't believe we could maintain that position before the public, and I fear you would have more or less trouble in delivering the goods. In the mines that are working non-union here today you will find a great many of your men. If they will go to work in non-union mines, your members working for operators outside of the association would not stay out as long as the independent operators were willing to pay the scale we pay. I don't think, however, there would be anything unfair or out of line in insisting that those operators pay a scale of wages that would bring their cost up to the cost of the association operators. I think you gentlemen ought to give that proposition consideration and give us some assurance that you will help us along those lines."

Mr. Hammond.
p. 67, c. 2, l. 11–40.

(311) "Mr. Peabody:—I proposed in the Indianapolis joint convention what I thought the proper solution. I will read from the records what I said:

'I move that the solution of this whole proposition be reached by adopting the lowest scale of wages we can find

for all classes of labor in the mines that are not union mines; the operators to adopt as their selling price the lowest selling prices they can find in the competitive fields that have not been unionized. In that way, gentlemen, we would carry the war into the enemy's camp and get results. If that was carried through, in less than six months there would not be a non-union miner in the United States and not an operator that would not be driven into our association. It is the only logical way of settling the question.'

"Do you want me to read your reply, Mr. Walker?

"Mr. Walker: That is not necessary. I know what I said.

"Mr. Peabody: Why is it not a good proposition?

"Mr. Walker: I cannot agree with Mr. Peabody that he is right. He says that in six months there would not be a non-union miner in the country. I am satisfied that in six months there would not be a union miner, because they could not pay dues. Mr. Peabody is always willing to settle matters at the other fellow's cost.

"In his statement Mr. Bush said that one reason why he could not go before the operators of non-union mines is because the companies we are doing business with have been working for the last two years at a loss, or at least without any profits. I expected he would go on and finish the statement and go on and say, as all the other operators who have taken the floor have said, that the reason they could not go into competition with operators of non-union mines was because of the cheap labor the non-union operators employed. It is reasonable to suppose that temporarily, while getting the first ones to come in, they could not hold out very strong inducements, but if they would all come in they would be able to decide what profits they were entitled to on their investments, and then sell coal

in such a way they could get that profit, they might be able to induce them to come in.

"Mr. Bush: You cannot very well go to a man and say to him, 'I am not making any money in my business, but I want you to come in and conduct your business in the same way I do because you are making a little money.' That will not appeal to him very strongly.

"Mr. Walker: The miners have spent millions of dollars trying to get those men to come into the organization.

"Mr. Bush: I know you have, and that is one of the things I cannot understand. I cannot understand why you would have any difficulty in converting your people to come into the organization when you can show it is for their advance and when you have a record of what you have done for those that are in.

"Mr. Mitchell: They would come in if the operators would let them.

"Mr. Walker: I don't want to suggest anything that is illegal, but there is no reason on earth why the bituminous operators cannot make just as good profits as the anthracite operators do except their refusal to conduct business as the anthracite operators do.

"Mr. Bush: You can get six men to agree on something better than you can six thousand.

"Mr. Walker: If the principle is the same there is no reason why they should not agree. I cannot see why you should abuse us for not getting those men in line and compelling their operators to pay prices that will allow you to compete and make a profit, when we are spending millions of dollars, working hard, getting our heads busted and living in the penitentiary in an effort to do that, while you refuse to even mention the matter to the men on the other side. It hardly looks reasonable.

"Mr. Bush: We are not abusing you for that.

"Mr. Walker: There is no doubt that if you could get them in you would be in as good position to increase your profits as we would be to increase our wages if we get the miners in. The only reason why we are in trouble all the time and why you are in trouble all the time is that they are not in."

p. 68, c. 1, l. 52–66.
p. 68, c. 2, l. 1–65.
p. 69, c. 1, l. 1–39.

(312) "We have all had more or less to say about the competitive position of Illinois lately, and I think you will all agree that a state situated as Illinois is, right at the threshhold of the big markets of this country, ought to have a bigger proportion of the tonnage than it has been receiving. If Illinois had as favorable conditions of mining as the eastern states, for instance Ohio and western Pennsylvania, the tonnage would unquestionably be from sixty to seventy-five millions instead of less than forty million tons a year. It occupies the best position, so far as the markets are concerned, of any State that has the coal to fill these markets. Iowa is favorably situated in this respect, but it has not the coal. Illinois, of course, has an unlimited amount of coal. You all know that last year Illinois decreased its tonnage into its Chicago markets very materially, while every other State shipping in there increased its shipments very materially. Chicago is a natural market for a large part of the Illinois coal, and it is being driven out of that market very largely because we cannot compete with other States. The greatest market for our company used to be in Chicago. We used to ship thousands of tons of coal into that market daily, you might say. For the past few years we have been gradually

forced out of it on account of our inability to compete with other coal."

Mr. Lukins.
p. 70, c. 2, l. 14–51.

(313) "9th. As rapidly as the requisite corps of competent engineers is provided at the different mines, the engineers shall become members of the United Mine Workers of America, and thereafter only members thereof shall be employed as hoisting engineers when such members, competent to fill the positions, can be obtained."

p. 107, c. 2, l. 24–32.

AGREEMENT.
Wages and Conditions to Govern Coal Hoisting Engineers in Illinois from June 1, 1906, to March 31, 1908.

Excerpts from book entitled "PROCEEDINGS OF THE EIGHTEENTH ANNUAL CONVENTION OF THE UNITED MINE WORKERS OF AMERICA: Held in the city of Indianapolis, Ind.: January Fifteenth to Twenty-second inclusive: Nineteen seven.

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 4. [Record pp. 706, 290.]

(314) "In any event, the conferences in the bituminous fields adjourned again without an agreement and the interstate movement, which had been the hope and protection of both miners and operators for many years was dissolved. Thereupon, the miners in separate convention declared that on and after April 1st all men should cease work except those employed by operators who by contract agreed to restore the scale of 1903, plus an advance of three cents a ton in the southwestern states. It was also declared that the miners of outlying districts in the bituminous fields not represented in either of the interstate conferences, whose scale of wages expired on April 1st, should cease work and remain in idleness until the scale of 1903 was restored."

President Mitchell.
p. 36, l. 35–46.

(315) "From 1897 to 1906, the operators and the miners of the central competitive field representing a production of over one hundred million tons of coal annually, or about one-third of all the bituminous coal produced in the United States, have met in annual or biennial joint conference and have, by mutual agreement, fixed the wages and conditions

of employment in a manner that was reasonably satisfactory to all concerned. It is true that in arriving at conclusions neither side secured all it desired or all it believed itself entitled to, but on the whole the policy of joint agreements was so far preferable to the old system of annual or biennial strikes and lockouts that the compensating advantages to each so greatly outweighed the losses and vexations occasioned by strikes as to make this method of adjusting wage differences vastly superior to the one it succeeded.

"Now that the smoke of battle has cleared away and the passions and prejudices naturally engendered by contest and conflict have been allayed, it seems to me that in the light of our past experience it would be not only good business policy, but also our duty to each other and to society, to take steps to renew our former relations and re-establish the joint interstate conference; and with that end in view I recommend that the International Executive Board, with the co-operation of the district officers in interest, negotiate with the operators of the central competitive field, during the present year, for an interstate meeting to be held at some suitable time prior to the first of April, 1908. Happily, the interstate movement in the southwest has been preserved, the miners and operators of that field having agreed to meet in Kansas City in the spring of 1908."

President Mitchell.
p. 38, l. 40–45.
p. 39, l. 1–23.

(316) "In West Virginia we have had almost continuous litigation. To such an extent has this been the case that the International Executive Board has retained at an annual salary a strong firm of lawyers, who not only defend our interests against the aggression of our opponents, but

who have also vigorously and successfully prosecuted innumerable violators of the law."

President Mitchell.
p. 40, l. 7–12.

(317) "Owing to the depletion of our treasury in the middle of the year (due to the payment of strike benefits), and to a change in the organizing policy in the Irwin and Connellsville fields of Pennsylvania and in West Virginia, our force of organizers was largely reduced; as a consequence, the expense incident to field work was not as great as heretofore."

President Mitchell.
p. 42, l. 2–7.

(318) "In preparing this report I have confined myself as closely as possible to those matters which I deemed to be of greatest moment and of most importance to our trade, but in closing I shall ask your indulgence to make some observations upon a matter which, while somewhat extraneous, is nevertheless so inseparably related to our movement that it comes properly within the purview of this address.

"I refer to the attitude of the American labor movement and to my own position in regard to the political situation as it presented itself during the recent campaign.

"You, no doubt, recall that a manifesto was issued by the Executive Council of the American Federation of Labor, calling upon the organized workers and their friends to support those candidates for legislative positions who held a paid up card in the organization of their craft, and to defeat all candidates, regardless of party affiliations, whose hostility to the measures favored by organized labor was well known. The action of our own convention one year ago in amending the constitution so as to enable salaried international, district and sub-district officers to

hold legislative positions seemed to harmonize entirely with the non-partisan political policy of the American Federation of Labor.

"Acting upon this hypothesis, I encouraged members and officers of our organization to seek nomination for legislative positions and advised our members to support such candidates without regard to party affiliation. Whether my advice in this respect was potential or not, I am not prepared to say. I do know, however, that a large number of miners and other trade unionists in mining districts became candidates and secured nominations for membership in the state legislatures and in the Congress of the United States. I have not learned the number of miners elected to the various state legislatures, but I do know that in Pennsylvania alone more miners were elected to the General Assembly in the last campaign than even the most enthusiastic had predicted. And I am sure that every member of our organization and every trade unionist in the United States feels proud of the fact that your International Secretary-Treasurer and the President of District No. 1, Brothers Wilson and Nichols, were elected triumphantly to Congress. Of course, it is not necessary to say that the first duty of these representatives is to their constituents in the congressional districts from which they were elected, and to the people in general of the United States; but the fact remains that this is the first time in the history of our country when men have been elected to Congress who by experience, training and sympathy will be in a position to voice our demands and to advocate the measures especially required for the protection of the underground toilers of the nation.

"I am firmly convinced that the time is not far distant when the organized workmen of America will have repre-

sentation in the national and state legislatures in proportion to their numbers and to their industrial importance.

"It must not be assumed, however, that a large representation in our legislative bodies will render less necessary the organizations of labor. On the contrary, the power and influence of our representatives will depend in no small degree upon the strength and solidarity of the organized labor movement; but we must exercise great care that the movement to place labor men in legislative positions is not permitted to degenerate into a mad scramble for office. Partisanship and self-interest or personal aggrandizement must be discouraged and frowned upon. Only those who have proved by good work that they have the real interests of labor at heart should receive countenance and endorsement."

President Mitchell.
p. 50, l. 5–44.
p. 51, l. 1–21.

(319) "The calling of a Special National Convention, the modified proposition submitted by the miners' representatives and accepted by certain Operators, and the final action of our own convention to sign local or district agreements is known to you."

Vice President T. L. Lewis.
p. 52, l. 25–28.

(320) "While there has been a large loss in membership during the past year, there has been a steady increase in the membership the past several months, and yet there is a tremendous loss in our membership compared to what it was a year ago."

Vice President T. L. Lewis.
p. 56, l. 45.
p. 57, l. 1–3.

(321) "Until last year I have supported the views of others and endorsed policies recommended to our members, even though I did not believe those policies were for the best interests of the mine workers of the country. Even last year, after the Special National Convention had agreed upon a policy of signing local or district agreements. I worked as earnestly as any member or officer of the Organization for the success of that policy and I challenge a successful contradiction of this statement."

Vice President T. L. Lewis.
p. 57, l. 22–30.

(322) "I have been an active member of, and assisted in the work of building up, three National Organizations of mine workers. I had also the honor of being one of the delegates that attended the Convention which laid the foundation of the United Mine Workers of America."

Vice President T. L. Lewis.
p. 58, l. 1–6.

(323) "I believe when the United Mine Workers was instituted that it was to be a National Organization. For years the mine workers of this country have struggled against tremendous opposition to establish a National Organization, National in name, National in purpose and to adopt National methods to deal with National questions affecting the interests of the miners.

"Is the United Mine Workers of America a National Organization in more than name? Does it deal properly with National questions affecting the miners' interests? Can we hope to establish a National eight hour day and our right to organize in certain districts except by a National movement? These are questions the miners of the country must seriously consider.

"Two years ago, or when a reduction was accepted in 1904, the members of our Union were led to believe that

all contracts would be made to terminate on the same date, so that we would be prepared to meet and dispose of any issue that confronted us in 1906. At the date of the expiration of the agreement in the Southwest, I made a special effort to have changed to conform with other contracts which expired April 1, 1906, and as a result, this contract was made for a period of nineteen months.

"It was on that date that the miners expected to establish recognition of the United Mine Workers in the Anthracite region. It was on that date that we hoped to establish a uniform eight hour day in Central Pennsylvania. It was on that date that the miners of the Irwin and Connellsville Districts would have joined in a National movement to free themselves from the conditions that have existed so many years in those districts. It was on that date that the opportunity presented itself to establish Hocking Valley prices and conditions in the Pittsburg District, according to promises made in Chicago in 1898. It was on that date that the mine workers of West Virginia would have swung into line and asserted their right to be members of the United Mine Workers."

Vice President T. L. Lewis.
p. 59, l. 12–44.

(324) "If the United Mine Workers is a National Organization, it should establish National reforms and make them apply to all alike.

"If national reforms, to be established in the mining industry, require a national movement, then those reforms cannot be established by a sectional effort. This has been proven by the millions of dollars we have spent in that kind of an effort in Pennsylvania, West Virginia, Tennessee, Alabama and Colorado.

"If States or districts are allowed and directed to legislate for themselves on questions of a National character,

then there is no need for a National Organization of miners.

"Regardless of what may have been said by some members of the United Mine Workers, even some who hold official position, I am a firm believer in an International organization of our craft. In fact, the American continent is not large enough to maintain two Organizations of miners.

"These things are mentioned for the benefit of the United Mine Workers of the country. With this information you will understand that there is work to do, if we desire to maintain what we now have and to bring the unorganized mine workers up to our standard.

"To clear the minds of all the mine workers of the country and to strangle many falsehoods that are being circulated in regard to my position on the policy of the United Mine Workers of America, I desire to make clear at this time, that"

Vice President T. L. Lewis.
p. 61, l. 13–37.

(325) "I favor:

"1. One Organization of the mine workers of the American Continent.

"2. I favor the establishment of a National eight hour day for every person employed in and around the mines.

"3. I favor a complete recognition of our right to organize in every mining district in the country.

"4. I recognize that there are certain local markets that naturally belong to certain coal producing districts.

"5. I favor giving every operator an equal opportunity to secure his share of the general markets."

Vice President T. L. Lewis.
p. 61, l. 37–45.
p. 62, l. 1, 2.

(326) "Secretary-Treasurer W. B. Wilson read the following report:

"Mr. President and Gentlemen of the Convention:

"I herewith submit for your consideration my financial report for the year ending November 30, 1906:

"Beginning with the first of April we had for a prolonged period over 400,000 men on strike. We had on hand in the International treasury at the close of business March 31, 1906, $361,951.87. It must be apparent to everyone, as it was to the International Executive Board, that this amount of money was insufficient to take care of all the men who were idle as a result of our failure to reach an agreement with the operators. Consequently it was decided to hold the money in the International treasury until the various locals, sub-districts and districts had exhausted their funds, and if they had not secured a settlement by that time, to use the funds in the International treasury at those points where assistance was most needed and where it would best protect the interests of all. Fortunately, many settlements were arrived at before it was necessary to draw much on the International treasury.

"District No. 2, Central Pennsylvania, and District No. 6, Ohio, were the last ones to secure a settlement and all of the International funds were expended in those two districts in the last few weeks of the conflict. This policy was absolutely necessary because it cannot be gainsaid that if the miners of either of those districts had been defeated it would ultimately have been disastrous to all of the miners of the United States.

"As a matter of fact, at the close of business July 11, we had expended $37,707.59 more money than we had in the treasury. The International Executive Board at its meeting in June, realizing the necessity for more funds with which to conduct the strike, levied an asseeement of 50

cents per week upon those who were at work, beginning with the 15th of June. Only $195.80 was realized from this assessment during the month of June, and very little until after the middle of July, when the payments for work performed in June were being made. In this crisis your International Officers began negotiations with districts that were known to have money in their treasuries to induce them to pay their assessments in bulk for all of their Locals. On the 12th of July the first payment in this manner was made by District No. 12 of Illinois, amounting to $100,000.00. District 13, Iowa, followed soon after with $35,000.00, and as settlements had been secured for a majority of the men in Ohio and Central Pennsylvania by that time, our financial crisis had passed.

"With the large number of men we had on strike and the comparatively small amount we had in the treasury we were unable to contribute sufficient money to the various districts to enable them to pay very large strike benefits. This created dissatisfaction and the question was frequently asked, 'What has become of our money?'"

p. 62, l. 22–44.
p. 63, l. 1–23.

(327) "INCOME.

Tax	$692,002.20
Supplies	10,470.34
Journal	5,001.55
Assessment	362,182.43
Miscellaneous	11,751.80
Total	$1,081,408.32

EXPENDITURES.

Salaries and expenses	$179,279.35
Supplies	16,435.78
Office expenses	3,123.55
Journal	6,894.58
Telephone, postage and express	6,458.16
Aid	813,945.92
Miscellaneous	106,856.67
Total	$1,132,994.01

RECAPITULATION.

Balance on hand December 1, 1905	$389,546.40
Income, December 1, 1905, to November 30, inc., 1906	1,081,408.32
	$1,470,954.72
Expenditures, December 1, 1905, to November 30, inc., 1906	1,132,994.01
Balance on hand December 1, 1906	337,960.71
Total amount on deposit	339,614.44
Cash on hand	4,582.71
	344,197.15
Outstanding checks	6,236.44
Balnce on hand December 1, 1906	$337,960.71

Secretary-Treasurer W. B. Wilson.
p. 184, l. 1–29.

(328) "President Mitchell: The chair does not want to consume the time of the convention, but there is one feature of the question you should understand. It was upon a recommendation made by myself, which was incorporated in one of my annual reports, that the separate organizations of mechanical trades were broken up and the men compelled to become members of the United Mine Workers of America. It was through Mr. Duncan and myself, in the American Federation of Labor, that the autonomy resolution which gives us jurisdiction over these trades was written. It was by my advice that the officials of Indiana told the engineers they would have to leave their separate union and join ours."

p. 214, l. 9–19.

(329) "Delegate Walker: If a member of our organization in good standing leaves a mine and goes to work in a non-union mine, can we add to the initiation fee a fine when he wants to come back?

"President Mitchell: The local unions have a right to place fines on members for violation of their rules."

p. 242, l. 39–43.

(330) "Delegate John T. Dempsey, for the Committee on Officers' Reports, presented the following report:

Indianapolis, Ind., Jan. 18, 1907.

To the Officers and Delegates of the Eighteenth Annual Convention. Greeting:

We, your Committee on Officers' Reports, beg leave to report that we have carefully examined the reports of our President, Vice President and Secretary-Treasurer."

p. 269, l. 38–45.

(331) "POLICY OF THE FUTURE.

"Your committee approves of our President's recommendation on this vital question, and would also recom-

mend that our International officers be empowered to negotiate with the operators of the central competitive field for an interstate meeting, to be held some time prior to the expiration of our present contracts. We further recommend that this convention instruct our officers to make a reasonable effort to secure the admission of all soft coal producing States desiring admission to the joint interstate movement."

Delegate John T. Dempsey.
p. 270, l. 17–25.

(332) "BOARD MEETINGS AND ORGANIZERS.

"Your committee recommend that this convention heartily approve of the Board's action in withdrawing a part of our organizing force from active service, as a result of a depleted treasury, but we further recommend that the force be increased whenever, in the discretion of the Board, our funds would warrant.

Delegate John T. Dempsey.
p. 270, l. 38–40.
p. 271, l. 1–3.

(333) "The motion to adopt the report of the Committee on Officers' Reports was carried by a unanimous vote.

"Delegate Dempsey, for the Committee, read the following report on the report of Vice-President Lewis:

VICE-PRESIDENT.

"We, your committee, after careful deliberation on Vice-President Lewis' report, would say that the same shows that our Vice-President was actively engaged during the year, and rendered valuable service to the organization in negotiating settlements of wage and other questions.

"Vice-President Lewis' report not being classified, your committee can only deal with the same in a general way.

"The Vice-President's review of the events that took place subsequent to our convention last spring, as mentioned in his report, are his own personal opinions. However, your committee reserves the same right to their opinions, and we disagree with our Vice-President in his report as to the wisdom of pursuing certain lines of action, and particularly the attitude of our Vice-President on the signing of sectional agreements in the several states. That results might have been more advantageous to our organization had a different policy been adopted is merely problematical and conjecture. The policy pursued was in harmony with the deliberate judgment of our last special convention. Taking into consideration the many complications confronting us at that time, together with the demoralized condition of our joint forces and a chaotic state of affairs on every hand existing as a result of the strained relations between the two divergent forces—operators and miners—we believe that the very best possible results have been attained under the circumstances, and congratulate our organization upon the fact that it has emerged from the conflict with honor and our organization has been preserved intact.

"Hence your committee recommends a continuation in the future of the same wise, conservative, business-like policies."

"Delegate J. H. Walker—I move the adoption of the report of the Committee on Officers' Report. (Seconded.)"

p. 272, l. 19–45.
p. 273, l. 1–8.

(334) "Had I believed that a national strike would have involved the miners of West Virginia, of Virginia, of

Meyersdale, Pa., of the Georges Creek District of Maryland, of the Connellsville, the West Penn Road and the Irwin Field in Western Pennsylvania, had I believed it would have involved the men of Alabama, of Colorado, of Utah, of Wyoming, of Washington—had I believed you could have stopped those non-union mines there would no one have favored a national strike more than I. But I did not believe it then, and I do not believe it now. I do not believe a national strike would have stopped any considerable number of men in any of the non-union fields of this country."

President Mitchell.
p. 275, l. 31–42.

(335) "In the middle of April the International Executive Board held a meeting in this city. The question of our policy was under consideration. An application has been received from Ohio asking what we should do in the Crooksville District, if I remember right. A sub-committee consisting of the Vice-President, the Secretary-Treasurer and myself were appointed to define a policy for the government of our various district organizations, so far as settlements were concerned, and this is what we unanimously reported to the Board, and it was unanimously adopted by them:

"'We are of the opinion that the representatives of our organization should demand a full restoration of prices and conditions of employment which prevailed in 1903, and, in addition thereto, should retain any advantages secured in 1904 and 1905. If, however, it becomes apparent to the responsible officer in charge of the miners' interests in any conference with the operators, that an agreement on this basis cannot be reached the Board believe and advise that where operators are willing to pay the advance provided for in the Perry resolution, to-wit: five cents per ton

on screened coal, three cents per ton on run-of-mine, four cents per ton for machine mining in Ohio, the restoration of the machine mining rate in Indiana and Illinois, an advance of 5 9-10 per cent. on dead work and yardage prices, rather than engage in a strike, settlements should be effected even though we are forced to accept the conditions of 1904 and 1905, plus the advance referred to herein.

"'This information is not to be communicated to our membership, but is intended solely for the guidance of the officers having general supervision over the making of agreements.'"

President Mitchell.
p. 278, l. 13–41.

(336) "I desire to say with reference to the strikes of 1894 and 1897, that the strike of 1894 took place at a time in the history of this country when there was a great depression in industry. That strike took place on a falling market. That strike ended in a compromise. In the strike of 1897, or during the period of which it is said the production of West Virginia coal increased to such a large extent, it is a well known fact that there were approximately nineteen thousand men working in the mines of West Virginia. It is also a well known fact that there were twelve thousand of those men on strike during the strike period. It is also a well known fact that when we met in Columbus, Ohio, to consider a compromise proposition with the operators that the West Virginia delegation was in that convention, and that for two days and a part of another the delegates from Illinois and the delegates from Ohio stood side by side in demanding that there be no settlement unless the men in West Virginia were included. It is also a well known fact that a compromise resolution was offered. As a result of that resolution, which read that we would accept the compromise offered by the

operators, the miners of Western Pennsylvania, Ohio, Indiana and Illinois would not return to work for ten days in order to give the West Virginia men an opportunity to make a contract. It is a well known fact that because of the wording of that resolution the West Virginia men believed their interests were being protected and voted it and carried it in the convention by a bare majority, and when some one, realizing what was at stake, asked for a reconsideration of that motion, Mr. Ratchford said it was too late, it had gone to the press of the country. What was the result? There could be but one result. The West Virginia men went home without a settlement. Some of the men in the other States went to work before the end of the ten days. Our brothers in Illinois continued to strike. Following that period this organization put men in the field to boycott the coal coming from West Virginia. And this is another opinion of mine, that the boycott was placed on West Virginia coal, and our men going into the markets of different sections of the country saying to the public 'Don't buy West Virginia coal because it is produced by non-union men; don't buy it because it is produced cheaper than union coal,' did more to advertise West Virginia coal than any strike that ever took place in this country.

"So far West Virginia has continued to increase its production by leaps and bounds, so much so that there are probably more than fifty thousand men working in that State. Their product crosses ours in the market, and, while I respect the opinion of every man, while I respect President Mitchell's opinion, that does not necessarily mean I should be deprived of expressing mine. And my judgment is based upon past experience. When we organize West Virginia, when we organize the unorganized sections of Pennsylvania, we will organize them by a strike movement.

Some man will say this is a matter to be determined by the future. That is true; but while it is true, coal from those States is crossing the union States and going into the markets that we ought to supply. If evidence is needed, we have only to refer to the coal reports of the union States to see that there is not the increase in their production they ought to have, notwithstanding the fact they have home markets."

Vice President Lewis.
p. 281, l. 10–45.
p. 282, l. 1–20.

(337) "At the last special convention held in the city of Indianapolis, we were confronted with a serious situation. The convention decided by a majority vote the policy that would be pursued, although many delegates did not believe that was the best policy that could be pursued. I was one of them. I believe that better and more speedy results could have been secured by reaffirming and reiterating the famous Ryan resolution that was adopted at the convention in January."

Delegate Green.
p. 284, l. 46.
p. 285, l. 1–7.

(338) "In referring to the National suspension of 1897 I desire to refresh your memories by saying to you that the result of the National suspension of that year, in addition to what President Mitchell has said, and in addition to what Vice-President Lewis has said, was the cause of the revival of the joint agreement, which has been of so much benefit to all of us. For some years previous to 1897 that agreement had been dissolved. That strike, in addition to securing for us an advance in wages and the re-establishment of the joint movement, provided for a convention a few months later to be held in Chicago. That convention

secured to the United Mine Workers of this country an eight-hour day. This result, secured in Chicago in 1898, can be traced to and identified with the results of the National suspension of 1897. In addition to that it gave an impetus to the organization. It created in some of the unorganized fields a sentiment in favor of organization, and in others crystallized a sentiment already existing there. After the suspension of 1897 the organization went forward in leaps and bounds.

"One reason why I believe a National suspension would have brought the best and most speedy result is because, as you know and as I know, and as subsequent events have proved, it would have prevented the dissolution of the interstate movement. I am exceedingly desirous of seeing the joint movement re-established, and will do all that is in my power to bring about that most desirable result. I recommended to our convention in Columbus last week that they instruct the officers to co-operate with the National and do all in their power to bring about the re-establishment of the interstate joint movement."

Delegate Green.
p. 285, l. 12–39.

(339) "If I do not understand the report of the committee, I want to understand it. I believe their recommendation is, after summing up the report of Vice-President Lewis, that the same wise, conservative policy be pursued in the future that has been pursued in the past. I would like to know whether or not that means to commit this organization to the same policy, no matter what the circumstances or conditions are, that are pursued in the last general settlement. I would like to know whether or not the adoption of the report of the committee would mean that we commit ourselves to at all times in the future adopt a policy of settling by sections? If that is

the intention of the committee, I don't believe the organization can afford to commit itself to such a policy. Conditions may change and circumstances arise which may cause some subsequent convention to deem it wise to declare in favor of a National settlement. If that is true, will this convention commit itself absolutely and unreservedly to a policy of sectional settlements? We cannot afford to do that, because the operators of the country would take advantage of such a declaration and say to us when we seek to again establish the joint interstate movement, 'You have gone on record as favoring the same policy that was pursued last year, and we claim the same right to make our settlements sectionally and locally and follow out the policy you have already laid down.'

"I say to you, gentlemen, one reason why I oppose the policy that was pursued last year was because over in Ohio we were peculiarly situated. We had West Virginia on the south and Pennsylvania on the east, and after four months of a strike in Eastern Ohio we had reached the danger line. We felt keenly the competition from West Virginia, and during the suspension our miners in Ohio chafed under the object lesson they had. They saw West Virginia coal go by, trainload after trainload passing their doors, when they were on strike. This coal supplied the markets that they should have had. There is no disguising the fact, something must be done to remedy this condition. Year after year Ohio has had to go home and strike in some portion of the district to enforce the interstate agreement that was signed up here. Ohio, because of her peculiar location, has been an impregnable defense for the States west, and has met successfully and resisted to a man the going westward of the conditions in Pennsylvania and West Virginia. If West Virginia increased her tonnage one million tons in 1897, reports show that last

year she increased it five million tons, and has taken from Ohio many local markets she has claimed, and has had a right to claim. Reports show that Pennsylvania increased her production about two-thirds the tonnage of Ohio. While this increase in production has been going on in their districts, Ohio has been practically standing still. Do you then wonder that in Ohio some means for bringing about better results is uppermost in the minds of our people? I confess here and now that the overwhelming sentiment in Ohio was that a settlement by sections would not correct the conditions we complained of.

"Now, something must be done; it is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us. I believe a National movement would have induced West Virginia to become organized and that, like other districts in 1897, it would have meant the organizing of that field. That would have brought us the protection we so richly deserve, and that is so absolutely necessary for us to have. Even during the suspension there developed a pronounced sentiment among our people in Ohio in some localities where they were on strike in favor of stopping even those who had signed the 1903 scale."

Delegate Green.
p. 286, l. 43–46.
p. 287, l. 1–45.
p. 288, l. 1–12.

(340) "As to the main issue that is being discussed, I disagree with Vice-President Lewis and President Green of Ohio. Since the time of the National convention all the information I have been able to secure has convinced me that the policy advocated by them would have been disastrous to the organization, and that the policy we adopted was the very best that could have been adopted

at that time and under the conditions then existing. From the knowledge I have gained in the past year, added to what little I knew prior to that time, if the same question came up in this meeting, not only would I do what I did then, but if there was anything I could conceive of, no matter what would have been the result to me as an individual, to prevent the policy advocated by those two brothers being adopted, I would do that in addition to what I did before.

"I have been coming to these conventions for a long time, and on some matters, I have been set down, particularly by some of the men interested in this question, as an impractical dreamer. I want to say that I have been fully prepared to meet these people, and I say now if ever there was an impractical dream advocated, if ever there was an absolute absurdity advocated, if ever there was an idea advocated that meant, if we were to adopt it, the annihilation of this organization, it was the one they stood for, the putting into force at any cost of the Ryan resolution. The Ryan resolution provided that we would all sign up or we would all refuse to sign up. I don't believe there is a man in our organization, or outside of it, I don't believe there is even a socialist in the country, who is foolish enough to attempt to get up before any body of men who have had experience in this movement and say that resolution could have been put into effect. The proposition itself as advocated by these people is almost as foolish as the position they are taking that the adoption of the report of the Committee on Officers' Reports would commit this organization to a set policy when acting on such questions in the future. I think it is clearly the intent of the committee to endorse the position taken by the organization in the past in dealing with such questions. In dealing with some of these questions in the past a National suspension has been

ordered, and, so far as the organization could control things, settlements were made nationally. Last year sectional settlements were made, but in both cases the men who considered the matter carefully did the best that could be done under the circumstances. That is the policy the report of the committee endorses, and that is what the report of the committee provides for a continuance of."

Delegate J. H. Walker.
p. 289, l. 21–46.
p. 290, l. 1–17.

(341) "The original scale that was drafted as a National proposition put the Western Pennsylvania, the Ohio, the two Indiana districts and the Illinois operators on a competitive basis. It was understood that if one of them got an advantage it would disturb that equitable basis."

Delegate J. H. Walker.
p. 290, l. 31–35.

(342) "I want to say to you frankly that, notwithstanding their statements, if you will leave the report of Vice President Lewis in the hands of an impartial judge, a man with a knowledge of the facts in the case as they affect our organization, and ask him if it is an honest personal opinion or an attack on President Mitchell and the men who believe in the policy adopted at the last convention, I am satisfied he would decide it was about the ablest attack of that character that could be made under the circumstances. I believe that ninety-nine out of every one hundred such impartial men would so decide.

"Now, Mr. Chairman, I want to give some consideration to the question of a National suspension. The National suspension in 1897 and the suspension in 1906 were two entirely different propositions. The markets were against us in 1906, which was not the condition in 1897. So much for that portion of the report.

"Now I want to ask any man, even the most idle dreamer on earth, who knows anything about the situation in Western Pennsylvania, the situation in the Connellsville coke region, the situation in West Virginia and Virginia, would any action taken by this convention be the means of getting those men out on strike? I put in two years in that region myself, and while I do not claim to know everything in connection with it, I do know something of that field. In 1897 Fred Dilcher started in at one end of the Kanawha and went right through the region. He was allowed to talk in the camps and every man was allowed to form his own opinion. I would like to see the man who would start in at the top of Kanawha and go to New River and talk to those men now. About the time you leave Cincinnati going up there you would get a pretty able body guard to attend you. There would not be a minute of your time after leaving Cincinnati until you got into Virginia when you would not be watched. They have complete control of the surface of the land in that state where we are interested. They have complete control of the judges, of the juries, the police force, the militia and all the thugs they want up there. They have plenty of deputy sheriffs, each one with a commission, a big forty-five, and a big club, but if you take a club and a gun along you will get fifty dollars and sixty days, and if you don't take them along you will get your brains beaten out. If a coal miner says, 'Hello, Jack, how are you?' from across the street he gets his time next morning. The mines are distant from the towns and the majority of them are not even reached by a public road. The only stores there are company stores, and the minute the men come out on strike they are prevented from getting anything, except what is brought to them. I don't care how good a man is, or how strong his union principles, or how willing he is to

strike, unless you can furnish means for him to keep his family alive it is impossible to keep him out. I agree with President Green and Vice President Lewis that you never can get those men organized except at the end of a general strike, but I warn you not to go into it until you are thoroughly prepared. If you are not prepared to take care of those men when you call them out, you will only victimize the poor fellows who have the courage to join you and have them driven out of there. I ask any man who has any knowledge of the situation if, even during the two months suspension last year, he believes there was enough money in the organization to have carried on that sort of fight in West Virginia, old Virginia and Maryland? There was not enough money, even if we took every cent in the national treasury and every cent in the district treasuries, and did not give a cent to our own members.

"When I see people who will adopt questionable tactics to push themselves to the front, I confess I have not much respect for them. I do not say that we had such people in the case we are discussing, I merely make the general statement, but I do not want to say to you frankly and freely that I believe the policy outlined by our last special convention on the proposition that was up for settlement was the very best that could be adopted. I believe a majority of the men who were conducting negotiations lost sight of their own interests entirely and tried to do only what was best for the organization. I believe if the other policy had been adopted the same men would have gone into the fight and would have done the very best they could to win. I don't believe there is a man who voted for that settlement on the other side who would have attempted to criticise those actions until the final result had been brought about, and I believe there would have been no harsh criticism of any individual, even if the result proved disas-

trous. I don't believe the practice of throwing cold water on the efforts of the men who have to carry out the policies we adopt is the proper thing to do."

Delegate J. H. Walker.
p. 293, l. 2–46.
p. 294, l. 1–34.

(343) "If we are able at a colliery to force all the men to become members of the union we do so. If we are too weak, we do not attempt it, but keep gradually working among the men until we are able to accomplish our end."

Delegate Patrick Gilday.
p. 295, l. 24–27.

(344) "I am one of those who believe that the policy adopted last year, that of settling where we could make settlements on the 1903 scale, was the proper thing to do."

Delegate Patrick Gilday.
p. 296, l. 6–8.

(345) "Now, Mr. President, I have no fault to find with Vice-President Lewis. Our relationship is friendly, but I do not believe he has a right to embody in his annual report such statements as he has without questioning the district or sub-district officers in Central Pennsylvania in regard to conditions there. If he had done that he would have discovered that he had been misinformed. I object to the statements that we have just now established the open shop, and that we have only a limited check-off. I hope Vice-President Lewis will correct his statements in regard to these matters."

Delegate Patrick Gilday.
p. 296, l. 23–32.

(346) "The future alone will determine whether or not the position of last year was correct. It is not a question of President Mitchell's policy, it is not a question of Vice-

President Lewis' policy; the future will determine what policy we will be required to adopt in order to best preserve and safeguard the interests of the mine workers of this country. In doing this it will be necessary for the mine workers of this country to know all the facts in regard to all the conditions in the mining industry from one end of the land to the other. No one has made the statement that we can organize West Virginia without a strike. If we can I will be one of the best pleased men in this organization, whether I am an official or whether I am working in the interests of the men while serving them in the ranks. That has been my position in the past and it will be my position in the future. In whatever position I am serving the miners of this country there won't be any differences of opinion between my colleagues and myself when the miners have determined on a policy; but in order that all the men may know what conditions prevail in the country, I believe as one of their representatives, I would be lax in my duty, that I would not be doing justice to the men who are struggling for improved conditions, if I did not point out to them the obstacles in the way of success, and what, in my opinion, would bring that success."

Vice President Lewis.
p. 310, l. 5–27.

(347) "President Mitchell: It was not my intention to speak again upon the subject under consideration; but in making my short address yesterday in defense of the policy adopted by your convention one year ago, and executed by your district and international officers, I failed to call attention to some features I believe would be of interest to you.

"Let me say, prefatory to presenting them to you, that I have repeatedly stated that, in my opinion, West Virginia, the Irwin field, the Connellsville coke region,

Southern Colorado and the Georges Creek district would not be thoroughly organized except as the result of a successful strike. I repeat that opinion now; but I want to add to it that they will not be organized at all, strike or no strike, unless we are able to support the men in those fields from the first day they lay down their tools. One year ago that was a consideration with me. I didn't believe they would have struck then. I don't believe it now, and if they had struck you would have had no money to support them and no resources from which to draw revenue, because when the union men were on strike you had cut off the only source of revenue."

p. 310, l. 28–46.

(348) "Now I believe it is possible, indeed I believe it is probable, that in the not distant future we will be able to inaugurate a movement in West Virginia and the other unorganized fields that will involve them in a strike, and then we will expect you to furnish the sinews of war, as you have done in the past, to keep these men in idleness."

President Mitchell.
p. 311, l. 1–6.

(349) "If one year hence it is my judgment that a suspension of mining throughout the United States would be best, I will favor that policy. If, on the other hand, I am of the opinion that partial settlements are best, I will favor partial settlements."

President Mitchell.
p. 313, l. 7–11.

(350) "This morning Delegate Walker spoke of the Ryan resolution. While that was a very drastic measure it was carried by very nearly a unanimous vote of the convention. One man opposed it but he has since been relegated to the rear for opposing that resolution and voting

in another manner when he went into the joint convention. We knew when we were voting for that resolution we were doing the right thing. We believed it still when we met here in special convention in March. The miners of Ohio believe it now."

Delegate G. W. Savage.
p. 323, l. 45, 46.
p. 324, l. 1–7.

(351) "When we founded the United Mine Workers we intended that we should, if one State had to be called out, call out all the others with it. We want all the States to come out together, and we want every man to stand by his brother, shoulder to shoulder, to show the operators what we can do. If we don't continue that policy, if we go on settling by sections, we might as well give up the organization. If we don't go together to ask for a settlement we had better abandon the organization and let every one settle for himself."

Delegate William Kinkade.
p. 337, l. 38–46.

(352) "I realize that the unorganized districts of this country not only are a menace to themselves, but they are a menace to the organized workers who wish for better things. How to secure better conditions in those fields is something that is better known to our executive officers than to me. Speaking of the joint movement and its dissolution, I want to refer briefly to the fact that when we were parting after our regular convention last year our demand for recognition was pending. The Ryan resolution of which we have heard so much, had been introduced, but I claim it had served its purpose when we reconvened again in the special convention, although great stress is laid upon the fact that it was in force at that time, and that it was in force even at the end of the joint convention.

However, I want to call the attention of the delegates to the fact that when we came to the special convention and our scale committee renewed its demands, they carried with them a demand that Iowa be admitted to the joint movement. You all know how the interstate conference proceeded to make a scale on the line of the joint movement alone. Now, I speak for my own district when I say that some day we propose to right our own wrongs, and if ever the course of this organization is so shaped that we go on the field of conflict, we want to make that struggle so interesting to every portion of our membership that they will have a healthy interest in working for its final success. We are not without troubles in our own state; we have many difficulties such as I have heard discussed in this meeting, but we do not think this is the proper place to air them. I think such things can better be taken care of in the respective districts than they can after being discussed here. I think our organization has emerged from the crisis of last year with considerable credit, and I believe we will be able to demonstrate that in a practical manner in the future."

Delegate White.
p. 343, l. 18–46.
p. 344, l. 1, 2.

(353) "The motion to adopt the report of the Committee on Officers' Reports on the annual report of Vice-President Lewis was carried by a viva voce vote.

Chairman Nicholls.
p. 344, l. 22–24.

(354) "The time has come when the laborers must control the country or the capitalists are going to control the laborers even more than they do today."

Delegate Crane.
p. 379, l. 41–43.

(355) "RESOLUTION NO. 39.

"GENERAL PLAN FOR GOVERNMENTAL REFORMS.

"Resolved, That the United Mine Workers of America in convention assembled declare for the immediate establishment in nation, state and municipality, of a modern system whereby the voters can instruct their representatives—the advisory initiative and advisory referendum or initiative and referendum principle—to be followed by further reforms in the governmental system, so that the representatives shall become the electors' agents, namely, that there be established the initiative and referendum, direct nominations, direct elections, proportional representation and the right of recall; and,

"Resolved, That this convention hereby approves the questioning of all legislative candidates as to whether, if elected, they will vote for the immediate restoration of the direct-vote system—the People's rule. JOHN MITCHELL, Delegate L. U. 8617.

"The committee concurred in the resolution."

p. 381, l. 38–43.
p. 382, l. 1–11.

(356) "The motion to concur in the report of the committee was carried."

p. 382, l. 21.

Excerpts from book entitled "PROCEEDINGS OF THE NINTH ANNUAL CONVENTION OF SUB-DISTRICT 5 OF DISTRICT 6, UNITED MINE WORKERS OF AMERICA, Held at WHEELING, W. VA., MARCH 14, 15, 16, 18 and 19, 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 5. [Record pp. 706, 290.]

(357) "PRESIDENT WATKINS' REPORT.

"To the Officers and Delegates of Sub-District No. 5 of District No. 6, U. M. W. of A.

"Brother Delegates: We have assembled in the ninth annual convention of our sub-district. Before submitting to you my report permit me to heartily congratulate you and our members on the large and splendid representation in this convention.

"One year ago you honored me by electing me president of our sub-district. At that time we were in hopes that we would be able to arrange a wage scale without very much trouble. In this we were disappointed, and succeeded in getting a wage contract signed after a prolonged and bitter strike lasting four months.

"That the greatest strike of the year was not finally settled until after we had held six joint conventions in this sub-district. The first convention was held April 12, 13, and 14, in Wheeling, W. Va. After being in session three days we adjourned without reaching an agreement. The next joint convention was held at Canton, O., April 16, 17 and 18, for the north end of Sub-District. We also failed to reach an agreement for that part of the Sub-District. The next joint convention was held at Wheeling, W. Va.,

April 23 and 24 at which time there was a scale formulated on the basis of the 1903 contract and this scale was signed by a few operators.

"The next joint convention was held at Wheeling, W. Va., June 27, 28, 29 and 30. After four days' session was adjourned without reaching an agreement. We then held another joint convention at Canton, O., July 11, 12 and 13, 19 and 20, at which we succeeded in effecting a settlement for the north end of the sub-district. The last joint convention was held at Wheeling, W. Va., July 24, 25, 26 and 27, at which time a settlement was reached on a basis of the present scale under which our men are now working."

p. 4, l. 26–37.
p. 5, l. 1–24.

(358) "At our last annual convention it was unanimously decided that the Eastern Ohio scale should apply to the West Virginia Pan Handle counties. The operators of those counties refused to meet us in joint convention to sign a general scale. Some of the operators even refused to sign a contract and this resulted in several local strikes, all of which were settled except the one now on at Elm Grove where the men are on strike and are standing firm. It is with regret that some of the locals in the Pan Handle broke away and the members went to work without any union or without getting a scale signed.

"I am of the opinion that there are many good active union men in the Pan Handle counties, and that if we all work together we can organize every mine worker in that section and establish scale rates."

President Watkins' Report.
p. 6, l. 11–25.

(359) "In past conventions there have been many resolutions passed, condemning the practice of working on idle days. It is reported to me that in some mines, this

resolution is being violated by our members, who are working on idle days. I would advise that our members adhere strictly to the resolution, and that local unions use every effort to enforce the rule prohibiting men from working on idle days."

President Watkins' Report.
p. 7, l. 10–16

(360) "REPORT OF SECY.-TREAS. LEE RANKIN.

"To the Delegates of the 9th Annual Convention of Sub-District 5 of District 6, U. M. W. of A.

"As your Secretary-Treasurer I have the honor and pleasure of submitting to you and the members of sub-district 5, a report of my work with a report of the membership and the finances of this sub-district for the year beginning March 1, 1906, and ending February 28, 1907.

"It is a matter of history that last year was no exception to the rule in Eastern Ohio—that the miners had to strike before a wage contract could be secured.

"We were hopeful, that when partial settlements were made with a few large corporations in Pennsylvania by the United Mine Workers, that there would be an early settlement of our differences in Eastern Ohio. Subsequent developments proved that our hope was without foundation.

"After several attempts to reach an agreement with the Operators of sub-district 5, our members were compelled to strike and that strike developed into the most bitter struggle that has taken place since the formation of our sub-district.

"The failure of the district organizations to provide each striking member with benefits to the amount of $3.00 per week caused considerable friction and this was taken advantage of by the enemies of the organization. What for a time seemed to be division in our ranks encouraged

certain operators with the hope that they could crush our organization. In this hope they were doomed to disappointment, as later developments fully demonstrated.

"When the district organization found that they could not comply with the constitution in the payment of strike benefits, a system of paying relief in orders was established. This policy was condemned and denounced by a few men, who did not stop to consider why the system was established.

"After a great deal of work on the part of your representatives, the reason for adopting such a policy was made clear to the members, who then took renewed courage and showed a determination to win in the struggle that then existed.

"With all the obstacles that we had to overcome last year, we have reason to feel proud that sub-district 5 came out of the strike with such credit to itself and the principles of unionism that it represents.

"To the fidelity, unity and activity of the mine workers of this sub-district is due the credit for winning in the struggle of last year. If any mistakes were made in that contest, let us profit by the experience of the past and be that much better prepared for the future."

p. 8, l. 28–39.
p. 9, l. 1–37.

(361) "On March 1, 1907, we had 108 local unions in good standing and a paid up membership of 12,500, an increase of 12 local unions and 2,050 members."

Report of Secy-Treas. Lee Rankin.
p. 10, l. 31–33.

(362) "We have one mine at Bellaire, O., and five mines in the Pan Handle district which I believe should be organized. I believe those mines can be organized and in

my opinion this convention should adopt some plan organize those mines."

Report of Secy.-Treas. Lee Rankin.
p. 10, l. 34–38.

(363) "RESOLUTION NO. 8.

"Whereas, There are mines in the Pan Handle District and Ohio that are not organized, and believing every mine should be organized, be it

"Resolved, By this Ninth Annual Convention that the Sub-District officers together with the District officers, be authorized to take up the work of organzing every mine in the Sub-District as quickly as it can be done.

"Presented by L. D. Devore, Delegate Local Union No. 778.

"Concurred in by Resolution Committee.

"Convention concurs in Committee's Report."

p. 28, l. 34–41.
p. 29, l. 1–3.

(364) "RESOLUTION NO. 10.

"Whereas, There is a growing tendency among some operators in Eastern Ohio to violate contract provisions, and having more than one mine, leave the mine idle rather than comply with agreement or settle disputes.

"Whereas, We believe 'an injury to one is the concern of all,' and believing that disputes should be settled promptly,

"Resolved, That we, the delegates to this Ninth Annual Convention, authorize the officers to close all mines of one company when such company fails or refuses to comply with contracts or settle disputes.

ALEX. BOYLE, Local Union No. 1430.
JOHN ZELENKA, Local Union No. 1245.
CHARLES BRIGGS, Local Union No. 2527.

"Concurred in by Resolution Committee.

"Convention concurs in Committee's report."

p. 29, l. 24–39.

Excerpts from book entitled "CONSTITUTION OF INTERNATIONAL UNION UNITED MINE WORKERS OF AMERICA, REVISION 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 1. [Record pp. 705, 290.]

(365) "Section 1. This organization shall be known as the United Mine Workers of America."

Article I.
p. 6, l. 4–6.

(366) "Section 2. The objects of this Union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes."

Article I.
p. 6, l. 7–11.

(367) "Section 3. This organization shall be composed of International, District, Sub-District and Local Unions."

Article I.
p. 6, l. 12–14.

(368) "Section 4. The International Union shall have jurisdiction over all Districts, Sub-Districts and Local Unions, which shall be governed by this Constitution."

Article I.
p. 6, l. 15–18.

(369) "Section 1. The officers of the Union shall be one President, one Vice President, one Secretary-Treasurer, and an Executive Board to be composed of one member from each district under the jurisdiction of the United Mine Workers, each district to elect its member of the

International Executive Board, the President, Vice President and Secretary-Treasurer to be members of the Board by reason of their position."

Article II.
p. 6, l. 21–26.
p. 7, l. 1–4.

(370) "Section 11. The funds of the organization shall be used for the purpose of assisting those who are in need from idleness or distress, when the payment of the same has been approved by the International Executive Board."

Article IV.
p. 16, l. 7–12.

(371) "ARTICLE VII.

Cards.

"Section 1. Local Unions shall provide each member with a Due Card, upon which the dues and assessments paid by the member shall be entered, which shall be his receipt for the same.

"Sec. 2. Due Cards shall not admit any person to membership from one local to another, and to protect the membership of individuals who are unable to pay their dues because of no Local existing where they reside, the International, District and Sub-District Secretaries shall, upon the payment of dues and assessments by said member, issue the usual cards for the same; provided that this shall not apply to a member living in a locality where a Local Union is in existence.

"Sec. 3. No person a member of the organization, who holds a Due or Transfer Card showing him to be a member in good standing, shall be debarred or hindered from obtaining work on account of race, creed or nationality. Cards properly filled out and signed by the officers of miners' unions in foreign countries shall be accepted in lieu of initiation fees.

"Sec. 4. Any member desiring to leave the mine where his Local is located and work elsewhere shall immediately make application to the Secretary of the Local for a Transfer Card, and if he has paid all dues and assessments, the President and Recording Secretary shall issue a Transfer Card to him, which shall be attested by the Financial Secretary, providing the Local Union is in good standing with the International, District and Sub-District Unions, which shall be accepted in any District, and in case such person cannot produce a Transfer Card he shall pay the regular initiation fee. All Transfer Cards shall be deposited as the laws of the District where work is secured may direct.

"Sec. 5. When a person who has not been a member of the organization three months or more secures a Transfer Card from a Local Union in a District where a dispensation has been granted said Transfer Card shall not be accepted by any Local in a different District from the one in which the Local issuing the same is located, unless said Transfer Card is accompanied by an amount equal to the difference between the initiation fee paid by said member and the initiation fee provided for in the District where the card is deposited.

"Sec. 6. No card shall be issued to any member when the Local is three or more months in arrears to the International, District or Sub-District for dues or assessments. Officers of any Local Union issuing cards in violation of any Section of Article VII shall be fined $10.00 for each card issued, the fine to be collected in the same manner as dues and assessments.

"Sec. 7. The Transfer Card must show that the member receiving it has paid all dues and assessments for the month in which it was issued, and must also show at what class of labor he was employed.

"Sec. 8. When a Transfer Card is issued to any member it must be deposited by him with some Local Union or with the International Secretary-Treasurer, within three months after the last day of the month in which it was issued to him, else the card will become void and he can only become a member again by initiation as a new member.

"Sec. 9. When a member presents a Transfer Card to a Local Union at any mine where he works or desires to work, the Local Union must accept the same and admit him to membership in that Local, unless the Local issuing the same is not in good standing, as shown by the monthly report of the Secretary-Treasurer, or the person to whom the card is issued has not been a member of the organization for three months as provided for in Section 5 of this Article, and shall collect from him all dues and assessments from the time between the last day of the month in which the card was issued and the date of depositing the same.

"Sec. 10. The Sub-District, District or International Secretary-Treasurer shall not accept a Transfer Card if the member is where he can deposit it with a Local Union.

"Sec. 11. The International Secretary-Treasurer shall prepare and send out monthly a statement of all Locals three months or more in arrears for dues and assessments, and no Local Union shall refuse to accept a Transfer Card from any Local unless it appears on said list as being in bad standing. Local Unions on strike shall be exempt from the provisions of this section.

"Sec. 12. All Transfer Cards shall be made in book form, with two stubs attached. The books to be numbered, and each card in the book to be numbered and bear the number of the book. The stubs to be printed in conformity with the card itself. The card and one stub to be filled out by the Recording Secretary and certified to by the President and Financial Secretary of the Local Union

granting the same; one stub to be retained by the Local issuing the card for future reference, the other stub to accompany the card and must be immediately filled out by the Secretary of the Local where the card is deposited and returned by him to the Secretary of the Local that issued the card.

"Sec. 13. The President, Financial and Recording Secretary of the Local Union shall keep a record of all Transfer Cards bought by, issued by and deposited in their respective Local Unions. The Auditing Committee shall compare their records every three months, and in the presence of the Local Union destroy all Transfer Cards that have been deposited that there is no dispute about."

p. 23, l. 17–31.
p. 24, l. 1–33.
p. 25, l. 1–33.
p. 26, l. 1–33.
p. 27, l. 1–23.

(372) "Section 1. When trouble of a local character arises between members of a Local Union and their employers, the officers of said Local shall endeavor to effect an amicable adjustment, and failing in this they shall immediately notify the officers of the District to which the affected Locals are attached, and said District officers shall immediately investigate the cause of complaint; and failing to effect a peaceable settlement on a basis that would be fair and just to aggrieved members, finding that a strike would best serve the interests of the locality affected, they may order the inauguration of a strike, but no local strike shall be legalized or supported by a District unless its inauguration was approved by the officers of the District or by the International Executive Board, upon an appeal taken by the aggrieved members from the decision of the District officers; any Local Union striking in viola-

tion of the above provisions shall not be sustained or recognized by the International officers."

Article X.
p. 28, l. 29–30.
p. 29, l. 1–22.

(373) "Sec. 3. When any member of the United Mine Workers is suspended or discharged, it shall be the duty of the Mine Committee to immediately investigate the case, and if the member discharged is not guilty of an offense justifying the same, the grievance shall immediately be reported to the Sub-District and District President in writing, under the seal of the Local and if, upon investigation, the report of the Local Committee is found correct the Sub-District and District President shall immediately insist upon the reinstatement of the suspended or discharged member."

Article X.
p. 30, l. 24–33.
p. 31, l. 1–4.

(374) "Sec. 4. The International officers shall, at any time they deem it to the best interests of mine workers in a District that is idle, for just and sufficient reasons, order a suspension in any other District or Districts that would in any way impede the settlement of the District affected; provided, that such action would conserve to the best interests of the United Mine Workers of America."

Article X.
p. 31, l. 5–13.

(375) "Sec. 2. Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with the International Union."

Article XII.
p. 34, l. 3–6.

(376) "Sec. 2. Sub-Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with International and District Constitutions or agreements entered into."

Article XIII.
p. 34, l. 15–19.

(377) "Sec. 3. All Local Unions within the territory of Sub-Districts already organized in any District shall contribute and become a part of the same and comply with its laws, before they are entitled to pass-word or representation in either International or District organization."

Article XIII.
p. 34, l. 20–26.

(378) "Section 1. Local Unions shall be composed of miners, mine laborers and other workmen, skilled and unskilled, working in and about the mines, except mine manager, top boss and persons engaged in the sale of intoxicating liquors, and shall be given such numbers as the International Secretary-Treasurer may assign them."

Article XIV.
p. 34, l. 29, 30.
p. 35, l. 1–6.

(379) "Sec. 2. All locals shall be under the jurisdiction of the International, District and Sub-District Unions, and may make such laws for their government as they deem necessary, provided they do not conflict with the International, District and Sub-District Constitutions or agreements entered into. Any local Union or members thereof violating this section shall be subject to a fine of not less than $5.00.

Article XIV.
p. 35, l. 7–16.

(380) "Section 1. The United Mine Workers' Journal, official organ of the organization, shall be issued on Thursday of each week from headquarters. It shall be a medium for circulating the news of interest to the craft; shall publish from time to time the important transactions of the organization, general mining and trade news, together with copies of official circulars and financial reports, and other matters of general interest. It shall be neutral in politics, non-sectarian in religion, dignified in tone, and a consistent advocate of the principles of modern trades organizations."

Article XV.
p. 36, l. 22–31.
p. 37, l. 1–4.

(381) "Sec. 4. All Local Unions shall subscribe for one copy of the Journal, paying for it in advance, and Secretaries are hereby instructed to examine every issue and read all official circulars to the members that are published therein."

Article XV.
p. 37, l. 20–25.

Excerpts from book entitled "CONSTITUTION OF DISTRICT NO. 6, UNITED MINE WORKERS OF AMERICA. Established April 15, 1890. Containing all Amendments to Date, January 12, 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 2. [Record pp. 706, 290.]

(382) "MANUAL.

OPENING.

"The hour of the meeting having arrived, the President shall take the chair and give one rap with the gavel, upon which all officers and members shall be seated. If no regular doorkeeper has been appointed, the President shall appoint one of the brothers to see that none but members of the Union are admitted.

"President: The time for opening this meeting having arrived, I declare this meeting duly convened and qualified to consider measures tending to conserve the best interests of this Union, and the United Mine Workers of America.

ORDER OF BUSINESS.

1. Roll call of officers.
2. Reading of minutes.
3. Correspondence.
4. Finance.
5. Propositions for membership and initiation.
6. Labor: The interest of the Union—of the United Mine Workers of America.
7. Report of committees.
8. Unfinished business.
9. New business.

10. Election of officers and installation.

"President: The business of this meeting having been duly transacted, I declare it adjourned until our next regular session, unless you are specially called together, when I hope to see all members present.

NEW MEMBERS.

"Any member of a Local Union can propose any one who works in or around the mine for membership in the organization. Propositions to be made to the Secretary, who shall announce the same to the Union, under the head of Order of Business No. 5.

"President: Brothers, you have heard the name (or names) of the candidate (or candidates) who desire to become members of this Union. Are there any obejctions?

"Note.—Local Unions, having complete control over their own affairs, shall decide by what vote they will admit members to their body; if objections are raised the President shall call for a vote in accordance with rules of the Union. If no objections are raised a vote is unnecessary, and the President shall say: No objections having been raised, I declare the candidates enlisted to take the obligation and become members of the Local Union.

"President: Mr. Doorkeeper, are there any candidates in waiting who have been accepted by this Union?

"Doorkeeper: Mr. President, I find Brothers.....
....., mine workers, who were elected to become members of this body.

"President: Admit the brothers.

"The doorkeeper will admit the candidates and place them in a line opposite the President.

"President: Fellow Workmen: The United Mine Workers of America require perfect freedom of inclination in every candidate for membership to its body. An obliga-

tion of fidelity is required; let me assure you that in this obligation there is nothing contrary to your civil or religious duties; with this understanding, are you willing to take an obligation which binds you upon your honor as a man to keep the same as long as life remains?

"Each candidate answers—I am.

"President: Raise your right hand.

"'I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow-worker on account of creed, color or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"'That I will not reveal to any employer or boss the name of any one a member of our Union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it.

"'To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.'

"Answer—I promise.

"President: You are now members of Local Union No. ..... and entitled to all rights and privileges of members of the United Mine Workers of America."

p. 6, l. 1–35.
p. 7, l. 1–42.
p. 8, l. 1–24.

(383) "Section 1. This organization shall be known as District No. 6, of the United Mine Workers of America."

Article I.
p. 9, l. 4–6.

(384) "Sec. 2. One of the objects of this organization is to unite all employes in and around the coal mines of Ohio and the Pan Handle District of West Virginia."

Article I.
p. 9, l. 7–10.

(385) "Sec. 3. To create a fund for the relief of members in distress caused through being on strike, and provide for those who may be in need after a thorough investigation has been made by the officers of District 6 that such members have complied with our laws."

Article I.
p. 9, l. 11–16.

(386) "Section 1. District No. 6 shall be divided into six sub-districts, as follows:

"No. 1—Athens, Hocking and that part of Perry County not hereinafter designated as being part of sub-district 6.

"No. 2—Jackson, Vinton and Gallia Counties and southern Ohio.

"No. 3—Stark, Wayne, Summit, Medina and Portage Counties.

"No. 4—Trumbull, Mahoning and Columbiana Counties and that part of West Virginia known as New Cumber-

land and Cannelton, Pa., and that part of Jefferson County other than the No. 8 or Pittsburg Seam.

"No. 5—Tuscarawas, Belmont, the No. 8 or Pittsburg seam of Jefferson, Harrison and Carroll, and that part of Stark county south of Canton, other than the Massillon seam, and the Pan Handle of West Virginia.

"No. 6—Guernsey, Noble, Coshocton, Muskingum, Morgan and Holmes counties, and that part of Perry county known as the Crooksville District, and the low coal fields of the Baltimore & Ohio, and north of Shawnee."

Article II.
p. 9, l. 18–36.
p. 10, l. 1–4.

(387) "Section 1. The officers of this organization shall consist of one President, one Vice President, one Secretary-Treasurer and an Executive Board of nine members, three of whom shall be the President, Vice President and Secretary-Treasurer. The President and Secretary-Treasurer shall act as Chairman and Secretary of the Executive Board."

Article III.
p. 10, l. 7–13.

(388) "Section 4. The Secretary-Treasurer shall have charge of and preserve all books, documents and effects of the district office; shall record proceedings of all conventions and of the meetings of the Executive Board, and shall keep copies of important letters sent out by him; he shall receive and receipt for all moneys, pay all current expenses; he shall prepare and submit to the locals a monthly report of all moneys received and disbursed; he shall give bond in the sum of $20,000, or in such amount as the funds warrant, at the discretion of the Executive Board, for the safe keeping of all moneys entrusted to him, and also have copies of Journal bound annually and filed for reference, and have

minutes of Joint, National District and Sub-District conventions bound and filed in office."

Article III.
p. 10, l. 40–44.
p. 11, l. 1–11.

(389) "Section 1. In case of trouble arising in any local with the employer it shall be the duty of the local officers to try to effect a settlement; failing in this the grievance shall be presented to the sub-district President in writing, who shall investigate the grievance or dispute and settle, if possible. Should he fail, he shall consult the District President, who shall settle the dispute either by suspending work or such other methods as they may deem best. In case of a direct violation of agreements the sub-district President or Local Union affected are authorized to order a suspension of work."

Article VIII.
p. 16, l. 5–16.

(390) "Sec. 2. When it becomes necessary for the District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated."

Article VIII.
p. 16, l. 17–24.

(391) "Section 1. The initiation fee in District 6 shall be $10.00, and all persons applying for and securing work in the mines who are not practical workers shall pay $10.00 initiation fee. Any person applying for work at any organized mine shall present a United Mine Workers' card. In

case said person cannot present such a union card he shall pay the regular initiation fee."

Article IX.
p. 16, l. 27–34.

(392) "Sec. 4. When a member allows himself to be three months in arrears he shall be considered no longer a member of the United Mine Workers of America, and in order to become a member again he must pay uniform initiation fee. In case of a member being sick or thrown out of employment for one month or more by the mine being idle or other causes, he shall be exonerated from dues."

Article IX.
p. 17, l. 1–8.

(393) "Sec. 6. All persons employed as check-weighmen shall be members of the United Mine Workers for a period of six months before they are elected to such position. Notice shall be posted near the weigh sheet at least three days before the election of a check-weighman, and no persons are entitled to vote except those who are assessed to pay him his wages."

Article IX.
p. 17, l. 13–19.

(394) "Sec. 12. When a miner's son becomes old enough to work in mine he shall be given the preference over other applicants for work."

Article IX.
p. 18, l. 3–5.

(395) "Sec. 15. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.

Article IX.
p. 18, l. 23–26.

(396) "Sec. 17. That a fine of $10.00 in each individual case where it can be proven that a member of the Union leaves his district for West Virginia, or any other unfair mines, and remains there one month or more without having deposited his transfer card and returns without giving a satisfactory account of why he has not deposited his transfer card; and the fine to be collected by the Local Union where he works."

Article IX.
p. 18, l. 31–39.

(397) "Sec. 5. When a local or Sub-District strike, upon investigation by the officers of District 6, it is found that the members of our Union who were actually employed and working at a mine when a strike was declared, and those members are entitled to relief, they shall receive the sum of $3.00 per week. Each member receiving relief as herein provided must have his initiation fee paid in full and in good standing in the Local Union as provided for in the Constitution, and no Local Union which has not paid all dues, per capita and assessments will be entitled to receive any money from the fund; and in no instance shall benefits be paid any Local or Locals who may have gone on strike without complying with the Constitution or consulting the district official, who shall, or may, have endorsed said strike, or cause for relief. In no instance shall the members of the Locals receive relief for the first four weeks of said strike."

Article X.
p. 19, l. 21–38.

(398) "Sec. 6. When a suspension or strike is endorsed by the officers of District, and strike benefits are ordered paid to the idle members, the secretary of the local union shall furnish a list of the names of those entitled to relief each pay. If a member misrepresents the number of days

he was idle in order to secure benefits, said member shall be fined $5.00, and also refund the amount of benefits paid to him. Members on strike shall report at least once each week the number of days they have worked.

"When a strike has been endorsed by the officers of District No. 6, a member will be entitled to benefits when he has worked one or two days, for wages, per week, but members working more than two days per week shall not be entitled to strike benefits for the week the member has worked more than two days."

Article X.
p. 19, l. 39–45.
p. 20, l. 1–8.

(399) "Sec. 7. The Secretary-Treasurer of District 6 shall prepare and send to the officers who have charge of relief funds such blanks as are necessary for them to submit an itemized statement of the disbursement of said funds.

"Strike benefits shall be forwarded to the Local officers, for distribution, when proof is furnished to the District Secretary that the local officers are bonded in a sufficient amount for the proper safety and accounting of the funds."

Article X.
p. 20, l. 9–17.

Excerpts from book entitled "PREAMBLE AND MANUAL CONSTITUTION UNITED MINE WORKERS OF AMERICA, SUB-DISTRICT 5 OF DISTRICT 6. Revision 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 3. [Record pp. 706, 290.]

(400) "MANUAL.

"OPENING.

"The hour of the meeting having arrived, the President shall take the Chair and give one rap with the gavel, upon which all officers and members shall be seated. If no regular doorkeeper has been appointed, the President shall appoint one of the brothers to see that none but members of the Union are admitted.

"President: The time for opening this meeting having arrived, I declare this meeting duly convened and qualified to consider measures tending to conserve the best interests of this Union and the United Mine Workers of America.

"ORDER OF BUSINESS.

1. Roll call of officers.
2. Reading of minutes.
3. Correspondence.
4. Finance.
5. Propositions for membership and initiations.
6. Labor: The interests of the union of the United Mine Workers of America.
7. Report of committees.
8. Unfinished business.
9. New business.
10. Election of officers and installation.

"President: The business of this meeting having been duly transacted, I declare it adjourned until our next regular session, unless you are specially called together, when I hope to see all members present.

"NEW MEMBERS.

"Any member of a Local Union can propose any one who works in or around the mine for membership in the organization. Propositions to be made to the Secretary, who shall announce the same to the Union, under the head of Order of Business No. 5.

"President: Brothers, have you heard the name (or names) of the candidate (or candidates) who desire to become members of this Union? Are there any objections?

"Note.—Local Unions, having complete control over their own affairs, shall decide by what vote they will admit members to their body; if objections are raised the President shall call for a vote in accordance with rules of the Union. If no objections are raised a vote is unnecessary, and the President shall say: No objections having been raised, I declare the candidates enlisted to take the obligation and become members of the Local Union.

"President: Mr. Doorkeeper, are there any candidates in waiting who have been accepted by this Union?

"Doorkeeper: Mr. President, I find Brothers.....
....., mine workers, who were elected to become members of this body.

"President: Admit the brothers.

"The doorkeeper will admit the candidates and place them in line opposite the President.

"President—Fellow Workmen: The United Mine Workers of America require perfect freedom of inclination in every candidate for membership to its body. An obligation of fidelity is required; let me assure you that in this obligation there is nothing contrary to your civil or

religious duties; with this understanding, are you willing to take an obligation which binds you upon your honor as a man to keep the same as long as life remains?

"President: Raise your right hand.

"'I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow-worker on account of creed, or color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"'That I will not reveal to any employee or boss the name of any one a member of our Union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it.

"'To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.'

"Answer—I promise.

"President: You are now members of Local Union No. . . . . , and are entitled to all rights and privileges of members of the United Mine Workers of America."

p. 7, l. 1–32.
p. 8, l. 1–43.
p. 9, l. 1–30.

(401) "Section 1. This organization shall be known as Sub-District 5 of District 6, United Mine Workers of America."

Article I.
p. 10, l. 6–8.

(402) "Sec. 2. The object of this organization is to unite the mine employees of Belmont, Jefferson, Tuscarawas, Harrison and Carroll Counties in Ohio, and that part of Stark County south of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio and Marshall counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike."

Article I.
p. 10, l. 9–16.

(403) "Sec. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines."

Article I.
p. 10, l. 17–19.

(404) "Sec. 4. This organization shall have jurisdiction over all local unions of Sub-District 5 of 6, U. M. W. of A.

Article I.
p. 10, l. 20–22.

(405) "Sec. 1. The officers of this organization shall consist of a president, a vice-president, a secretary-treasurer and three members of an executive board, who shall constitute a board of six members. Board members shall be elected, one from the north end of the sub-district by the delegates from the north end of the sub-district and

the two from the south end to be elected by the delegates from the south end and the Pan-handle of West Va."

Article II.
p. 10, l. 24–32.

(406) "Sec. 1. In case of trouble arising in any Local with the employer, it shall be the duty of the Local officers to try to effect a settlement; failing in this the grievance shall be presented to the Sub-District President in writing, who shall investigate the grievance or dispute and settle if possible. Should he fail he shall consult the District President, who shall settle the dispute either by suspending work or by such other methods as they may deem best. In case of a direct violation of agreements, the Sub-District President or Local Union affected are authorized to order a suspension of work."

Article IV.
p. 12, l. 5–17.

(407) "ARTICLE VI.
Salaries of Officers.

"Sec. 1. The salary of President shall be $80 per month and all necessary expenses in the performance of his duties.

"Sec. 2. The salary of the vice-president shall be $70 per month and all necessary expenses in the performance of his duties.

"Sec. 3. The salary of the Secretary-Treasurer shall be $75 per month and all necessary expenses in the performance of his duties.

"Sec. 4. The Board members and Auditors shall receive $3.10 per day and all necessary expenses when actively employed in the work of the organization.

"Sec. 5. The surplus revenue of this organization shall be deposited in a bank with interest.

"Sec. 6. The above prices are based on a 90c. mining rate, and that these prices be increased or decreased the same per cent as the miners."

p. 13, l. 13–32.

(408) "Sec. 7. All Checkweighmen employed by members of the United Mine Workers shall be members of the United Mine Workers six months prior to their election, except newly organized locals, and voted for and elected by those who pay to maintain them. Notice of election for Checkweighman shall be posted in some conspicuous place at the mines where Checkweighman is to be employed at least three days before the time set for such an election. It shall be the duty of such Checkweighman to keep a record of all men employed in and around the mine. Under no consideration shall a Checkweighman be considered an officer of the Local Union. The term for which a Checkweighman shall serve shall be left to the discretion of those who employ him. The above will not prevent any local officer from acting as Checkweighman."

Article VII.

p. 14, l. 42, 43.
p. 15, l. 1–16.

(409) "Sec. 2. That a fine of $10.00 in each case,where it can be proven that a member of our Union leaves his district for West Virginia or any other unfair mine, and remains one month or more without depositing a transfer card, and returns without giving a satisfactory account of why he has not deposited his transfer card, and a fine to be collected by the Local Union where he is working."

Article IX.

p. 15, l. 28–35.

(410) "Sec. 3. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense."

Article IX.
p. 15, l. 36–38.
p. 16, l. 1.

Excerpts from book entitled "OFFICIAL MINING SCALE OF ASSOCIATION OF PITTSBURG VEIN OPERATORS OF OHIO FOR THEIR MINES IN BELMONT, HARRISON AND JEFFERSON COUNTIES, OHIO, AND THE UNITED MINE WORKERS OF AMERICA." In Effect April 1, 1906, and Ending March 31, 1908.

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 8. [Record pp. 707, 292.]

(411) "RULE 9. We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, the local union or the party upon whom the fine is imposed object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling.

"In order to be honored the check-off must be furnished to the company not later than 5 p. m. on the second and seventeenth day of each month."

General Rules for Pick and Machine Mining.
p. 10, l. 28–38.

(412) "RULE 13. That all machine loaders be accorded two rooms for each two men, and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming scarce through a squeeze or striking horseback,

or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine."

General Rules for Pick and Machine Mining.
p. 11, l. 25–31.

(413) "RULE 14. There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit; but in no case shall entry miners be allowed more cars than room miners, and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that, by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length."

General Rules for Pick and Machine Mining.
p. 11, l. 32–42.
p. 12, l. 1–4.

(414) "RULE 17. Members of the Pit Committee and local officers shall remain at their working places the same as all other employees, unless a miner and a mine boss fail to agree on prices to be paid for extra work when they may be called in to confer with the superintendent to decide the dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union."

General Rules for Pick and Machine Mining.
p. 12, l. 16–25.

(415) "RULE 20. Any rule, either local or general, governing the scale or conditions of employment in the Pittsburg Vein of Sub-District No. 5 shall be mutually agreed to by the operator and miners interested, and said rules, before being enforced, shall receive the endorsement of the officials of the operators and officials of District No. 6, United Mine Workers of America."

General Rules for Pick and Machine Mining.
p. 12, l. 34–39.

Excerpts from book entitled "UNITED MINE WORKERS OF AMERICA. DISTRICT No. 6, OHIO. Issued by the authority of the Executive Board of District No. 6 (Ohio Miners) United Mine Workers of America. G. W. SAVAGE, Secretary-Treasurer. FOR SCALE YEAR, APRIL 1, 1908, TO MARCH 31, 1910."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Koch's Exhibit No. 1. [Record pp. 706, 277.]

(416) "REPORT OF JOINT SCALE COMMITTEE.

PITTSBURG, PA., January 24, 1899.

"First. Resolved, That the Chicago Agreement be adopted as the Agreement for the scale year, beginning April 1, 1899, and ending March 31, 1900.

"Second. It is the understanding that the machine question of Illinois, outside of the basic point (the Danville District, where the present prices shall continue in force), shall be taken up by the Illinois State Convention for adjustment, by conciliation or arbitration; provided an agreement cannot be arrived at by the Illinois State Convention, the question at issue shall be referred to a Board of Arbitration of seven members, three to be selected by the Illinois operators, and three by the United Mine Workers; the six so selected to appoint the seventh member, the question to be arbitrated being whether or not the various districts of Illinois are entitled to any reduction in the Springfield scale differentials, as against Danville, the basing point; and if so, how much.

"It is understood and agreed that arbitration, if resorted to, shall be proceeded with at a date to be agreed upon at the Springfield Convention.

Committee on behalf of Operators:

Illinois—
S. M. DALZELL,
J. H. GARAGHTY.

Indiana—
J. SMITH TALLEY,
W. S. BOGLE.

Ohio—
J. B. ZERBE,
N. O. GRAY.

Pennsylvania—
G.W.SCHLEUDERBERG,
C. L. SNOWDEN.

Committee on behalf of Miners:

Illinois—
JOHN M. HUNTER,
W. D. RYAN.

Indiana Bituminous—
W. D. VAN HORN,
J. H. KENNEDY.

Indiana Block—
P. D. ROBERTS,
BARNEY NAVIN.

Ohio—
WM. H. HASKINS,
T. L. LEWIS.

Pennsylvania—
P. DOLAN,
WM. WARNER.

Members of the National Executive Board, U.M.W. of A.:
JOHN MITCHELL, President.
THOMAS W. DAVIS, Vice-President.
W. C. PEARCE, Secretary-Treasurer."

p. 8, l. 29–39.
p. 9, l. 1–34.

(417) "INDIANAPOLIS AGREEMENT.

"Between the United Mine Workers of America and the coal operators of Pennsylvania, Ohio, Indiana and Illinois.

"Covering and effective during the scale year from April 1, 1900, to April 1, 1901.

IT IS HEREBY AGREED:

"Section 1. (a) That an advance of fourteen (14) cents per ton of two thousand (2,000) pounds for pick mined,

screened coal, shall take effect in Western Pennsylvania thin vein, the Hocking, the basing District of Ohio, and the Block Coal District of Indiana.

"(b) That the Danville District, the basing point of Illinois, shall be continued on an absolute run of mine basis, and that an advance of nine (9) cents per ton over present prices be paid in the district named.

"(c) That the bituminous Coal District of Indiana shall pay forty-nine (49) cents per ton for all mine run coal loaded and shipped as such. All other coal mined in that district shall be passed over a regulation screen and be paid for at the rate of eighty (80) cents per ton for two thousand (2,000) pounds for screened lump.

"Sec. 2. That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the Bituminous District of Indiana, shall be uniform in size, six (6) feet wide by twelve (12) feet long, built of flat or Akron-shaped bar, of not less than five-eighths ($\frac{5}{8}$) of an inch surface, with one and one-fourth ($1\frac{1}{4}$) inches between bars, free from obstructions, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Sec. 3. That the Block Coal District of Indiana may continue in the use of the Diamond Bar screen, to be seventy-two (72) feet superficial area, of uniform size, one and one-quarter inches between the bars, free from obstruction, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Sec. 4. That the differential between the thick and thin vein pick mines of the Pittsburgh District be referred to that district for settlement.

"Sec. 5. (a) That the price of machine mining in the Bituminous District of Indiana shall be eighteen (18) cents per ton less than the pick mining rate for screened lump

coal, when punching machines are used; and twenty-one and one-half (21½) cents per ton less than pick mining rate when chain machines are used.

"When coal is paid for on run of mine basis, the price shall be ten (10) cents per ton less than the pick mining rate when punching machines are used, and twelve and one-half (12½) cents per ton less than pick mining rates when chain machines are used.

"(b) That the machine mining rate in the Danville District, the basing point of Illinois, on both punching and chain machines, be thirty-nine (39) cents per ton.

"Sec. 6. That the machine mining rate in the thin vein of the Pittsburgh District, and the Hocking, the basing district of Ohio, for shooting, cutting and loading, shall be advanced nine (9) cents per ton. And that the Block Coal District of Indiana shall be advanced eleven and one-half (11½) cents per ton.

"Sec. 7. That the mining rates in the Central District of Pennsylvania be referred to that district for adjustment.

"Sec. 8. That the advance on inside labor be twenty per cent. (20 per cent.), based on the present Hocking Valley scale; with the exception of trappers, whose compensation shall be one dollar ($1.00) per day.

"Sec. 9. That all narrow, dead work and room turning shall be paid a proportionate advance with the pick mining rate.

"Sec. 10. That internal differences in any of the States or Districts, both as to prices or conditions, shall be referred to the States of Districts affected for adjustment.

"Sec. 11. The above scale is based upon an eight (8) hour work day.

"The foregoing scale, having been unanimously adopted by the Interstate Convention of miners and operators, at

Indianapolis, Indiana, on February 2, 1900, in witness whereof we hereto attach our signatures.

In behalf of Operators:
For Pennsylvania—
F. L. ROBBINS,
WM. B. ROGERS.
For Ohio—
J. S. MORTON,
W. J. MULLINS.
For Bituminous District of Indiana—
J. SMITH TALLEY,
A. M. OGLE.
For Block District of Indiana—
W. W. RISHER,
M. H JOHNSON
For Illinois—
E. T. BENT,
CHAS. E. HULL.

In behalf of Miners:
For Pennsylvania—
P. DOLAN,
WM. DODDS.
For Ohio—
W. H. HASKINS,
T. L. LEWIS.
For Bituminous District of Indiana—
W. D. VAN HORN,
J. H. KENNEDY.
For Block District of Indiana—
WM. WILSON,
BARNEY NAVIN.
For Illinois—
JNO. M. HUNTER,
W. D. RYAN.

In behalf of the United Mine Workers of America:
JOHN MITCHELL, President.
W. C. PEARCE, Secretary."

COLUMBUS, OHIO, February 9, 1901.

"In accordance with the action of the Joint Convention of miners and operators held in Columbus, Ohio, January 31 to February 9, 1901, this agreement and the prices and conditions thereby fixed are renewed and continued in force for the year from April 1, 1901, to April 1, 1902.

In behalf of Operators:
For Thin Vein District of Pennsylvania—
G. W. SCHLUDERBERG,
O. A. BLACKBURN.

In behalf of Miners:
For Thin Vein District of Pennsylvania—
P. DOLAN,
WILLIAM DODDS.

For Ohio— THOS. JOHNSON, W. J. MULLINS.	For Ohio— W. H. HASKINS, D. H. SULLIVAN.
For Block District, Indiana— J. M. McCLELLAND, W. W. RISHER.	For Block District, Indiana— WM. WILSON, HARRY WRIGHT.
For Bituminous District, Indiana— W. S. BOGLE, P. H. PENNA.	For Bituminous District, Indiana— J. H. KENNEDY, W. D. VAN HORN.
For Illinois— JOHN M. HUNTER, W. D. RYAN.	For Illinois— H. N. TAYLOR, A. J. MOORSHEAD.

On behalf of the United Mine Workers of America:
JOHN MITCHELL, President.
T. L. LEWIS, Vice-President.
Attest: W. B. WILSON, Secretary.
W. B. WILSON, Secretary-Treasurer.

p. 9, l. 35–40.
p. 10, l. 1–41.
p. 11, l. 1–40.
p. 12, l. 1–41.
p. 13, l. 1–12.

(418) "INTERSTATE AGREEMENT FOR SCALE YEAR, BEGINNING APRIL 1, 1902.

"The committee designated to execute the contract met after the convention adjourned and executed the following:

INDIANAPOLIS, IND., February 8, 1902.

"In pursuance of the instructions from the Joint Convention we hereby reaffirm last year's scale for

the year beginning April 1, 1902, and ending April 1, 1903:

For Operators:	For Miners:
Thin Vein District of Pennsylvania—	Thin Vein District of Pennsylvania—
G. W. SCHLUDERBERG,	P. DOLAN,
O. A. BLACKBURN.	WILLIAM DODDS.
Ohio—	Ohio—
JNO. H. WINDER,	W. H. HASKINS,
W. J. MULLINS.	D. H. SULLIVAN.
Block District, Indiana—	Block District, Indiana—
J. H. McCLELLAND,	WM. WILSON,
W. W. RISHER.	HARRY WRIGHT.
Bituminous District, Indiana—	Bituminous District, Indiana—
JNO. K. SEIFERT,	W. D. VAN HORN,
HUGH SHIRKIE.	J. H. KENNEDY.
Illinois—	Illinois—
H. N. TAYLOR,	W. D. RUSSELL,
W. W. KEEFER.	W. D. RYAN.

In behalf of the United Mine Workers of America:
JOHN MITCHELL,
T. L. LEWIS,
W. B. WILSON.

Attest: W. B. WILSON, Secretary."

p. 13, l. 13–41.
p. 14, l. 1–5.

(419) "INDIANAPOLIS INTERSTATE AGREEMENT.

For Scale Year Beginning April 1, A. D., 1903.

INDIANAPOLIS, IND., February 7, 1903.

"That the Interstate agreement of the present year be continued with the same conditions for the scale year

beginning April 1, 1903, and ending March 31, 1904, with the exception of the mining prices and inside day wages.

"That the price for mining be increased ten (10) cents per ton on inch and a quarter screened lump coal, pick mining, in Western Pennsylvania thin vein, the Hocking the basing district of Ohio, and both Block and Bituminous Districts of Indiana; six (6) cents per ton on mine run coal, pick mining, in the Bituminous District of Indiana and at Danville, the basing point of Illinois.

"That the price for machine mining be increased eight (8) cents per ton on screened lump coal in Western Pennsylvania thin vein, and the Hocking the basing district of Ohio; ten (10) cents per ton on screened lump coal in the Block and Bituminous District of Indiana, and six (6) cents per ton on mine run coal in the Bituminous District, of Indiana and at Danville the basing point of Illinois.

"That the inside day wage scale shall be as follows, with the conditions of the Columbus day wage scale agreement of 1898, to wit:

Tracklayers	$2.56
Tracklayers' helpers	2.36
Trappers	1.13
Bottom cagers, drivers, trip riders	2.56
Water haulers, machine haulers	2.56
Timbermen, where such are employed	2.56
Pipemen for compressed air plants	2.50
Company men in long wall mines of Third Vein District, Northern Illinois	2.36
All other inside day labor	2.36

That yardage and dead work be advance 12½%.

In behalf of the Operators:
Thin Vein District of Pennsylvania—
G. W. SCHLUDERBERG,
O. A. BLACKBURN.

In behalf of the Miners:
Thin Vein District of Pennsylvania—
P. DOLAN,
WM. DODDS.

Ohio—
JNO. H. WINDER,
W. K. FIELD.

Block District, Indiana—
J. H. McCLELLAND,
W. W. RISHER.

Bituminous District, Indiana—
W. S. BOGLE,
W. L. GOULD.

Illinois—
H. N. TAYLOR,
A. J. MOORSHEAD.

Ohio—
W. H. HASKINS,
G. W. SAVAGE.

Block District, Indiana—
JAS. CANTWELL,
WM. TREAGER.

Bituminous District, Indiana—
GEO. HARGRAVE,
J. H. KENNEDY.

Illinois—
W. R. RUSSELL,
W. D. RYAN.

On behalf of the United Mine Workers of America:
JOHN MITCHELL, President.
T. L. LEWIS, Vice-President.
W. B. WILSON, Secretary-Treasurer.

Attest: W. B. WILSON, Secretary.

p. 14, l. 6–39.
p. 15, l. 1–29.

(420) "INTERSTATE AGREEMENT FOR YEARS BEGINNING APRIL 1, 1904, AND ENDING MARCH 31, 1906.

"IT IS HEREBY AGREED, That the Interstate Agreement of the present year shall be continued with the same conditions for two years from April 1, 1904, until March 31, 1906, with the following exceptions, to-wit:

"First. That the price for mining be reduced five cents (5c) per ton on inch and a quarter ($1\frac{1}{4}$-inch) screened lump coal, pick mining, in Western Pennsylvania thin vein, the Hocking, the basing district of Ohio, and in both Block and Bituminous Districts of Indiana three cents (3c.) per ton

on mine-run coal, pick mining, in the Bituminous District of Indiana, and at Danville, the basing point of Illinois.

"Second. That the price for machine mining be reduced four cents (4c.) per ton on screened lump coal in Western Pennsylvania thin vein, and the Hocking, the basing district of Ohio; five cents (5c.) per ton on screened lump coal in the Block and Bituminous Districts of Indiana, and three cents (3c.) per ton on mine-run coal in the Bituminous District of Indiana, and at Danville, the basing point of Illinois.

"Third. That the inside day wage scale shall be as follows, with the conditions of the Columbus day wage scale agreement of 1898, to-wit:

Tracklayers	$2.42
Tracklayers' helpers	2.23
Trappers	1.06½
Bottom cagers	2.42
Drivers	2.42
Trip riders	2.42
Water haulers and machine haulers	2.42
Timbermen, where such are employed	2.42
Pipemen, for compressed air plants	2.36
Company men in long wall mines of Third Vein District of Northern Illinois	2.23
All other inside day labor	2.23

"Fourth. That yardage and dead work be reduced in the same proportion.

"Fifth. That internal differences in any of the states or districts, both as to prices and conditions, shall be referred to the states or districts affected for adjustment.

"Further, in pursuance of the authority vested in us, we hereby call a Joint Convention of the coal operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois to meet at Indianapolis, Indiana, at 10 o'clock a. m., January 25, 1906.

"The foregoing scale having been unanimously agreed to by the duly qualified representatives of the operators and miners of the four states of (Western) Pennsylvania, Ohio, Indiana and Illinois, by virtue of the authority vested in us by the operators and miners of the states aforesaid, we hereunto attach our signatures.

THIN VEIN DISTRICT OF PENNSYLVANIA.

In behalf of Operators:	In behalf of Miners:
Thin Vein District of Pennsylvania—	Thin Vein District of Pennsylvania—
FRANCIS L. ROBBINS,	P. DOLAN,
G. W. SCHLUDERBERG.	WM. DODDS.
Ohio—	Ohio—
JOHN H. WINDER,	W. H. HASKINS,
J. J. ROBY.	G. W. SAVAGE.
Indiana Block District—	Indiana Block District—
J. H. McCLELLAND.	WM. M. ZELLER,
	WM. WILSON.
Indiana Bituminous District—	Indiana Bituminous District—
W. S. BOGLE,	GEO. HARGROVE,
J. C. KOLSEM.	J. H. KENNEDY.
Illinois—	Illinois—
H. N. TAYLOR,	T. J. REYNOLDS,
J. H. GARAGHTY.	W. D. RYAN.

In behalf of the United Mine Workers of America:

JOHN MITCHELL, President.
T. L. LEWIS, Vice-President.
W. B. WILSON, Secretary-Treasurer.

Signed at Indianapolis, Ind., March 21, 1904.
Attest: F. S. BROOKS, Secretary.

p. 15, l. 30–39.
p. 16, l. 1–42.
p. 17, l. 1–31.

(421) "TOLEDO INTER-STATE AGREEMENT OF 1908.

TOLEDO, OHIO, April 17, 1908.

"It is hereby agreed between the operators' and miners' representatives of Western Pennsylvania, Ohio and Indiana:

"First: That the mining rates, day wage scale and general prices in existence in Western Pennsylvania, Ohio and Indiana in the year 1907 be reaffirmed:

"Second: That internal differences both as to prices and conditions be referred for adjustment to the various districts affected.

"Third: That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the Bituminous District of Indiana shall be uniform in size, six feet wide by twelve feet long, built of flat or Akron-shaped bars of not less than five-eighths of an inch surface, with one and one-fourth inches between bars, free from obstructions, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Fourth: That the Block Coal District of Indiana may continue the use of the diamond screen of present size and pattern, with the privilege of run-of-mine coal, the mining price of which shall be determined by the actual screenings.

"Fifth: That the eight-hour day of forty-eight hours of six days per week is hereby reaffirmed.

"Sixth: That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

"Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work begin-

ning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

"Seventh: That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time.

"Eighth: That the term of this contract shall begin April 1st, 1908, and expire March 31st, 1910;

"Ninth: That a general resumption of operations in Western Pennsylvania and Ohio (the mines of Indiana now being in operation) shall take place on Monday, April 20th, 1908;

"Tenth: That the renewal of the mining rates, day wage scale and general prices existing in 1907 is on condition of the approval of a two years contract by referendum vote of the United Mine Workers of America;

"Resolved, By representatives of the Interstate Joint Convention, composed of the operators and miners of Western Pennsylvania, Ohio and Indiana, that we condemn in the most vigorous and positive manner the practice of suspending the operation of mines, pending the investigation and adjustment of disputes arising under the terms of joint agreements in the various districts and sub-districts under the jurisdiction of this interstate movement; and we recommend that such provisions be agreed upon by the operators' and miners' representatives in the various districts and sub-districts as will require the mine managers and mine workers to comply with the terms of the

contract, and to adjust disputes without delay and without suspending the operation of mines.

"This Interstate Joint Convention shall adjourn to meet in Interstate Convention on the first Tuesday in February, 1910, at 10 a. m., in the City of Toledo, Ohio.

"Signed at Toledo, Ohio, April 17, 1908.

On behalf of Operators:	On behalf of Miners:
Pennsylvania—	Pennsylvania—
G.W.SCHLUDERBERG,	FRANCIS FEEHAN,
JOHN H. JONES.	S. A. WHETZEL.
Ohio—	Ohio—
H. L. CHAPMAN,	WM. GREEN,
F. M. OSBORNE.	G. W. SAVAGE.
Indiana Bituminous District—	Indiana Bituminous District—
INDIANA BITUMINOUS COAL OPERATORS ASSOCIATION.	W. D. VAN HORN,
By P. H. PENNA,	D. N. CURRY.
J. K. SIEFERT.	
Indiana Block Coal District—	Indiana Block Coal District—
J. H. McCLELLAND,	PATRICK GOLDEN,
W. J. SNYDER.	JOHN FOGG,
	T. L. LEWIS,
	President U. M. W. of A.
	J. B. ZERBE, Chairman.
	W. D. RYAN,
	F. S. BROOKS, Secretaries.

p. 18, l. 1–38.
p. 19, l. 1–41.
p. 20, l. 1–30.

(422) "SUB-DISTRICT NO. 5.

OFFICIAL MINING SCALE

Of Association of Pittsburgh Vein Operators of Ohio for Their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America.

RULES AND REGULATIONS.

"All persons accepting employment in these mines hereby agree to be governed by the following Rules and Regulations:

PICK MINING.

Mining, per ton, screened coal..... $0.90
Mining, run of mine coal, per ton..... .64 2-7"

p. 95, l. 1-13.

(423) "GENERAL RULES FOR PICK AND MACHINE MINING.

"Rule 1—Mining entries and entry break-throughs in pick and machine mines drove double shift, extra, per yard, 28c.

"Rule 2—Wet entry shall be paid 28c. per yard extra when it has been fully determined that it is entitled thereto by the miner and mine boss, or by the mine committee and mine superintendent, in case the former do not agree.

"Rule 3—Operators shall take the water out of rooms and entries and have rooms and entries dry at starting time, or pay 4½c. per barrel if the miner has to bail it. Barrels to be placed in rooms and entries, and where barrels cannot be placed in entries, the water box shall be forwarded for the entryman to bail water in.

"Rule 4—Prices to be paid for slate or soapstone coming down unavoidably over the coal shall be agreed upon by the mine boss and miner, and if they fail to agree, it shall be referred to the superintendent, mine boss and mine committee.

"Rule 5—Clay veins and spars shall be paid for, the matter to be referred to miner affected and mine boss. If they fail to agree, the company reserves the right to remove the same and give the miner another place.

"Rule 6—Any rolls or horsebacks coming up in bottom or down in top, shall be paid for as follows, per yard, running with rolls:

"Six to ten inches in thickness, 28c.

"Between ten and seventeen inches, 56c.

"Between seventeen and twenty-three inches, 84c.

"Between twenty-three and twenty-nine inches, $1.12, and rolls of more thickness shall be paid in the same proportion for each six inches.

"Miners shall take up and remove roll when same crosses roadway.

"When roll is so hard as to require drilling and blasting the operator shall furnish one-half and the miner one-half the labor for drilling and blasting.

"Rule 7—Work shall begin at 7.00 a. m., work until 11.00 a. m., not more than 30 minutes for dinner, and work from 11.30 a. m. to 3.30 p. m., Central Standard Time.

"Rule 8—Any man called from inside to perform outside day labor shall receive inside day wages.

"Rule 9—We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, the local union or the party upon whom the fine is imposed, object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling.

"In order to be honored the check-off must be furnished to the company not later than 5 p. m., on the second and seventeenth day of each month.

"Rule 10—No strike shall take place at any mine under the jurisdiction of Sub-District 5 of District No. 6 (Ohio), except for violation of agreements, refusal of employers to pay on regular pay day without explanation, until the grievances at the mine affected have been thoroughly investigated by the officers of District 6, U. M. W. of A., and operators interested.

"Rule 11—That a uniform rate of one per cent on the dollar be charged in pick mines, where company hires the blacksmith, and it is further agreed that no charge be made for blacksmithing for cutters and loaders in machine mines.

"Rule 12—Bottom coal in all narrow work must be taken up and loaded by the loader.

"Where bottom coal not to exceed 4 inches in thickness is required to be taken up in wide rooms and said coal is in normal state and parts freely from the bottom, the miner must take it up without extra compensation.

"Where coal sticks to bottom and extra labor is required to lift same, the company shall pay loader extra at a rate per crossing based upon maximum inside day labor scale.

"A committee of two operators and two miners to investigate and determine the method of payment on basis named.

"This committee shall determine what constitutes a sticky bottom.

"If a machine cutter leaves a sprag or a thick bottom in excess of 4 inches he shall be notified to remove same, and should he refuse he shall be charged 50 c. for each sprag or bottom, the same to be paid to the loader.

"Rule 13—That all machine loaders be accorded two rooms for each two men, and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming

scarce through a squeeze or striking horseback, or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine.

"Rule 14—There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit; but in no case shall entry miners be allowed more cars than room miners, and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length.

"Rule 15—Miners shall exercise proper care in posting the soapstone in rooms, in order to prevent falls. When coal is taken out by the person employed in a room and soapstone falls to the amount of 750 pounds, it shall be removed by the miner without compensation, and when the fall of soapstone exceeds 750 pounds the miner shall be paid for removing it, or the company remove the same.

"Rule 16—Checkweighmen may be placed on tipple at expense of miners, and his duties shall be those prescribed by the laws of the State of Ohio, and all weigh scales may be tested by the miners at any reasonable time.

"Rule 17—Members of the Pit Committee and local officers shall remain at their working places the same as all other employes, unless a miner and a mine boss fail to agree on prices to be paid for extra work when they may be called in to confer with the superintendent to decide the

dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union.

"Rule 18—All rooms shall be 24 feet wide or over. Machine rooms, when ordered by mine boss, driven less than 24 feet wide, entry price shall be paid.

"Rule 19—Where entries are ordered driven fifteen degrees or more away from the line of butts or face, 25 cents extra per yard shall be paid in pick and machines, but shall not be construed to apply to necessary curves in turning one entry from another, and in order to lay track on a required radius.

"Rule 20—Any rule, either local or general, governing the scale or conditions of employment in the Pittsburg vein of Sub-District No. 5, shall be mutually agreed to by the operators and miners interested, and said rules, before being enforced, shall receive the endorsement of the officials of the operators and officials of District No. 6, United Mine Workers of America.

"Rule 21—No meeting shall be held during working hours, except by mutual arrangement between miners and superintendent.

"Rule 22—On the day that death by accident to an employe occurs in the mine, for that day only, the miners may cease working, but under no circumstances shall the mine be made idle for any funeral. And in consideration of the mine continuing to work on a day a funeral is held, the operators agree to contribute to the bereaved family, on the death of any of their workmen, one-third the amount paid by the miners, said amount not to exceed $25.00. This does not prevent friends from attending the funeral.

Rule 23—When any employe absents himself from duty two days or more, except on account of sickness, without giving advance notice to the mine boss or mine superintendent, when possible, he forfeits his position.

"When a machine runner or any employe upon whose work other employes of the mine are dependent, absents himself from duty without giving advance notice, when possible, to the mine boss, he forfeits his position.

"Rule 24—When any places on any territory are not cut and the machine runners have not worked as many hours as the mine has worked, by reason of breakdowns, sickness or absence of runners, the machine runners shall work on idle days or overtime until they have made up the lost time.

"Rule 25—In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep mines in shape, shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, and then subject to any subsequent settlement.

"Rule 26—The conditions, employment, duties, hours of labor, and membership in the U. M. W. of A., of the engineers, firemen, electricians and machinists existing prior to September 1, 1903, continue and remain in force during the life of this contract.

"It is further agreed that any interference on the part of any member of the U. M. W. of A., of a mine committee,

or local officer with the duties of engineer, fireman, electrician or machinist, shall subject such member or members of the U. M. W. of A., of a mine committee, or local officers to suspension or dismissal by the operator, with the understanding that the engineers, firemen, electricians, or machinists, who are now members, shall remain members of the U. M. W. of A., and those who are not members shall not be compelled to join.

"Rule 27—It is understood and agreed that should any dispute arise in regard to the interpretation of the rules and provisions of this scale that the interpretation shall be left entirely to the Committee of Operators and Miners who formulated and signed this agreement.

"Rule 28—Pay days shall be uniform on the 10th and 25th of each month.

C. E. MAURER, Chairman.
LEE RANKIN, Secretary.

On behalf of the miners:
WILLIAM GREEN,
President District 6.

A. R. WATKINS,
President Sub-District 5.
JOHN ZELENKA,
Vice-President Sub-District 5.

L. D. DEVORE,
WALTER MILLS,
NOBLE AULT,
B. SEDLECKY,
JOHN JEFFERS,

On behalf of the operators:
F. M. OSBORNE,
President Pittsburgh Vein Operators' Association.

P. McBRIDE,
Secretary Pittsburgh Vein Operators' Association.

J. J. ROBY,
LUTE HORNICKEL,
JOHN SIMPSON,
EDW. JOHNSON,
JOHN WHALEN, JR.

Miners' Scale Committee. Operators' Scale Committee
T. L. LEWIS,
National President U. M.
W. of A.
Signed at Wheeling, W. Va., June 9, 1908."

p. 100, l. 10–41.
p. 101, l. 1–41.
p. 102, l. 1–42.
p. 103, l. 1–40.
p. 104, l. 1–41.
p. 105, l. 1–39.
p. 106, l. 1–22.

Excerpts from book entitled "DETAILED MINING SCALE FOR SUB-DISTRICT 5 OF DISTRICT 6, U. M. W. OF A. EFFECTIVE FROM APRIL 1, 1910, TO MARCH 31, 1912."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 9. [Record pp. 707, 388.]

(424) "COLUMBUS AGREEMENT.

Columbus, Ohio, April 5, 1910.

"Sub-District No. 5.

"Agreement between the Association of Pittsburg Vein Operators of Ohio for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America.

"It is hereby agreed by and between the United Mine Workers of America and the Pittsburg Vein Operators' Association of Ohio, operating what is known as the Pittsburg or No. 8 vein.

"That for a period of two (2) years, viz., from April 1, 1910, until April 1, 1912, the price of mining be increased five cents per ton, viz., from ninety to ninety-five cents, pick mining, and four cents per ton on machine mined coal; 1¼ (inch and quarter) screened-lump coal.

"The inside day wage scale shall be increased 5.55 per cent, with the conditions of the Columbus Day Wage Scale of 1898.

"That all narrow and dead work, room turning, and outside day labor shall be paid a proportionate advance with the pick mining rate.

"That internal differences both as to prices and conditions shall be referred for adjustment to a joint conven-

tion of miners and operators of said district, to be held at the earliest date possible.

"Signed this fifth day of April, 1910, at Columbus, Ohio:

"Behalf Pittsburg Vein Operators of Ohio:

F. M. OSBORNE, President.
J. J. ROBY, Vice-President.
M. D. RATCHFORD, Secretary.

"Behalf of U. M. W. of A., District No. 6:

D. H. SULLIVAN, President.
G. W. SAVAGE, Secretary.

p. 1, l. 1–23.
p. 2, l. 1–13.

(425) "OFFICIAL MINING SCALE.

Of Association of Pittsburg Vein Operators of Ohio, for their Mines in Belmont, Harrison and Jefferson Counties and the United Mine Workers of America.

In effect April 1, 1910, and ending March 31, 1912.

RULES AND REGULATIONS.

PICK MINING.

"Mining, per ton, screened coal.....$0.95
"Mining, run of mine coal, per ton..... .6785"

p. 3, l. 1–12.

(426) "GENERAL RULES FOR PICK AND MACHINE MINING.

"Rule 1. The screen adopted by the Toledo Interstate agreement of 1908 is reaffirmed and shall be uniform in size, six feet wide by 12 feet long, built of flat or Akron shaped bars of not less than five-eighths of an inch surface, with one and one-fourth inches between bars, free from obstruction; and such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Rule 2. That the eight-hour day of forty-eight hours of six days per week is hereby reaffirmed.

"Rule 3. That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night. Regarding drivers, they shall take their mules to and from the stables and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

"Rule 4. That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fraction part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time.

"Rule 5. Mining entries and entry break-throughs in pick and machine mines drove double shifts, extra, per yard 29½ cents.

"Rule 6. Wet entry shall be paid 29½ cents per yard extra when it has been fully determined that it is entitled thereto by the miner and the mine boss, or by the mine committee and mine superintendent, in case the former do not agree.

"Rule 7. Operators shall take the water out of rooms and entries and have rooms and entries dry at starting time, or pay 4¾ cents per barrel if the miner has to bail it. Barrels to be placed in rooms and entries, and where barrels cannot be placed in entries, the water box shall be forwarded for the entrymen to bail water in.

"Rule 8. Prices to be paid for slate or soapstone coming down unavoidably over the coal shall be agreed upon by the mine boss and the miner, and if they fail to agree, it shall be referred to the superintendent, mine boss and mine committee.

"Rule 9. Clay veins and spars shall be paid for, the matter to be referred to miner affected and mine boss. If they fail to agree, the company reserves the right to remove the same and give the miner another place.

"Rule 10. Any rolls or horsebacks coming up in bottom or down in top, shall be paid for as follows, per yard, running with rolls:

Six to ten inches in thickness	$0.29½
Between ten and seventeen inches	.59
Between seventeen and twenty-three inches	.89
Between twenty-three and twenty-nine inches	1.18

"And rolls of more thickness shall be paid in the same proportion for each six inches.

"Miners shall take up and remove roll where same crosses roadway.

"When roll is so hard as to require drilling and blasting the operator shall furnish one-half and the miner one-half the labor for drilling and blasting.

"Rule 11. Work shall begin at 7 a. m., work to 11 a. m., not more than 30 minutes for dinner, and work from 11.30 a. m. to 3.30 p. m., Central Standard time.

"Rule 12. Any man called from inside to perform outside day labor shall receive inside day wages.

"Rule 13. We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two thirds of the members of the local Union. However, should either the operator, the local union or the

party upon whom the fine is imposed, object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. In order to be honored the check-off must be furnished to the company not later than 5 p. m., on the second and seventeenth day of each month.

"Rule 14. No strike shall take place at any mine under the jurisdiction of Sub-District 5 of District No. 6 (Ohio) except for violation of agreements, or refusal of employers to pay on the regular pay day without explanation, until the grievances at the mine affected have been thoroughly investigated by the officers of District 6, U. M. W. of A., and operators interested.

"Rule 15. That a uniform rate of 1 per cent on the dollar be charged in pick mines where company hires the blacksmith, and it is further agreed that no charge be made for blacksmithing for cutters and loaders in machine mines.

"Rule 16. Machine men in both wide and narrow work are required to cut coal level and close to bottom, and in no case shall thickness of bottom exceed four inches. If a machine cutter leaves a sprag or a thick bottom in excess of four inches he shall be notified to remove same, and should he fail or refuse, he shall be charged 50 cents for each sprag, or 25 cents for each run, or both, the same to be paid to the loader.

"Bottom coal in all narrow work must be taken up and loaded by the loader. When the operator requires bottom coal not to exceed four inches in thickness, to be taken up in wide rooms and said coal is in normal state and parts freely from the bottom, the miner must take it up without extra compensation. Where coal sticks to the bottom and extra labor is required to lift same, the company shall

pay loader extra at a rate per crossing based upon maximum inside day labor scale.

"Should the loader and the mine foreman fail to agree on the character of the bottom coal, or the compensation to which the loader is entitled, the matter shall be referred to the mine committee and superintendent. In case they disagree, the miner or miners affected shall be given an average place in the mine pending a final settlement of the question in dispute, then the matter shall be referred to the Sub-District President and the Operators' Commissioner, who shall use every effort to settle the controversy, and in case they disagree, then the Sub-District President may call in one experienced miner, and the commissioner, one operator or superintendent, and the matter referred to them and their decision shall be final and binding. Said investigations and decisions shall not be delayed, but be determined at the earliest possible date.

"Rule 17. That all machine loaders be accorded two rooms for each two men and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming scarce through a squeeze or striking a horseback, or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine.

"Rule 18. There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit; but in no case shall entry miners be allowed more cars than room miners and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the n mber of miners in each entry, so that, by

giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length.

"Rule 19. Miners shall exercise proper care in posting the soapstone in rooms, in order to prevent falls. When coal is taken out by the person employed in a room and soapstone falls to the amount of 750 pounds, it shall be removed by the miner without compensation, and when the fall of soapstone exceeds 750 pounds, the miner shall be paid for removing it, or the company remove the same.

"Rule 20. Checkweighmen may be placed on tipple at expense of miners, and his duty shall be that prescribed by the laws of the State of Ohio, and all weigh scales may be tested by the miners at any reasonable time.

"Rule 21. Members of the Pit Committee and local officers shall remain at their working places the same as all other employes unless a miner and a mine boss fail to agree on prices to be paid for extra work, when they may be called in to confer with the superintendent to decide the dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union.

"Rule 22. All rooms shall be 24 feet wide or over. Machine rooms when ordered by the mine boss, driven less than 24 feet wide, entry price shall be paid.

"Rule 23. When entries are ordered driven 15 degrees or more away from the line of butts or face, 25 cents extra per yard shall be paid in pick and machine mines, but

shall not be construed to apply to necessary curves in turning one entry from another, and in order to lay track on a required radius.

"Rule 24. Any rule, either local or general, governing the scale or conditions of employment in the Pittsburg Vein of Sub-District No. 5, shall be mutually agreed to by the operator and miners interested, and said rules before being enforced, shall receive the endorsement of the officials of the operators and officials of the District No. 6, United Mine Workers of America.

"Rule 25. No meeting shall be held during working hours, except by mutual agreement between miners and superintendent.

"Rule 26. On the day that death by accident to an employe occurs in the mine, for that day only, the miners may cease working, but under no circumstances shall the mine be made idle for any funeral. And in consideration of the mine continuing to work on a day a funeral is held, the operators agree to contribute to the bereaved family, on the death of any of their workmen, one third of the amount paid by the miners, said amount not to exceed $25.00. This does not prevent friends from attending a funeral.

"Rule 27. When any employe absents himself from duty two days or more, except on account of sickness, without giving advance notice to the mine boss or mine superintendent, when possible, he forfeits the position.

"When a machine runner or any employe upon whose work other employes of the mine are dependent, absents himself from duty without giving advance notice, when possible, to the mine boss, he forfeits his position.

"Rule 28. When any places or any territory are not cut and the machine runners have not worked as many hours as the mine has worked by reason of break-downs, sickness

or absence of runners, the machine runners shall work on idle days or overtime until they have made up the lost time.

"Rule 29. In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers, and other men necessary to keep the mines in shape shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension and then subject to any subsequent settlement.

"Rule 30. The conditions, employment, duties, hours of labor, and membership of the U. M. W. of A., of the engineers, firemen, electricians and machinists existing prior to September 1, 1903, continue and remain in force during the life of this contract.

"It is further agreed that any interference on the part of any member of the U. M. W. of A. of a mine committee, or local officer, with the duties of engineers, fireman, electrician or machinist shall subject such member or members of the U. M. W. of A., of a mine committee, or local officer to suspension or dismissal by the operator with the understanding that the engineers, firemen, electricians or machinists who are now members shall remain members of the U. M. W. of A., and those who are not members shall not be compelled to join.

"Rule 31. It is understood and agreed that should any dispute arise in regard to the interpretation of the Rules and Provisions of this scale that the interpretation

shall be left entirely to the Committee of Operators and Miners who formulated and signed this agreement.

"Rule 32. Pay days shall be uniform on the 10th and 25th of each month.

"Rule 33. All draw-slate over twelve (12) inches in thickness shall be considered thick slate and shall be paid for at the following prices per yard, for the full width of and running with the working place:

When Thickness of Slate is	To be paid for	Price in Room 24 ft. wide	Price in Entry 12 ft. wide	Price in Entries 8 ft. wide.
13 inches	1 inch	$.06	$.04	$.03
14 inches	2 inch	.12	.08	.06
15 inches	3 inch	.18	.12	.09
16 inches	4 inch	.24	.16	.12
17 inches	5 inch	.30	.20	.15
18 inches	6 inch	.36	.24	.18
19 inches	7 inch	.42	.28	.21
20 inches	8 inch	.48	.32	.24
21 inches	9 inch	.54	.36	.27
22 inches	10 inch	.60	.40	.30
23 inches	11 inch	.66	.44	.33
24 inches	12 inch	.72	.48	.36
25 inches	13 inch	.78	.52	.39
26 inches	14 inch	.84	.56	.42
27 inches	15 inch	.90	.60	.45
28 inches	16 inch	.96	.64	.48
29 inches	17 inch	1.02	.68	.51
30 inches	18 inch	1.08	.72	.54
31 inches	19 inch	1.14	.76	.57
32 inches	20 inch	1.20	.80	.60
33 inches	21 inch	1.26	.84	.63
34 inches	22 inch	1.32	.88	.66
35 inches	23 inch	1.38	.92	.69
36 inches	24 inch	1.44	.96	.72

SCALE COMMITTEE.

FOR MINERS:

FRANK WOODY, NOBLE AULT,
FRANK HLAD, THOMAS HEPBURN,
R. I. PATTERSON.

FOR OPERATORS:

J. J. ROBY, C. E. MAURER,
MICHAEL GALLAGHER, EDWARD JOHNSON,
JOHN SIMPSON.

ON BEHALF OF MINERS:

D. H. SULLIVAN, President District No. 6.
JOHN ZELENKA, President Sub-District No. 5.
C. J. ALBASIN, Vice-President Sub-District 5.
A. R. WATKINS, National Executive Board Members.

ON BEHALF OF OPERATORS:

F. M. OSBORNE, President Pittsburg Vein Operators.
J. J. ROBY, Vice-President Pittsburg Vein Operators.
M. D. RATCHFORD, Secretary Pittsburgh Vein Operators.
J. B. ZERBE, Chair Joint Convention.
LEE RANKIN, Secretary Joint Convention.
Signed at Wheeling, W. Va., May 18, 1910."

p. 10, l. 1–33.
p. 11, l. 1–35.
p. 12, l. 1–34.
p. 13, l. 1–35.
p. 14, l. 1–35.
p. 15, l. 1–35.
p. 16, l. 1–35.
p. 17, l. 1–35.
p. 18, l. 1–35.
p. 19, l. 1–31.
p. 20, l. 1–26.

(427) "Wheeling, W. Va., May 19, 1910.

"This certifies that the Miners of the Eastern Ohio or No. 8 District, by a referendum vote, taken on May 18, 1910, have ratified and approved the report of the joint Scale Committee of May 13, 1910. The vote officially reported is as follows:

Total vote cast		6038
For ratification of Scale	3491	
Against ratification of Scale	2547	6038
Plurality in favor of Scale	944	

(Signed.)

D. H. SULLIVAN,
Pres. District No. 6, U. M. W. of A.
JOHN ZELENKA,
Pres. Sub-District No. 5, U. M. W. of A.
LEE RANKIN,
Sec'y Sub-District No. 5, U. M. W. of A.
F. M. OSBORNE,
Pres. Pittsburg Vein Operators of Ohio.
M. D. RATCHFORD,
Sec'y Pittsburg Vein Operators of Ohio."

p. 22, l. 1–22.

Excerpts from President T. L. Lewis' Report to the Twenty-Second Annual Convention of the United Mine Workers of America held at Indianapolis, Indiana, in January, 1911, as published in the United Mine Workers' Journal in its issue of January 19, 1911.

This report is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 1. [Record pp. 707, 560-563.]

While all of the report is in evidence, ten excerpts follow, and are marked a to j inclusive:

(428)

(a) "President Lewis' Report.

Submitted to the Twenty-Second Annual Convention of the International United Mine Workers of America.

"To the Officers and Representatives of the Twenty-second Annual Convention, United Mine Workers of America:

"Fellow Mine Workers: With the opening of this, the Twenty-Second Annual Convention of the United Mine Workers of America, we are reminded that another year has come and gone in the history of our movement. We are also reminded that just twenty-one years ago there assembled in the city of Columbus, Ohio, a small but determined body of miners. The miners' representatives to that convention were determined that no longer would personal animosities be permitted to jeopardize the interests and welfare of the men who toil in and around the coal mines. As a result of their deliberations, the United Mine Workers of America was organized and embarked on its mission of bringing into one organization all the mine workers of the country.

"Those of you who remember the history of the miners' unions for several years previous to 1890, will recall that rival organizations in the mining industry had divided our forces. The rivalry that existed at that time between the two miners' unions created bitter animosities among the members and destroyed the effectiveness of either organization, to accomplish any permanent good for the mine workers. The time and energy of the members of both organizations was spent fighting each other, instead of combining their forces to resist the unjust conditions imposed on the mine workers. Is it any wonder that many miners, as well as others, were skeptical of the success of the United Mine Workers' organization at the time it was organized on January 25, 1890?

"In the twenty-one years' existence of the United Mine Workers the good judgment of the founders of our union has been fully vindicated. Our hopes and expectations have not always been realized, but an impartial review of the history of our movement will convince any one of the splendid results accomplished by the organized mine workers of the country. It is true that the United Mine Workers of America has not always been successful. It has met with its reverses and defeats as well as won its victories. But its work has brought to the membership a steady increase in wages and a permanent improvement in the working conditions of the men who are employed in the mines. We have reason to congratulate ourselves that in the thoroughly and partly organized mining States we have nearly 350,000 men who are now employed under joint agreements that provide the highest rate of wages ever paid the mine workers of the country.

"When we last met in regular annual convention we were confronted with the work of outlining a plan to extend the interstate joint movement. We were expected to

adopt a policy that would provide a higher wage standard to meet the increased cost of living.

"I have always been opposed to a division of our forces in negotiating our wage contracts either in districts or with individual operators. I am a firm believer in unity of action and this must be the basis of the future success of the organization. In harmony with my position on this question, I submitted to the representatives in the last annual convention the following general recommendation in the form of a resolution:

1. That we demand an advance in wages for each and every mining district of the country.

2. That all district officers are authorized and instructed to negotiate wage agreements, but no district shall sign a contract until all wage contracts are negotiated.

3. That all mines shall continue working after the 1st of April and continue working until wage contracts are finally negotiated, provided the present rates continue until final action is determined upon.

"In the recommendation that I submitted to the convention there were three essential features. One was to the effect that we were entitled to and should receive an advance in wages. The other was to give each scale district an opportunity to negotiate the terms of wage contracts in accord with the declared policy of the International convention, but denied the right of the representatives of any district or group of districts to sign an agreement until each and every scale district in the country had completed their negotiations. The third important feature in my recommendation was to avoid a suspension of operation of the mines, by continuing to work until all wage contracts were finally negotiated.

"I firmly believed at that time and have been thoroughly convinced since, that if the proposition I submitted

to the last annual convention had been adopted we would have avoided the prolonged strikes of the past year, prevented the enormous expense and secured as good if not better terms in the wage contracts which were finally negotiated and agreed upon.

"What I desire to explain at this time is that the recommendations I submitted to the last annual International convention were in perfect harmony with the position I have taken for years; *i. e.*, that we should keep our forces united at all times; that we should not have sectional strikes or settlements, and that all contracts should be negotiated before any contracts can be signed. To make this policy effective and avoid periodical strikes, either more time must be taken to negotiate wage contracts or the mines should continue working pending the negotiation of wage agreements.

NEGOTIATIONS OF AGREEMENTS.

"The policy of the last annual convention to govern the negotiations of wage contracts included the following general propositions:

"A demand for run-of-mine system. Ten cents per ton advance in the mining rate. A uniform rate of wages for all classes of inside and outside labor with time and a half for overtime, Sundays, and holidays. An eight-hour day from 'bank to bank' and Saturday half holiday. That the contract be made for two years. That local inequalities be referred to districts affected. To adjust the new powder controversy in the Pittsburg district. No limit to amount of deductions for the organization. That no district negotiate an agreement to reimburse the operators for legislation that added cost to the production of coal. That contracts be negotiated but not signed by any district until all contracts were negotiated. That the Inter-

national convention should not adjourn to reconvene in Toledo, Ohio.

"Immediately upon the adjournment of the International convention the miners' representatives of Illinois, Indiana, Ohio and western Pennsylvania went to Toledo, Ohio, to meet the operators in interstate joint convention which had been called to meet in that city.

"The interstate joint convention at Toledo, Ohio, was called to order and committees on credentials and rules of order were appointed. The credential committee disagreed, the miners' representatives insisted that the Illinois miners should be seated in the interstate joint convention with voice and vote. The operators objected to the seating of the Illinois miners' representatives in the absence of the Illinois operators. The interstate joint convention at Toledo failed to even effect a permanent organization on the single issue of seating the Illinois miners.

"My position in the Toledo joint convention was clearly defined to the operators and miners. As a firm believer in the interstate joint movement, I was unwilling to negotiate a wage contract for three states. This position was in harmony with my declarations time and again of uniting, instead of dividing our forces in an effort to extend the interstate joint movement.

"When we adjourned the convention at Toledo there was little or no prospect of negotiating wage contracts. Conferences were held in various districts but with no success. A conference was called to meet in Cincinnati, Ohio, February 23, and it was agreed to issue a call for a joint convention of the representatives of the miners and operators of Indiana, Ohio and western Pennsylvania to meet in joint convention in Cincinnati, Ohio, March 8, 1910. An invitation was also extended to the Illinois

miners and operators to take part in the interstate convention but they were not present. On February 25 a call was issued for a special International convention of the United Mine Workers to meet in Cincinnati, Ohio, March 15, 1910, to take such action as necessary to protect the interests of the mine workers of the country.

"After several weeks' deliberation the interstate joint convention in Cincinnati adjourned without reaching an agreement. The special International convention at Cincinnati adopted as the basis upon which wage contracts could be negotiated the following proposition:

1. That the following is the terms on which agreements can be negotiated:

That the agreement of the present year be continued for the scale year beginning April 1, 1910, and ending March 31, 1912, with the exception of the mining prices and day wages.

That the price for mining be increased five (5) cents per ton on inch-and-a-quarter screen lump coal, pick mining in western Pennsylvania thin vein, the Hocking the basing district of Ohio, and both block and bituminous districts of Indiana; three cents per ton on mine-run coal pick mining in the bituminous district of Indiana.

That the price for machine mines be increased (4) cents per ton on screen lump coal in western Pennsylvania, thin vein, in the Hocking, the basing district of Ohio; four (4) cents per ton on screen lump coal in the block and bituminous district of Indiana, and three (3) cents per ton on mine-run coal in the bituminous district of Indiana.

This internal differences both as to prices and condition be referred for adjustment to the various districts affected, it being understood that in the adjustment of such differences there shall be no modification of the advance of wages provided for in the proposition.

The inside day wage scale shall be advanced 5.55 per cent with the conditions of the Columbus day wage scale agreement of 1898.

That all narrow, dead work and room turning and outside day labor shall be paid a proportionate advance with the pick mining rate.

2. That contracts may be negotiated and agreed upon by states, districts or groups of districts.

3. That where all the operators within one district fail to sign the terms of the proposed contract that the operators of any sub-district may agree upon the general terms of the contract.

4. That where the operators of an entire state, district or sub-district agree to pay the general advance demanded their mines may continue in operation pending the final negotiations and agreement upon the details of the wage contract in the state, district or sub-district affected.

5. That details not herein specified are referred to the International Executive Board with full power to act, except the Board is not empowered to modify in any respect the terms of the demand for an advance in wages as it applies to mining, day labor—inside and out—narrow and dead work.

6. All coal companies shall be required to sign the contract for all the mines that operate in one or more districts, unless permission is given district officials to do otherwise by the International Executive Board.

7. That in any district where new explosives are used the mines affected shall operate on a run-of-mine basis and the company shall furnish the miners with new explosives at the same relative cost as black powder.

"Immediately upon the adjournment of the Special International Convention at Cincinnati, Ohio, the following letter was sent to the presidents of the various districts where wage contracts expired on April 1, 1910:

Indianapolis, Ind., March 30, 1910.

Dear Sir and Brother—You will find inclosed a

copy of the proposition adopted at the special convention at Cincinnati, yesterday evening.

You can see by this proposition that the first thing necessary to be done is to get the operators of your district together and have them agree to sign the general terms of the contract providing they want the mines to continue in operation after April 1.

According to the rules laid down by the special convention at Cincinnati, no contracts can be signed up by individual operators. This rule should be adhered to as well as the other rules embodied in the proposition adopted by the special convention.

In accordance with the policy of the United Mine Workers, any of the operators that desire to have pumpers and such other men employed as may be necessary to take care and protect the property, such men should be permitted to work providing they receive the advance in wages provided for in the enclosed proposition.

With the hope that you will be able to arrange a conference of the operators of the District immediately, I remain,

Yours very truly,

(Signed) T. L. Lewis, President, U. M. W. of A.

"This letter was sent to each of the district presidents where contracts expired in order that we would have some definite understanding in regard to negotiating contracts on the basis provided by the policy outlined at the Cincinnati Special Convention.

"On April 1 about 300,000 mine workers suspended work to enforce the demands of the Cincinnati convention."

(429) "IRWIN DISTRICT.

(b) "There has been a strike in progress in the Irwin district of Pennsylvania that has cost the International organization of the United Mine Workers $329,900 up to November 30. Inasmuch as that strike was ordered by officers of the Pittsburgh district without even consulting

the International officers and without even organizing the men, I feel it my duty to give you the facts in regard to the situation in that field.

"I made the statement at the last annual convention that we had organizers in the Irwin district, in the Greensburg and other non-union sections of Pennsylvania, as well as in Maryland and West Virginia. In the early part of March I learned that President Feehan had sent district officers or organizers into the Irwin district, and on March 5 I wrote President Feehan the following letter:

> Indianapolis, Ind., March 5, 1910.
>
> Mr. Francis Feehan,
>
> President, District 5, Pittsburg, Pa.
>
> Dear Sir and Brother: You may not be aware that we have organizers in the coke regions and in the Irwin field and that both of those districts are outside of the jurisdiction of District 5.
>
> I am writing to inquire if it is true that your board members, or any of them, are working in those fields. If they are, they are interfering with our arrangements and may serio isly interfere with our plans to try and organize those fields.
>
> I am writing to suggest that you have your board members confine their efforts to the territory under the jurisdiction of District 5. There are many men in District 5 that need to be brought into the organization and they will find plenty to do.
>
> Hoping to hear from you immediately on this sub ject, I remain,
>
> Yours very truly,
>
> (Signed) T. L. LEWIS,
>
> President, U. M. W. of A.

"I received a communication from President Feehan, dated March 7, in which he stated that the district vice-president with interpreters had been authorized to go to Greensburg on Friday, March 4, and succeeded in establishing an organization with about four hundred miners.

On March 20, while in Cincinnati, I communicated with President Feehan and stated that the Irwin district and the Connellsville coke regions would be separate districts when organized, and called his attention to the fact that a serious mistake had been committed in organizing a few men and declaring a strike in a district outside of the Pittsburg district. I received a letter from President Feehan, dated March 11, in which he stated that there was a necessity for a strike in the Irwin field, in order that the mine workers of that section could be given an opportunity to improve their working conditions. He also stated that he had made his position plain to the miners in the Irwin district, and that he did not think they expected to get any financial assistance from the International organization, and he stated that the Pittsburg District was willing to give the Irwin field men financial assistance.

"In reply to his communication, dated March 11, I sent him the following letter:

Burnett House,
Cincinnati, Ohio, March 14, 1910.

Mr. Francis Feehan, Cincinnati, Ohio:

Dear Sir and Brother: Desire to acknowledge receipt of your communication of March 11. I have read your letter very carefully and desire to state again that the Irwin district is not under the jurisdiction of District 5 and never was. It is District 3 if it was organized and the Connellsville coke regions is District 4. I am surprised that you did not know, according to your letter, that the Irwin field was no part of your district.

Any attempts to organize one mine in the Irwin field will simply jeopardize the possibility of organizing the entire district. When the International Executive Board has decided on a definite policy in regard to the situation in the Irwin field, those men will not be required to fight their battles alone.

Thanking you for the information contained in your letter, I remain,

Yours very truly,

(Signed) T. L. LEWIS,
President U. M. W. of A.

"On May 17, 1910, while the International Executive Board was in session at Indianapolis, an appeal from the secretary of the Pittsburg district was read. This appeal contained the following preamble and resolutions:

Whereas, We recognize that it is the duty of our organization to get every man who works in and around the mines to become a member of the U. M. W. of A., and

Whereas, We know that we owe it to ourselves and to our fellow workmen in the Greensburg and Irwin fields to do all in our power to bring them within the folds of our union, not only for their protection but our own; therefore, be it

Resolved, That we, the delegates to the Twenty-first Annual Convention of District No. 5, pledge our hearty cooperation and support to the striking miners in that field, and be it further

Resolved, That when the miners in the Pittsburg district resume operation that the district executive board be authorized to levy an assessment of twenty-five (25) cents per week on the membership in order to carry this strike to a successful termination, and be it further

Resolved, That we appeal to the International Executive Board to donate fifty thousand ($50,000.00) dollars to these people in order to promote the strike and extend the jurisdiction of the United Mine Workers of America, and be it further

Resolved, That the district officials appeal to officers and members of all district organizations affiliated with the U. M. W. of A. and all other trade organizations, if necessary, and urge them to send financial assistance to succeed in permanently establishing an organization and negotiating a wage scale in that field.

"In March, President Feehan expressed the opinion in his letter to me that he did not think the Irwin district mine workers expected any relief, and yet the resolutions adopted by the Pittsburg district convention requested the International Executive Board to donate fifty thousand dollars to support the men on strike in the Irwin district, and this at a time when we had over one hundred thousand members on strike through a failure to negotiate wage contracts.

"In keeping with the well-established custom and rules of the International Executive Board to investigate the merits of every appeal for financial assistance before it is endorsed, a committee of five International Board members, composed of Vice-President Hayes, Board Members Dagger, Haggerty, Powell and Smith was appointed to visit the Irwin district and learn the facts in regard to the existing conditions. The committee returned and failed to agree upon the kind of a report that should be submitted to the International Executive Board, but the majority of the committee of five recommended that the Irwin district strike be granted the moral and financial support of the International Executive Board.

"The recommendations of the majority of the committee of International Executive Board members appointed to go to the Irwin district was adopted.

"During the afternoon session of the International Executive Board, May 23, a motion was adopted to appoint a committee of five International Board members to draft a plan with reference to the Irwin strike. On May 28 the committee submitted to the International Executive Board a report that provided for the calling of a convention in the Irwin district for the purpose of forming a scale. That three International Executive Board Members, including the International Board member from District

5, be appointed to attend the convention. That the International and district officials co-operate to the fullest extent in conducting the strike and negotiating a settlement. That in the event of a conflict of authority the International Executive Board be recognized as the higher authority. That the financial relief donated by the International organization be handled through the district office. That the district secretary-treasurer furnish a statement to the International Secretary-Treasurer of the money expended. These recommendations were adopted.

"At a meeting of the International Executive Board held Friday evening, July 22, 1910, there appeared before the Board a committee representing eleven local unions in the Irwin district and presented a petition in which the International Executive Board was requested to form a district with a complete set of officers in the Irwin field, to issue orders to the engineers, firemen and other outside labor to quit work and to furnish more finance for the strike.

"The reason assigned by the committee representing the eleven local unions in the Irwin district for wanting a district formed immediately was to effect a settlement of the strike. It was stated by the committee from the Irwin district that the operators were unwilling to agree to any settlement with the officers of the Pittsburg district.

"The situation in the Irwin field was discussed from every possible phase and the following resolutions were offered and unanimously adopted:

> That a committee of three be appointed to co-operate with the officers of District 5 and the representatives of the strike district, with a view of trying to bring about a settlement of the strike in that field.
>
> That the forming of the district in the Irwin field be left in abeyance until we get a report from the committee provided for.

That the question of furnishing more money to that district be left in the hands of the resident officers.

"The reason that the International Executive Board was unwilling to form the new district immediately was that it would be additional expense to pay the district officers, as there was no per capita tax reported from any of the local unions in the Irwin district.

"In reporting the situation in the Irwin district, I have brought to your attention the fact that the mine workers of the Irwin district were involved in a strike before they were organized. The strike was declared without any preparation. It was inaugurated by the officers of the Pittsburg district without consulting the International Officers. The International organization has furnished financial assistance to the extent of $329,900 up to November 30, 1910, and since November 30, $20,000 per week has been sent. The International organization has had representatives in the Irwin district for months, not in full authority, but co-operating with the officers of the Pittsburg district and the representatives of the Irwin district to make the strike a success.

"That the Irwin district mine workers should be organized is a well-known fact; that they could have been organized without a strike is my firm belief; that the Irwin district miners made a splendid effort to win the strike after it was declared is well known to every person who is conversant with the situation. That the strike has not been a success in establishing the organization and wage contracts is due to the following reasons:

"1. The calling of a meeting of the men at one mine and declaring a strike without the men being organized.

"2. The failure to make proper preparation by organizing local unions and then calling a convention to formu-

late demands to be presented to the operators of the Irwin district.

"3. The failure to formulate demands to present to the operators of the Irwin district before a strike was declared.

"4. The failure of the officers of the Pittsburg district to consult the representatives of the International organization until a large number of unorganized men were on strike and in need of financial support.

"I have but briefly stated the many incidents that have taken place in connection with the Irwin district strike. I have been severely criticised by the officers of the Pittsburg district and others because I have tried to defend, in my own way, the interests of the miners. I have been made the subject of the most scurrilous abuse and I have remained silent and refused to be drawn into controversies over the Irwin strike situation. I remained silent but gave every possible assistance that the International could give in order that the miners of the Irwin district might win in their heroic struggle for justice.

"It may be a matter of information to you and for the the mine workers of the country to learn that I assisted in bringing a representative of one of the large companies in the Irwin district and President Feehan together to negotiate a settlement. In my judgment, if he had acted promptly, one thousand of the Irwin district miners would have returned to work under union wages and conditions last June. I believe that other settlements could have been effected if an agreement had been promptly made with the company mentioned. Later, I offered again to try and effect a settlement, but could not get President Feehan to agree upon any definite basis. He insisted that there should be a conference and then consider the basis of settlement.

"The Irwin district strike is still being conducted by the officers of the Pittsburg district and representatives of the International organization and the Irwin district. The production of coal in that district has reached that point where there is no hope of winning the strike under the present circumstances. The International organization is furnishing relief to support the men on strike to the extent of $20,000 per week. I have no desire and I have no right to deceive you in regard to the situation in any district. It is my duty to tell you frankly that it is a waste of money to continue the Irwin district strike under the present circumstances. In my opinion the strike in the Irwin district will be completely lost if continued under the present method of conducting that strike. The International organization is furnishing the financial support and should have complete control to perfect the interest of the miners now idle.

"Those men have been misled and deceived long enough and the International organization has contributed to their support without authority to settle the strike. Let me call your attention to a remarkable fact. It was stated to me by President Feehan in the early part of last year that a local was organized at Greensburg, Pa., March 4, and yet, according to the books at the International Office, not one cent of per capita tax or assessments have been paid by the miners of the Irwin district to the International organization."

(430) "COST OF STRIKES.

(c) "The United Mine Workers has passed through several criticial periods in its history.

"In the year 1894, with less than 20,000 members, the organization engaged in a contest of a national character.

"The outcome of that contest was a compromise and the leaders of that strike were severely criticized by those of our members who did not understand the conditions of the mining industry at that time. In the year 1897, as a result of internal strife and dissension, the organization had less than 10,000 members. Wages had reached a point where the mine workers of the country were in a condition of starvation. Desperation itself compelled the miners to engage in a national strike, and without any financial means of support the strike was declared on July 4 and brought to an end in September with a compromise on wages and an agreement to re-establish the interstate joint movement. The interstate joint convention in January, 1898, gave to the mine workers of the country an eight-hour day without a strike.

"In the year 1904, in order to avoid a national strike, the mine workers of the competitive field accepted a reduction in wages and there was very little criticism of the leaders who were directing the affairs of the organization at that time. In the year 1906 the organization was again confronted with a criticial situation and after a struggle the wage scale of 1903 was restored, but many important conditions were sacrificed that year in a number of the States, including Illinois, Ohio and the Southwest. In the year 1908, in the midst of an industrial depression that affected the entire country, the United Mine Workers was able to maintain its standard of wages and partially re-establish the interstate joint movement that had been disrupted in 1906. Last year we were convinced that we were entitled to an advance in wages and, failing to negotiate wage contracts previous to the expiration of our agreements, about 300,000 mine workers suspended work on April, 1910. Our efforts last year might have been more

successful and less costly if we had avoided sectional strikes and sectional settlements.

"I have referred to those periods in the history of our movement in order that you and our members might take greater interest in the success of the organization. If you will carefully study the history of the United Mine Workers, I believe you will be convinced that strikes have not brought the greatest measure of success to our organization.

"Sectional strikes of any magnitude have been a complete failure in promoting the welfare of the United Mine Workers of America. This fact emphasizes again the necessity of changing our policy and adopting new methods that will be more effective in protecting our rights.

"I have prepared a statement, covering a period of eleven years, in which is given the amount of money paid to each district in support of mine workers who have been on strike. The period begins with 1900 and ends with the year 1910.

AMOUNT PAID TO EACH DISTRICT FOR STRIKE RELIEF.

District 1, Anthracite	$705,830.94
District 2, Central Pennsylvania	497,987.48
District 3, Irwin Field	329,900.00
District 5, Western Pennsylvania	44,016.07
District 6, Ohio	216,566.13
District 7, Anthracite	261,500.00
District 8, Indiana Block	500.00
District 9, Anthracite	501,100.00
District 10, Washington	59,500.00
District 12, Illinois	74,250.00
District 14, Kansas	122,500.00
District 15, Colorado	707,676.45

District 16, Maryland and Meyersdale	421,335.21
District 17, West Virginia	669,938.81
District 18, British Columbia	49,800.18
District 19, Tennessee	461,306.01
District 20, Alabama	1,286,031.32
District 21, Arkansas and Oklahoma	293,061.00
District 22, Wyoming	3,439.30
District 23, Kentucky	312,222.26
District 24, Michigan	7,700.00
District 25, Missouri	95,000.00
District 26, Nova Scotia	968,775.00
Total	$8,089,986.16

"In addition to the foregoing information I have also prepared another financial statement giving the amount that has been paid each year to support mine workers on strike for the same period beginning with the year 1900 and ending with the year 1910:

AMOUNT PAID OUT ANNUALLY IN SUPPORT OF STRIKES.

Year 1900	$144,462.50
Year 1901	202,202.71
Year 1902	1,834,506.53
Year 1903	301,922.44
Year 1904	1,065,435.47
Year 1905	753,626.02
Year 1906	805,599.92
Year 1907	105,045.57
Year 1908	744,897.19
Year 1909	600,267.39
Year 1910	1,532,020.42
Total	$8,089,986.16

"To the eight million dollars spent by the International organization must be added the hundreds of thousands of dollars contributed by our members to the districts and spent for the same purpose. If you will examine these two statements you will discover that where we have spent the most money, in support of strikes, is where we have the least membership.

"This information should be conclusive evidence that the strike as a method of organizing has not proven a success. I am convinced that sectional strikes will not organize the non-union mining districts of our country.

"The enormous expenditure of money and the tremendous waste of energy incident to a strike should be avoided. Our right to strike must never be surrendered, but as the strike is an industrial war measure it should be the last method resorted to in our effort to enforce any demands that we present to the mine owners.

(431) "MEMBERSHIP.

(d) "Herewith is given a table showing the average paid-up membership for each year since the formation of the United Mine Workers of America in 1890:

Year.	Members.	Year.	Members.	Year.	Members.
1890	20,912	1897	39,731	1904	251,006
1891	17,044	1898	32,902	1905	264,950
1892	19,376	1899	61,887	1906	230,667
1893	14,244	1900	115,321	1907	260,740
1894	17,628	1901	198,024	1908	252,018
1895	10,871	1902	175,367	1909	265,274
1896	9,617	1903	247,240	1910	231,392

"It is a matter of congratulation to our membership that we are able to report that we received per capita tax at the International Office on an average of 231,392 members for each month for the year ending November

30, 1910. This is especially significant when we pause to consider the large number of mine workers who were on strike and who, according to our laws, are not required to pay monthly dues.

"In the month of March, 1910, per capita tax was received from 310,744 members, the highest number in the history of the organization. That the strike affected our paying membership you can readily understand, when I call your attention to the fact that in May, 1910, we received per capita tax on but 118,811 members.

"As a further evidence that the United Mine Workers of America has lost none of its prestige, we received per capita tax at the International office in December, 1910, on 308,660 members. This is the highest number of members upon which per capita tax has been reported for any December month in the history of the organization. In my opinion we ought to be proud of this remarkable showing on the part of our members, in view of the prolonged strikes and the extra assessment of $1.00 per month that has been levied on our membership since May of last year. You know that heavy assessments have a tendency to cause a falling off in our membership.

"If the enemies of the United Mine Workers can derive any consolation from this statement of the actual condition of our union we have no objection. Let me here suggest that if these results can be secured and maintained by the organization when we have members who are doing all they can to create friction and divide our forces, what could we do if every member of the United Mine Workers was actually lending his assistance to make the organization a greater power for good. Let us try and work for the success of the United Mine Workers' Union and the welfare of the people we represent."

(432) "UNORGANIZED MINING DISTRICTS.

(e) "The all important problem confronting the United Mine Workers of America is, how can we organize the mine workers in the non-union districts and complete the work in those districts which are but partly organized? Costly and unsuccessful efforts have been made to organize the non-union districts through the medium of strikes.

"The tremendous expenditure of the funds of the organization and the failure to organize the States of the Ohio river as well as Colorado, Maryland and a large section of Pennsylvania, should prompt us to investigate the cause of the hostile attitude and the bitterness shown toward the organization by many of the operators in the States named.

"I have called attention in former reports to the fact that in West Virginia and other southern coal producing States, there is a firm conviction in the minds of a number of the operators that it is our purpose to organize the miners of those States in order to shut them out of the markets into which operators of organized districts ship coal. This is an unfortunate condition but is partly due to the action of a few of our own members in misrepresenting the facts and deceiving our members.

"During the past year I assigned International Vice-President Hayes and Board Members Farrington, Watkins and Garner to visit the Norfolk and Western district and the Fairmont region of West Virginia to investigate and report the prospects of organizing that State. The reports submitted to me verified what I have known for years—that in certain non-union districts, an organizer jeopardized his own life the instant he undertook to organize the miners.

"My experience in West Virginia and other non-union mining States prompts me to believe that we should clearly

define our position with reference to those States. We should declare in the most emphatic manner that it is not our purpose to organize the non-union mining districts to curtail their coal production. We should emphasize our position that every non-union mining district of the country is entitled to an equal opportunity with every other mining district to market the product of their mines.

"Let us clearly define our position as organized mine workers. Let us then appeal to the intelligence of the operator and the miner in the non-union districts. If we desire to establish that confidence necessary to our success we should be perfectly frank in stating our position and we must be absolutely sincere in carrying into effect our declarations.

"I have stated in former conventions, and I repeat again, that the application of common sense should be the basis of a new method of extending our organization into the non-union mining districts and to establish permanent industrial peace between the mine owners and the mine workers of the country.

(433) "JOINT WAGE AGREEMENTS.

(f) "The joint conference method adopted by the operators and miners for the purpose of negotiating wage contracts has done much to establish peace in the mining industry. Whether this method is to be continued will depend entirely upon the sincerity of those who have been parties to the joint movement.

"Time and again we have declared in our conventions that differences existing between the employer and employe in the mining industry should be settled without resorting to strikes. In recent years there has been a disposition among our members to ignore the terms of the contracts under which they are employed, and to refuse to accept or be governed by the advice of their official rep-

resentatives. If this condition is allowed to continue, and if there is no way by which our members can be convinced that agreements should be respected and complied with, then the joint movement will necessarily pass out of existence.

"In a number of districts there are so many rules being incorporated in our joint agreements that it is difficult for our members to understand the meaning and the application of the terms of the contract. Those rules are no doubt insisted upon by the operators in order to avoid strikes. There is so much delay in settling even trifling disputes, owing to technicalities in the rules, that our members become restless and finally become desperate at the failure of having grievances adjusted. The result is that instead of strikes being prevented, the mines are stopped in violation of the expressed terms of the agreement.

"Simplicity should be the basis of our joint agreements. A contract should be so clear and specific that there would be no trouble for any member to understand what it means. Penalties for failure to comply with the terms of wage agreements and incorporated in our contracts, should apply to the mine foreman and superintendent as well as to the miner and mine laborer.

"What are known as stampede strikes, locally or otherwise, are becoming a serious menace to the permanency of the joint movement method of arranging wage contracts. There is no excuse that should justify a suspension of the operation of the mines, especially under a contract mutually agreed to by the operators' and miners' representatives. That strikes take place at mines where a contract is in effect proves either that there is a defect in the contract itself, or that the parties to the contract were not sincere when it was negotiated.

"If we are to give stability to the joint movement we must adopt some practical method, not only to negotiate wage contracts, but to have them strictly complied with in every respect.

"The existence of the joint movement and the future well-being of the mine workers of the country depends upon what action this convention may take to restore that confidence necessary for the success of the United Mine Workers and the joint movement method of negotiating wage agreements."

(434) "RIGHT TO ORGANIZE.

(g) "In my report to the last annual convention I expressed my opinion in regard to the right of the laboring people to organize. This is a subject of such vital importance to the wage earners of the country that I deem it my duty to again emphasize the importance of insisting upon our right to organize the mine workers in every State in the Union.

"The power of co-operation and the dependency of individuals upon each other in every walk of life, we are compelled to more fully realize every day of our existence. Regardless of the tremendous impulse given to each movement through unity of purpose, there are employers of labor, and even representatives of the government, who deny that unity of action among laboring people, that they, themselves, exercise in their every day affairs.

"The employers of labor and those representatives of the government who attempt to prevent the laboring men from organizing and seek to destroy labor unions are hastening the day when the laboring people of this country will assert themselves and by the intelligent use of the franchise will take complete charge of every branch of the United States government.

"The time has come when we must bring forcibly but intelligently to the attention of the enemies of organized labor that in an era of concerted effort there is no such a thing as individual liberty. We must convince those who are attempting to destroy the labor movement that we will not be denied the right to co-operate with each other to better our condition and secure for ourselves a brighter future.

"Capital has a right to be invested through human agencies, either in dollars singly or in combination with millions of other dollars. The wage earner must be conceded the right to act singly or in conjunction with all of his fellow laborers. This is not a sentimental expression but a statement of a condition that will eventually be recognized by the nation and respected by the employers of labor, as well as men in public life. Capital and labor should co-operate and work together where it is possible for such a condition to exist. There can be no industrial peace and there can be no permanent progress for the nation where men are compelled to be subordinate to the influence of wealth."

(435) "WHY WE ORGANIZE.

(h) "The status of the miners' organization must be explained by its representatives, not from a charitable or a sympathetic standpoint. We must make it clear to the American people, and especially to the enemies of our movement, that we have our existence legally and morally as a matter of absolute right, not only the right to organize but the right to accomplish the purpose for which we are united.

"Few men today, even among the rankest enemies of labor unions, would hesitate to publicly express the opinion that the wage earners of our country have no right to form themselves into labor unions. There is a further

right, the right to make the organization effective in accomplishing the purpose for which we organize or else the existence of the union is a farce.

"It is well known that as mine workers we are organized to secure fair wages, better conditions of employment, shorter hours of labor and the enactment of such laws as will provide greater safeguards and lessen the danger in the mine. In addition to this we are seeking to educate ourselves and those depending upon us. In fact, the basic principle of our movement is to make better citizens of the men who work in and around the coal mines of the country.

"When we present our claims to certain employers or mine owners we are told that we must respect individual liberty, or the right of the mine owner to do what he pleases with his own. This may sound plausible and might be considered as reasonable if every individual were permitted to do as he pleased. What we insist upon is that if our labor is needed to develop the mining industry we have a right as an individual or collectively to dictate the terms upon which we will sell our labor.

"It is unfortunate but true that there are a number of employers and men in public life who seem to forget that rights, duties and obligations are mutual. They seem to forget that every man who has become a part of the government has made a concession and surrendered certain individual rights. They seem to forget that the producers of the wealth of the country make it possible for the nation and the government to exist.

"As members of the United Mine Workers' organization we are asking for no special privilege. All we ask for is an equal opportunity before the law, and this we have a right to insist upon. Those employers of labor and those representatives of the United States government who are attempting to destroy labor unions should remember that, when driven too far, the mighty army of labor, by

organized effort and the intelligent use of the ballot, can remove from public office the enemies of the people, and can destroy the power of the coprorations and make them harmless as a factor to enslave the wealth producers of our country."

(436) "SHERMAN ANTI-TRUST LAW.

(i) "We have in this country a law known as the Sherman anti-trust law. Its alleged object is to destroy trusts and to prohibit combinations that are inimical to the interest of the people.

"We have no knowledge that the great industrial corporations have been limited in their authority to control certain commodities. There is no likelihood that the Standard Oil Company, the United States Steel Corporation and other great industrial institutions will be dissolved by the enforcement of the provisions of the Sherman anti-trust law.

"This law, like others enacted for the alleged purpose of protecting the rights of the people, is in reality being used to deprive the wage earners of the right to organize. We know that the Sherman anti-trust law, as well as many similar State laws, are being used to keep the mining industry from being elevated to a higher standard.

"In my opinion the Sherman anti-trust law and every other law of a similar character, should be either amended or repealed, and instead of attempting to regulate corporations and trusts in the manner provided by the Sherman law, the national and State governments should enact laws providing for a method of taxation that would remove any incentive for large corporations to accumulate wealth by illegitimate methods.

"As laboring men, and especially as mine workers, we should lend every influence we possess to repeal those provisions of the Sherman law that deprive us of our right to organize and establish the object for which we are

united. Now is the time to act as we may at any time be made the victims of a law that was enacted to control trusts but which is being diverted to destroy organized labor."

(437) "WESTERN FEDERATION OF MINERS.

(j) "Our last Annual Convention clearly defined the attitude of the United Mine Workers of America toward our fellow workers who are members of the Western Federation of Miners.

"By a unanimous vote of our last International Convention we adopted the following:

1. We recommend that at some time in the future there shall be a complete solidification of the organized forces now enlisted under the names of Western Federation of Miners and the United Mine Workers of America.

2. That we declare in favor of continuing the present agreement of a mutual exchange of transfer cards.

3. We favor co-operation of the organizers of the two unions in organizing the non-union coal miners and metal miners in every section of the American continent.

4. We recommend to the Western Federation of Miners that they make application for affiliation with the American Federation of Labor, on condition that the present jurisdiction of the Western Federation of Miners and United Mine Workers will be recognized by the Executive Council of the American Federation of Labor.

5. We declare in favor of forming a mining department under the jurisdiction of the American Federation of Labor to control the mining industry of the American continent, along similar lines to those departments which are now organized under the jurisdiction of the American Federation of Labor.

6. In the event that this general outline is ratified by representatives of the United Mine Workers of America and the Western Federation of Miners, either in convention

or by a referendum vote, all details to bring about a better working alliance to be referred to the International Executive Boards of the Western Federation of Miners and the United Mine Workers of America.

7. That whatever agreement this joint committee may reach is tentative and not binding on either organization, but subject to the action of each organization, either of whom has the right to accept, reject or modify this proposition, and nothing shall be binding on either organization, unless ratified by both.

"This general proposition was ratified by the members of the Western Federation of Miners. Representatives of the United Mine Workers of America and representatives of the Western Federation of Miners met in Washington, D. C., with the Executive Council of the American Federation of Labor to arrange the granting of a charter. A conference of representatives of the United Mine Workers and the Western Federation of Miners together with representatives of the Executive Council of the American Federation of Labor, held another conference in Indianapolis to agree upon the granting of a charter to the Western Federation of Miners, but without success.

"The United Mine Workers' delegation to the Convention of the American Federation of Labor at St. Louis introduced the following resolution:

> Whereas, The Western Federation of Miners have applied for a charter of affiliation to the American Federation of Labor, with similar jurisdiction to be accorded to them that is now accorded to the United Mine Workers of America.
>
> Whereas, We believe that the Western Federation of Miners should be affiliated with the American Federation of Labor, and accorded the same rights and privileges as the United Mine Workers of America in their jurisdiction of men working in and around the mines, to be organized under the Western Federation of Miners.

> Resolved, That it is the sense of the delegates representing the Thirtieth Annual Convention of the American Federation of Labor that the Western Federation of Miners should be granted a charter of affiliation, with jurisdiction of employes working in and around the metalliferous mines under their present organization and that the officers and Executive Council of the American Federation of Labor are hereby instructed to issue to the Western Federation of Miners a charter of affiliation with the American Federation of Labor on that basis. On behalf of the United Mine Workers of America.

"The resolution, together with the report of the Executive Council, was referred to a special committee which reported to the Convention of the American Federation of Labor, recommending that a charter be granted to the Western Federation of Miners with a limited jurisdiction.

"It is to be regretted that, owing to technical objections of representatives who believe strictly in the trade idea of labor unions, a charter of affiliation with the American Federation of Labor was not granted to the Western Federation of Miners.

"I am still of the opinion that a charter should be granted to the Western Federation of Miners, giving to them similar jurisdiction over the men working in and around the metalliferous mines as has been conceded to the United Mine Workers of America. We should renew our efforts and determination to do everything within our power to secure a charter for the Western Federation of Miners. We should form a closer alliance in order that all the mine workers on the American Continent may finally be enrolled in one Union, fighting in a common cause for the industrial emancipation of the mine workers of the world."

EXPENDITURES of the United Mine Workers of America for ie year 1910, as published in the United Mine Workers' Journal i its issue of January 26, 1911; otherwise known in the record f the case of the Hitchman Coal & Coke Company against John itchell and others as Lewis' Exhibit No. 2. [Record pp. 707, 563.]

(438) "EXPENDITURES.

	Salaries and Expenses.	Supplies.	Office Expenses.
1909.			
)ecember	$21,152.38	$19.70	$703.38
1910.			
anuary	20,182.55	529.67	753.68
'ebruary	16,452.99	432.94	383.22
Aarch	22,571.66	824.73	431.44
pril	16,639.39	1,041.79	374.35
Aay	20,947.90	448.55	320.54
une	19,100.31	535.36	832.24
uly	18,957.52	319.10	450.13
ugust	18,087.08	47.65	337.98
eptember	15,308.72	12.85	339.95
)ctober	12,744.65	224.15	331.95
Vovember	14,097.33	140.00	336.93
	$216,242.48	$4,576.49	$5,595.79

	Printing.	Journal.	Telephone, Postage and Express.
1909.			
December	$66.25	$910.78	$630.75
1910.			
January	644.38	498.46	326.92
February	1,701.30	2,280.39	454.64
March	6,328.10	1,246.90	412.08
April	66.25	1,207.74	315.67
May	842.00	1,234.37	699.45
June	8,706.70	1,107.71	552.30
July	175.75	1,172.94	689.07
August	333.11	1,032.05	363.89
September	381.60	711.37	622.83
October	3,245.64	1,084.87	655.70
November	254.25	1,459.77	1,412.40
	$22,745.33	$13,947.33	$7,135.70

	Aid.	Miscellaneous.	Total.
1909.			
December	$80,542.18	$7,822.36	$111,847.76
1910.			
January	76,148.85	28,853.58	127,938.09
February	71,943.03	27,555.50	121,204.01
March	70,300.00	29,309.66	131,424.57
April	142,342.51	8,455.05	170,442.75
May	134,850.00	3,193.03	162,535.84
June	168,985.50	2,528.30	202,348.42
July	161,118.54	2,002.16	184,885.21
August	133,165.00	27,008.10	180,374.86
September	147,950.00	12,562.45	177,889.77
October	157,750.00	27,575.69	203,612.65
November	186,944.81	512.22	205,157.71
	$1,532,040.42	$177,378.10	$1,979,661.64"

INCOME of the United Mine Workers of America for the year 1910, as published in the United Mine Workers' Journal in its issue of January 26, 1911; otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 3. [Record pp. 707, 604, 605.]

(439) "INCOME.

	Tax.	Supplies.	Journal.	Assessment.	Miscellaneous.	Total.
1909.						
December	$73,130 76	$522 89	.....	.....	$537 31	$74,190 96
1910.						
January	70,982 38	544 29	.....	$20 00	683 57	72,230 24
February	63,403 31	579 37	$2,537 96	.....	5,013 04	71,533 68
March	77,686 07	729 79	.....	.....	429 26	78,845 12
April	59,125 69	896 55	1,338 94	.....	319 49	61,680 67
May	29,712 75	682 95	685 18	.....	669 79	31,750 67
June	43,061 63	641 11	421 65	45,354 49	100,209 61	189,688 49
July	50,688 82	475 11	.....	118,392 25	25,597 37	195,153 55
August	49,585 71	491 21	1,296 11	112,123 48	341 44	163,837 95
September	51,760 53	667 22	.....	173,776 78	263 40	226,467 93
October	59,038 78	818 22	.....	190,953 32	32 48	250,842 80
November	66,055 85	631 24	2,028 11	184,306 21	391 25	253,412 66
	$694,232 28	$7,679 95	$8,307 95	$824,926 53	$134,488 01	$1,669,634 72

INCOME.

Tax	$694,208 28	[694,232 28]
Supplies	7,679 95	
Journal	8,307 95	
Assessment	824,950 53	[824,926 53]
Miscellaneous	134,488 01	
Total	$1,669,634 72	

EXPENDITURES.

Salaries and expenses	$216,242 48
Supplies	4,576 49
Office expenses	5,595 79
Printing	22,745 33
Journal	13,947 33
Telephone, postage and express	7,135 70
Aid	1,532,040 42
Miscellaneous	177,378 10
Total	$1,979,661 64

RECAPITULATION.

Balance on hand, December 1, 1909	$470,820 69	
Income, December 1, 1909, to November 30, 1910, inclusive	1,669,634 72	
	$2,140,455 41	
Expenditures, December 1, 1909, to November 30, 1910, inclusive	1,979,661 64	
Balance on hand December 1, 1910	$160,793 77	
Amount on deposit, Edwin Perry		$51,666 [illegible]
Amount on deposit, strike account		77,753 [illegible]
Amount on deposit, Capital National Bank		40,169 [illegible]
Amount on deposit, Union National Bank		35,035 [illegible]
Total amount on deposit		$204,624 [illegible]
Outstanding checks		43,830 [illegible]
Balance on hand December 1, 1910		$160,793 77

COPY BOUND CL

ANNUAL REPORT OF INTERNATIONAL AUDITORS showing Income and Expenditures for the year 1910, as published in the United Mine Workers' Journal in its issue of January 26, 1911, otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 4. [Record pp. 707, 605.]

(440) "ANNUAL REPORT OF INTERNATIONAL AUDITORS.

"Columbus, Ohio, January 17, 1911.

"To the Officers and Delegates of the Twenty-Second Annual Convention of the International United Mine Workers of America, in Convention here Assembled:

"We, the undersigned auditors of the International United Mine Workers of America, have examined the books and accounts of Secretary-Treasurer Edwin Perry, commencing December 1, 1909, and ending November 30, 1910, and beg leave to submit our findings for your consideration.

INCOME.

Tax	$694,232.28
Supplies	7,679.95
Journal	8,307.95
Assessment	324,926.53
Loans from districts	125,160.00
Miscellaneous	9,328.01
Total	$1,669,634.72

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EXPENDITURES.

Salaries and Expenses	$216,242.48
Supplies	4,576.49
Office expenses	5,595.79
Printing	22,745.33
Journal	13,947.33
Telephone, postage and express	7,135.70
Aid	1,532,040.42
Refunded loan to District No. 6	25,000.00
Miscellaneous	152,378.10
Total	$1,979,661.64

RECAPITULATION.

Balance on hand December 1, 1909	$470,820.69
Income from December 1, 1909, to November 30, inc., 1910	1,669,634.72
Total	2,140,455.41
Expenditures from December 1, 1909, to November 30, inc	1,979,661.64
Balance on hand December 1, 1910	$160,793.77

Indianapolis, Ind., December 22, 1910.

Messrs. John J. Mossop, Albert Neutzling, William Donaldson, Auditors, U. M. W. of A.:

Gentlemen: We beg to advise you that the following are the balances to the various accounts of the United Mine Workers of America, November 30, 1910:

Edwin Perry, Secretary-Treasurer	$51,666.51
United Mine Workers of America	40,169.04
Strike Fund	77,753.25

Yours truly,

ANDREW SMITH, Vice-President.

Indianapolis, Ind., December 22, 1910.

Messres. John Mossop, Albert Neutzling, William Donaldson, Auditors, U. M. W. of A.:

Gentlemen: This is to certify that there was on deposit at the close of business December 1 to the credit of the United Mine Workers of America, thirty-five thousand, thirty-five dollars and sixty-two cents ($35,035.62).

Yours truly,

UNION NATIONAL BANK,
ROSS H. WALLACE, Cashier.

Total amount on deposit	$204,624.42
Outstanding checks	43,830.65
Balance on hand December 1, 1910	$160,793.77

Respectfully submitted.

JOHN J. MOSSOP,
ALBERT NEUTZLING,
WILLIAM DONALDSON,
Auditors."

Office Supreme Court, U. S.
FILED
NOV 21 1916
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

No. [redacted]11

HITCHMAN COAL & COKE COMPANY, a Corporation,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et als.*,
Respondents.

Certiorari
To Circuit Court of Appeals for Fourth Circuit.

Writ granted March 13, 1916.

RE-ARGUMENT.

Petitioner is also referred to as Plaintiff.

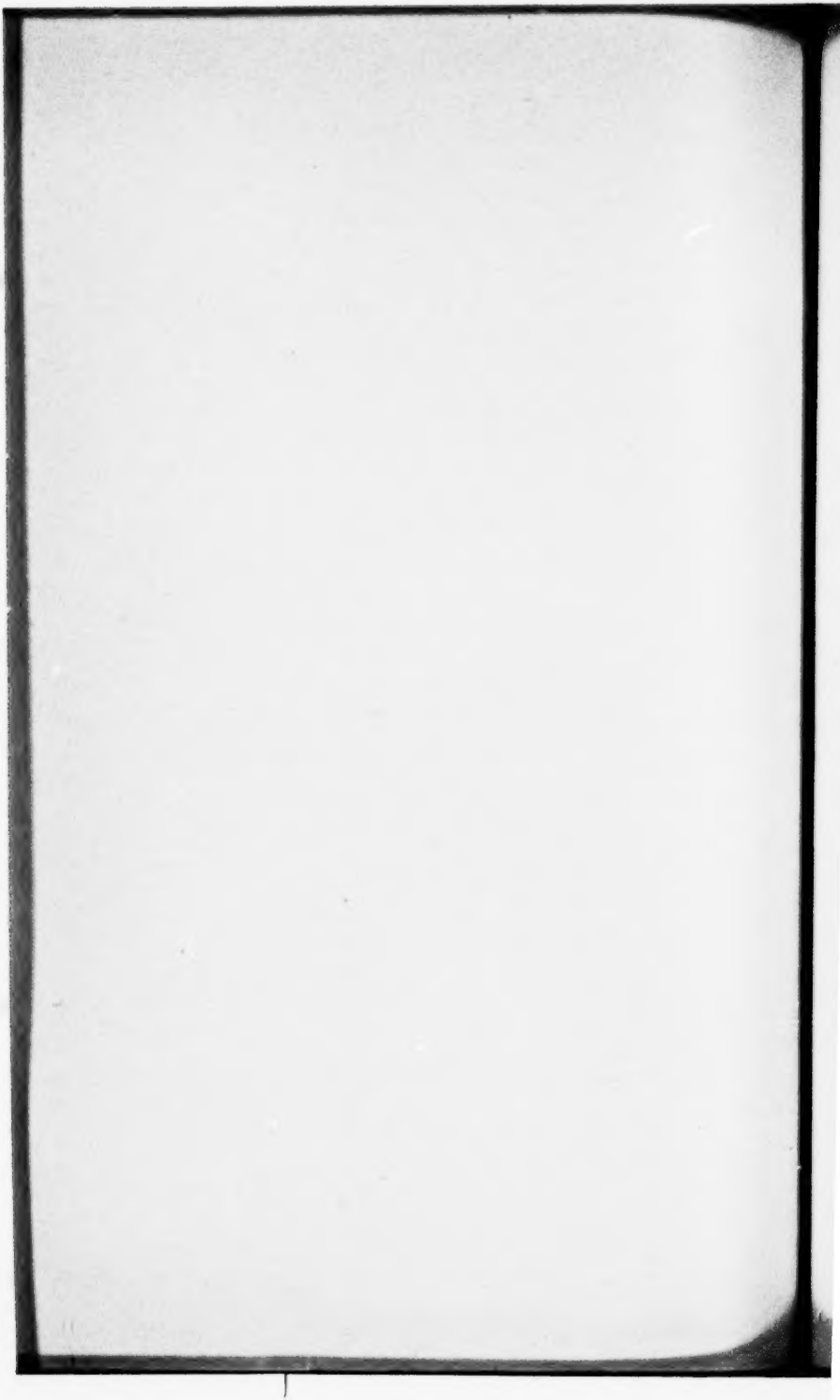
PLAINTIFF'S INDEX.

CONTENTS.

(1) Index to testimony in printed Record.
(2) Index-Digest to Excerpts from original documents transmitted to this Court, but not in printed Record.
(3) Excerpts from original documents transmitted to this Court, but not in printed Record.

NOTE.—The particular documents from which the Excerpts have been taken are now in the custody of the Clerk of this Court, pursuant to the order of the Circuit Court of Appeals. Record pp. 752, 712, 704.

This book has been prepared by George R. E. Gilchrist, of Petitioner's Counsel, as an aid to the Court in its examination of the Record. It is filed with Petitioner's brief.



Supreme Court of the United States

OCTOBER TERM, 1916.

No. 43.

HITCHMAN COAL & COKE COMPANY, a Corporation,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et als.*,
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INDEX TO TESTIMONY IN PRINTED RECORD.

AGREEMENT WITH MEN.

(*a*) At the time the mine resumed work "non-union," June 12, 1906.

(*b*) With men who have entered employment with the Company since June 12, 1906.

(*a*) At the time the mine resumed work "non-union," June 12, 1906.

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(*b*) With men who have entered employment with the Company since June 12, 1906.

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Purpose of is to unite all labor unions in the United States into one federation, these unions in

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Record, p. 456, l. 50–52.
Record, pp. 457, 458, l. 1–34.
Cross—
Record, p. 460, l. 32–35.
Record, p. 461, l. 16–51.
Rowand.
Recalled-Direct—
Record, pp. 462, 463, 464, l. 1–10.
Cross—
Record, p. 464, l. 13–49.
Record, p. 465, l. 1–29.
Popage.
Direct—
Record, p. 466, l. 6–50.
Record, p. 467, l. 1–25.

CARD.
See Employment Card.
Record, p. 689, l. 45–50.
Record, p. 690, l. 1–13.
Cotts.
Direct—
Record, p. 264, l. 42–52.
Record, p. 265, l. 1–5.
Koch.
Direct—
Record, p. 284, l. 37–53.
Record, p. 285, l. 1–4.

CENTRAL COMPETITIVE FIELD.
See Competitive Field.

CERTIFICATE OF INCORPORATION OF HITCHMAN COAL & COKE CO.
"Hitchman's Exhibit No. 1."
Direct—
Record, p. 249, l. 45–51.
Record, p. 250, l. 1–6.
(Original document transmitted to U. S. Supreme Court.)

CHALK MARKS ON PAVEMENTS.
See Notices of Meetings.
Stewart.
Direct—
Record, p. 469, l. 30–47.

CHECK-OFF PAID BY MEN.
See Breaking away from Union.

CHECK-OFF.
Admitted in pleading.

CHICAGO AGREEMENT OF 1898.
Lewis.
Cross—
Record, p. 538, l. 38–41.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 575, l. 51, 52.
Record, pp. 576, 577, 578, l. 1–21.
Record, p. 579, l. 7–12.

CLOSED SHOP.
See U. M. W. of A.
(*a*) Enforced by the United Mine Workers of America.
Lewis.
Cross—
Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.

(*b*) Was a result of the Chicago Agreement of 1898.
Lewis.
Cross—
Record, p. 538, l. 33–49.
(*c*) Reasons given by the United Mine Workers of America for enforcing the closed shop.
Lewis.
Cross—
Record, p. 618, l. 1–25.
(*d*) Number of men belonging to United Mine Workers of America working under closed shop agreements amounts to over 200,000.
Lewis.
Cross—
Record, p. 618, l. 25–50.
(*e*) States in which closed shop agreements are made and enforced by the United Mine Workers of America: Ohio, Indiana, Michigan, Illinois, Iowa, Kansas, Missouri, Oklahoma, Texas, Arkansas, part of Kentucky, part of British Columbia, part of Washington, all Wyoming, all Montana, part of Central Pennsylvania, and greater part of Western Pennsylvania.
Lewis.
Cross—
Record, p. 618, l. 25–41.

COMPETITIVE FIELD.
The Central.
See Freight Rate.
(*a*) Consists of—
Western Pennsylvania.
Ohio.
Indiana.

Illinois.
McKinley.
Direct—
Record, p. 410, l. 38–50.
Record, p. 411, l. 1–28.
Record, p. 411, l. 42–50.
Record, pp. 412, 413, 414, l. 1–12.
Upstill.
Direct—
Record, p. 472, l. 39–48.
Record, pp. 473 to 485, l. 1–3, incl.
Cross—
Record, pp. 486, 487, 488, 489, 490, l. 1–13.
Re-Direct—
Record, p. 490, l. 18–32.
(*b*) Associations of Operators.
Efforts have been and are now being made to include all Operators.
Lewis.
Cross—
Record, p. 571, l. 12–14.
COMPETITIVE FIELD SCALE.
(*a*) Based upon physical condition of mines, selling price of the coal and earning power of the mine.
Lewis.
Cross—
Record, p. 543, l. 43–46.
Re-Direct—
Record, p. 620, l. 10–52.
(*b*) First fixed in a preliminary way by the National Convention of U. M. W. of A., which takes into consideration the different peculiarities of districts or sections of country and conditions of coal and the markets.

Lewis.
Cross—
Record, p. 543, l. 47–50.
Record, pp. 544 to 550, l. 1–35.
Re-Direct—
Record, p. 620, l. 4–52.

(*c*) When agreed on between operators and miners in convention is enforced against every other operator not a party to the conference but who operates a mine within that particular competitive field.

Lewis.
Cross—
Record, p. 590, l. 39–51.
Record, pp. 591, 592, l. 1–15.

COMPETITORS OF HITCHMAN COAL & COKE CO.
Were members of operators' association holding joint conferences with United Mine Workers.
Lorain Coal & Dock Co. was such a competitor.
So was the Pursglove mine.
Upstill.
Direct—
Record, p. 477, l. 51.
Record, p. 478, l. 1–3.
Record, p. 482, l. 43–51.
Record, p. 483, l. 1–36.
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

COMPLAINT.
None against the Company.
See Grievance.

Its men had none at the time of the 1906 strike.
Koch.
Direct—
Record, p. 282, l. 23–27.
Pickett.
Direct—
Record, p. 301, l. 27–38.

CONTRACT BETWEEN B. & O. AND HITCHMAN COMPANY REQUIRED HITCHMAN COMPANY IN CASE OF STRIKE TO LOAD OTHER COAL ON B. & O. ENGINES WHICH MIGHT BE BROUGHT TO THE HITCHMAN MINE BY THE B. & O. RAILROAD COMPANY.

1904.
Hitchman.
Direct—
Record, p. 251, l. 34–53.
1906.
Hitchman.
Direct—
Record, p. 253, l. 13–25.
1903.
Koch.
Direct—
Record, p. 276, l. 7–24.
1904.
Koch.
Direct—
Record. p. 276, l. 25–37.
1906.
Koch.
Direct—
Record, p. 276, l. 38–51.
Record, p. 277, l. 1–15.

CONTRACTUAL RELATIONS BETWEEN HITCHMAN COAL & COKE COMPANY AND ITS EMPLOYEES.

See Knowledge of Contractual Relations between Men and Company.

Agreement with Men.

CORNS, WESLEY.

Direct—
Record, pp. 327–330.

Cross—
Record, pp. 331–333.

COTTS, R. J.

Direct—
Record, pp. 259–266.

Cross—
Record, pp. 266–272.

Recalled-Direct—
Record, pp. 333–335.

Recalled-Cross—
Record, pp. 335–336.

DAUGHERTY, WM.

Direct—
Record, pp. 343–358.

Cross—
Record, pp. 358–366.

Re-Direct—
Record, pp. 367–368.

Re-Cross—
Record, pp. 368–369.

DECREE DIRECTING TAKING OF TESTIMONY.
Record, p. 221.

DEFENDANTS.

(*a*) Are higher officials of the U. M. W. of A., are in that business for a living, and have been acquainted and have dealt with each other for years.

Lewis.

Cross—

Record, p. 550, l. 36–51.
Record, pp. 551, 552, l. 1–43.
Record, p. 575, l. 42–46.

Sullivan.

Cross—

Record, p. 630, l. 25–49.
Record, pp. 631 to 635, l. 1–45, incl.

(*b*) Some one or all of them.

Had to do with the Mount Pleasant mine and also had to do with unionizing the Hitchman mine in 1903, and with the Hitchman while it was run union from May 23, 1903, to April 16, 1906, and with the efforts to re-unionize the Hitchman mine in 1907 up to the time of the granting of the restraining order forbidding such efforts, and also with the efforts to unionize the Hitchman in spite of the restraining order, and also with the design of the Union to still unionize the Hitchman mine if the injunction can be gotten rid of as was testified to by Lewis and by Sullivan.

See Efforts to Unionize.

Hitchman.

Direct—

Record, p. 250, l. 17–37.

Cross—

Record, p. 256, l. 17–19, l. 23–50.
Record, p. 257, l. 1–23.

Daugherty.
Direct—
Record, p. 358, l. 17–36.
See—
Notices of Meetings.
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
Pickett's Exhibit No. 1.
Pickett's Exhibit No. 2.
McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.

EARNINGS.
Depend on output.
Koch.
Recalled-Direct—
Record, p. 295, l. 42–44.

EFFORTS.
(*a*) Efforts made by Company with Union officials to get permission to run pending the fixing of a National Scale in 1906, but so as only to mine engine coal and not commercial coal and to take care of Company's railroad trade.
Koch.
Direct—
Record, p. 287, l. 7–24.
See Wages.

See Warning.
Pickett.
Direct—
Record, p. 301, l. 39–49.
Record, p. 302, l. 1–30.
Cross—
Record, p. 308, l. 1–45.
Oliver.
Direct—
Record, p. 320, l. 1–33.
Corns.
Direct—
Record, p. 328, l. 20–49.
Record, p. 329, l. 1–18.
Cross—
Record, p. 331, l. 7–13.
Daugherty.
Direct—
Record, p. 345, l. 9–51.
Record, pp. 346 to 350, l. 1–38, incl.
Jarrett, Albert.
Direct—
Record, p. 375, l. 18–36.
Jarrett, James.
Direct—
Record, p. 379, l. 46–48.
Record, p. 380, l. 1–44.

(*b*) Efforts made by the men employed by the Hitchman mine to get the consent of their Union officials for the men to continue working pending the adjustment of a National Scale at the time of the 1906 strike, which strike order, after running for 16 days, the men finally obeyed on April 16, 1906.

Rowand.
Direct—
Record, p. 313, l. 29–49.
Record, pp. 314, 315, l. 1–33.
Daugherty.
Direct—
Record, p. 345, l. 9–51.
Record, pp. 346, 347, l. 1–38.
Rowand.
Recalled-Direct—
Record, pp. 462, 463, 464, l. 1–10.
Cross—
Record, p. 464, l. 13–49.
Record, p. 465, l. 1–29.

(*c*) Efforts to settle strike between April 16, 1906, and June 12, 1906, whereby mine would resume union.

None made by the Union's officials.
None made by the men on strike.
None made by the Company.
Koch.
Direct—
Record, p. 285, l. 34–43.

(*d*) Efforts made by defendants to induce Company to agree to again run a union mine after it started up non-union June 12, 1906, and before Hughes appeared at the mine in the fall of 1907.

Koch.
Direct—
Record, p. 285, l. 50–52.
Record, pp. 286, 287, l. 1–24.
Recalled-Direct—
Record, p. 294, l. 14–48.
Record, p. 295, l. 1, 2.

Pickett.
Direct—
Record, p. 302, l. 47–52.
Record, p. 303, l. 1–21.
Daugherty.
Direct—
Record, p. 358, l. 13–36.
Cross—
Record, p. 364, l. 47–52.
Record, p. 365, l. 1–23.
Record, p. 366, l. 20–22.
Jarrett, Albert.
Direct—
Record, p. 377, l. 42–46.
Record, p. 378, l. 1–10.
(*e*) Efforts made by some of the defendants who tried to induce Company to re-unionize before Hughes appeared to assist Hughes in his work after Hughes appeared—thus connecting them up with Hughes in the entire scheme.
Daugherty.
Direct—
Record, p. 358, l. 17–36.
"Notices of Meetings."
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.

(*f*) Efforts of Hughes and other defendants were about to be successful at the time the restraining order was granted in the Hitchman case, October 24, 1907, so Hughes claimed, and the mine was to be shut down and to be kept shut down until Company agreed to run Union.

McKinley.
Direct—
Record, p. 415, l. 11–33.

Leonard.
Direct—
Record, p. 429, l. 3–49.
Record, p. 430, l. 1–26.
Record, p. 431, l. 49, 50.
Record, p. 432, l. 1–31.

Logston.
Direct—
Record, p. 452, l. 20–33.

Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–27.

Stewart.
Direct—
Record, p. 469, l. 3–14.
Record, p. 470, l. 22–25.

(*g*) Efforts made by defendants to unionize Hitchman mine after the restraining order of October 24, 1907, was granted.

Hitchman.
Direct—
Record, p. 255, l. 9–26.
Cross—
Record, p. 258, l. 34–37.

(*h*) Efforts to unionize the Hitchman mine would still be made if the injunction forbidding it were out of the way.

Lewis.
Direct—
Record, p. 534, l. 17–21.
Sullivan.
Direct—
Record, p. 628, l. 50–53.
Record, p. 629, l. 1–11.
Savage.
Cross—
Record, p. 503, l. 34, 35.

EMPLOYMENT CARD.
See—
Card.
Agreement with men (*b*).
Cotts.
Direct—
Record, p. 264, l. 38–52.
Record, p. 265, l. 1–40.
Cross—
Record, p. 270, l. 39–51.
Record, pp. 271, 272, l. 1–20.
Koch.
Direct—
Record, p. 284, l. 38–53.
Record, p. 285, l. 1–33.
Pickett.
Direct—
Record, p. 304, l. 27–52.
Record, p. 305, l. 1–30.
Cross—
Record, p. 307, l. 31–50.

Cotts.
Recalled-Direct—
Record, p. 334, l. 26–43.
Cross—
Record, p. 336, l. 11–20.

ENGINE COAL.
See—
Trade of Hitchman mine.
(*b*) At times of strikes.
1906 strike.
Breaking away from Union.

EXHIBITS.
A. Plaintiff's Exhibits.
B. Defendants' Exhibits.
A. Plaintiff's Exhibits.
(*a*) Plaintiff's Documentary Exhibits numbered.
(*b*) Plaintiff's Documentary Exhibits not numbered, but otherwise identified.
(*c*) Plaintiff's Witnesses' Exhibits numbered, introduced by plaintiff.
(*d*) Defendants' Witnesses' Exhibits numbered, introduced by plaintiff.
(*a*) Plaintiff's Documentary Exhibits numbered.
Plaintiff's Documentary Exhibit No. 1.
"Constitution of International Union, United Mine Workers of America.
Revision 1907."
McKinley.
Direct—
Record, p. 290, l. 5–24.
Daugherty.
Cross—
Record, p. 358, l. 48, 49.
Record, p. 359, l. 1–15.

Re-Direct—
Record, p. 367, l. 4–37.
Re-Cross—
Record, p. 369, l. 1–29.
Savage.
Direct—
Record, p. 491, l. 20–51.
Record, pp. 492 to 496, l. 1–28, incl.
Lewis.
Direct—
Record, p. 507, l. 1–51.
Record, pp. 508 to 517, l. 1–24, incl.
Record, p. 519, l. 6–52.
Record, pp. 520 to 527, l. 1–5, incl.
Record, p. 532, l. 46–51.
Record, p. 533, l. 1–14.
Cross—
Record, p. 566, l. 30–50.
Record, p. 567, l. 1–28.
Record, p. 579, l. 13–51.
Record, p. 580, l. 40–51.
Record, p. 581, l. 1–5.
Sullivan.
Direct—
Record, p. 623, l. 43–45.
Record, p. 625, l. 46–51.
Record, p. 626, l. 1–9.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 2.
"Constitution of District No. 6, United Mine Workers of America.
"Established April 15, 1890.
"Containing all amendments to date, January 12, 1907."

McKinley.
  Direct—
    Record, p. 290, l. 5–24.
  Recalled-Direct—
    Record, p. 407, l. 31–51.
    Record, p. 408, l. 1–20.
    Record, p. 408, l. 34–44.
Daugherty.
  Cross—
    Record, p. 359, l. 15–24.
  Re-Direct—
    Record, p. 367, l. 18–34.
  Re-Cross—
    Record, p. 369, l. 1–29.
Savage.
  Direct—
    Record, p. 491, l. 20–51.
    Record, pp. 492 to 496, l. 1–28, incl.
Lewis.
  Direct—
    Record, p. 507, l. 1–51.
    Record, pp. 508 to 517, l. 1–24, incl.
    Record, p. 519, l. 6–52.
    Record, pp. 520 to 527, l. 1–5, incl.
    Record, p. 531, l. 44–51.
    Record, p. 532, l. 1–17.
  Cross—
    Record, p. 567, l. 35–50.
    Record, p. 568, l. 1–27.
    Record, p. 579, l. 13–51.
    Record, pp. 580, 581, l. 1–5.
Sullivan.
  Direct—
    Record, p. 625, l. 39–43.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 3.
"Preamble and Manual Constitution United Mine Workers of America, Sub-District 5 of District 6.
"Revision 1907."
McKinley.
Direct—
Record, p. 290, l. 5–24.
Recalled-Direct—
Record, p. 398, l. 40–51.
Record, pp. 399 to 407, l. 1–29, incl.
Daugherty.
Cross—
Record, p. 359, l. 24–30.
Re-Direct—
Record, p. 367, l. 38–50.
Record, p. 368, l. 1–8.
Re-Cross—
Record, p. 369, l. 1–29.
Savage.
Direct—
Record, p. 491, l. 20–51.
Record, pp. 492 to 496, l. 1–28, incl.
Lewis.
Direct—
Record, p. 507, l. 1–51.
Record, pp. 508 to 517, l. 1–24, incl.
Record, p. 519, l. 6–52.
Record, pp. 520 to 527, l. 1–5, incl.
Cross—
Record, p. 579, l. 13–51.
Record, pp. 580, 581, l. 1–5.
Sullivan.
Direct—
Record, p. 625, l. 39–45.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 4.

"Proceedings of the Eighteenth Annual Convention of the United Mine Workers of America held in the City of Indianapolis, Indiana. January fifteenth to twenty-second, inclusive, nineteen seven."

McKinley.

Direct—

Record, p. 290, l. 25–38.

Cross—

Record, p. 292, l. 49–50.
Record, p. 293, l. 1–11.

Lewis.

Cross—

Record, p. 592, l. 16–38.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 5.

"Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6, United Mine Workers of America, held at Wheeling, West Virginia, March 14, 15, 16, 18, and 19, 1907."

McKinley.

Direct—

Record, p. 290, l. 39–50.

Cross—

Record, p. 293, l. 12–25.

Recalled-Direct—

Record, p. 414, l. 31–49.
Record, p. 415, l. 1–48.

(Original document transmitted to U. S. Supreme Court.)

Plaintiff's Documentary Exhibit No. 7.
Bill in Chancery filed October 24, 1907, in the cause of Glendale Coal Company *v.* Mitchell, *et als.*, in the Circuit Court for the Northern District of West Virginia and upon which a restraining order similar to the Hitchman was issued October 24, 1907, and a temporary injunction also similar to the Hitchman awarded May 26, 1908.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary—
Exhibit No. 8.
Exhibit No. 9.
Exhibit No. 10.
Original summons and returns of service.
(Original documents transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 11.
Restraining order entered October 24, 1907, in the case of Glendale Coal Company *v.* Mitchell, *et als.*, and bond and its approval.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 12.
Restraining order entered January 14, 1908, in the case of the Glendale Coal Company *v.* Mitchell, *et als.*, and bond and its approval.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 13.
Temporary injunction awarded May 26, 1908, in the case of Glendale Coal Company *v.* Mitchell, *et als.*, together with the affidavits read in

support of the bill, and the bond and its approval.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 14.
Joint and several answer of T. L. Lewis and others filed September 5, 1910, in the Glendale case.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 15.
Bill filed October 24, 1907, in the Circuit Court of the U. S. for the Northern District of West Virginia in the case of the Richland Coal Company *v.* Mitchell, *et als.*, and upon which a restraining order similar to the Hitchman was issued October 24, 1907, and a temporary injunction was subsequently awarded, similar to that awarded May 26, 1908, in the Hitchman case.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary Exhibit No. 16.
Restraining order entered October 24, 1907, in the Richland case, together with bond and its approval.
(Original document transmitted to U. S. Supreme Court.)
Plaintiff's Documentary—
Exhibit No. 17.
Exhibit No. 18.
Summons in the Richland case and returns of service.
(Original documents transmitted to U. S. Supreme Court.)

Plaintiff's Documentary—
Exhibit No. 19.
Exhibit No. 20.
Temporary injunction and affidavits read in support of same in the Richland case.
(Original documents transmitted to U. S. Supreme Court.)
(*b*) Plaintiff's Documentary Exhibits not numbered, but otherwise identified.
All of the first lot of answers and orders relating thereto, including the affidavits of Watkins, Hogg, and Barnes, and order withdrawing all of those answers.
These items are the nine items mentioned in an order entered November 5, 1910, in the Hitchman case.
Record, pp. 85–87.
Separate answer of Watkins filed May 26, 1908.
Record, pp. 88–101.
Order extending time for answers.
Record, p. 102.
Joint and several answer of T. L. Lewis and others.
Record, pp. 102–117.
Separate answer of William Green.
Record, pp. 118–133.
Separate answer of D. H. Sullivan.
Record, pp. 133–148.
Order filing answers July 13, 1908.
Record, pp. 148, 149.
Sworn separate answer of A. R. Watkins and affidavits of A. R. Watkins, Chas. E. Hogg, and Uriah Barnes.
Record, pp. 150–177.

Order August 20, 1908, tendering for filing sworn separate answer of A. R. Watkins, and affidavits of A. R. Watkins, Chas. E. Hogg, and Uriah Barnes.

Record, pp. 177, 178.

Order entered July 22, 1910, withdrawing separate answers of Green and Sullivan and original and amended answers of Watkins, and joint and several answers of all served defendants.

Record, pp. 178, 179.

Motion to modify the injunction of May 26, 1908.

Record, pp. 37–39.

Decree deferring proceedings pending consideration of motion.

Record, pp. 39–41.

Opinion of Court on motion to modify.

Record, pp. 41–49.

Decree refusing to modify injunction.

Record, pp. 50–52.

Preliminary motion filed at Parkersburg, January 11, 1908, with supporting affidavit of E. T. Hitchman and Exhibits 1 to 29 incl., and affidavits of Wayne Archer and B. F. Marling, relating to defendants' acts in attempting to organize plaintiff's mine in defiance of the restraining order which had been granted on October 24, 1907.

These items are the four items mentioned in an order entered November 5, 1910, in the Hitchman case.

Record, pp. 179, 180.

Preliminary motion.

Record, pp. 181–184.

Affidavit of S. T. Hitchman and exhibits.
Record, pp. 184–203.
Affidavit of Wayne Archer.
Record, pp. 204, 205.
Affidavit of B. F. Marling.
Record, pp. 206, 207.
Decrees and papers *in re* Glendale Coal Company *v.* John Mitchell, *et al.* Decree November 5, 1910, relating to the following papers: decree June 26, 1908, extending time for filing answers; joint and separate answers of T. L. Lewis, *et al.*, answer of William Green, separate answer of D. H. Sullivan, and separate answer of A. R. Watkins, each filed July 13, 1908; order filing foregoing answers, entered July 13, 1908; and decree withdrawing answers, entered July 22, 1910.
(Original documents transmitted to U. S. Supreme Court.)
Decrees *in re* Glendale Coal Company *v.* John Mitchell, *et al.* Decree November 5, 1910, relating to the following decrees: two decrees entered December 15, 1908, *in re* motion to dissolve injunction; decree entered October 6, 1909, overruling motion to dissolve injunction.
(Original documents transmitted to U. S. Supreme Court.)
General replication to defendants' answers *in re* Glendale Coal Company *v.* John Mitchell, *et al.*
(Original document transmitted to U. S. Supreme Court.)

Decree of November 5, 1910, suspending action in Glendale case pending disposition of Hitchman case.
(Original document transmitted to U. S. Supreme Court.)
(*c*) Plaintiff's Witnesses' Exhibits numbered, introduced by plaintiff.
Hitchman's Exhibit No. 1.
Certificate of Incorporation of Hitchman Coal & Coke Company.
Hitchman.
Direct—
Record, p. 249, l. 45–49.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 1.
Hitchman Coal & Coke Company's tonnage.
Commercial Coal and Engine Coal.
March 2, 1903, to April 2, 1903, and from May 23, 1903, to June 23, 1903.
Cotts.
Direct—
Record, p. 259, l. 45–49.
Record, p. 260, l. 1–4.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
Koch.
Direct—
Record, p. 274, l. 7–16.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 2.
Hitchman Coal & Coke Company's tonnage.
Commercial Coal and Engine Coal.

March 20, 1904, to April 20, 1904, and from June 15, 1904, to July 15, 1904.

Cotts.

Direct—

Record, p. 260, l. 5–12.
Record, p. 262, l. 6–15.

Cross—

Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.

Koch.

Direct—

Record, p. 274, l. 26–36.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 3.

Hitchman Coal & Coke Company's tonnage.

Commercial Coal and Engine Coal.

March 16, 1906, to April 16, 1906, and from June 12, 1906, to July 12, 1906.

Cotts.

Direct—

Record, p. 260, l. 13–20.
Record, p. 262, l. 16–27.

Cross—

Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.

Koch.

Direct—

Record, p. 274, l. 37–50.
Record, pp. 275, 276, 277, l. 1–15.

(Original document transmitted to U. S. Supreme Court.)

Cotts' Exhibit No. 4.

Hitchman Coal & Coke Company's tonnage of engine and commercial coal covering t

years 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, to and including November, 1910.

Cotts.
Direct—
Record, p. 260, l. 21–51.
Record, p. 261, l. 1–46.
Record, p. 262, l. 41–52.
Record, p. 263, l. 1–11.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
See Cotts' Exhibit No. 7, supplementing Cotts' Exhibit No. 4.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 5.
Memorandum Card of Employment between the Hitchman Coal & Coke Company and its employees.
Cotts.
Direct—
Record, p. 264, l. 38–52.
Record, p. 265, l. 1–16.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
Record, p. 270, l. 39–51.
Record, pp. 271, 272, l. 1–20.
Koch.
Direct—
Record, p. 284, l. 25–53.
Record, p. 285, l. 1–4.
Recalled-Direct—
Record, p. 297, l. 16–21.

Pickett.
Direct—
Record, p. 304, l. 27–52.
Record, p. 305, l. 1–30.
Cross—
Record, p. 307, l. 31–50.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 6.
Memorandum or list of men employed during the year 1908 and those employed during 1909 and those employed during 1910, down to December 9, and signed employment cards.
Cotts.
Direct—
Record, p. 265, l. 16–40.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
Record, p. 270, l. 39–51.
Record, pp. 271, 272, l. 1–20.
Koch.
Direct—
Record, p. 284, l. 25–34.
Record, p. 285, l. 1–4.
Recalled-Direct—
Record, p. 297, l. 16–21.
Pickett.
Direct—
Record, p. 304, l. 27–52.
Record, p. 305, l. 1–30.
Cross—
Record, p. 307, l. 31–50.
See Cotts' Exhibit No. 8, supplementing Cotts' Exhibit No. 6.

(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 7.
Tonnage, Hitchman Coal & Coke Company, December, 1910, to February, 1911.
Supplements Cotts' Exhibit No. 4.
Cotts.
Recalled-Direct—
Record, p. 333, l. 33–47.
Record, p. 334, l. 1–24.
Cross—
Record, p. 335, l. 39–49.
Record, p. 336, l. 1–10.
(Original document transmitted to U. S. Supreme Court.)
Cotts' Exhibit No. 8.
Hitchman Coal & Coke Company employees employed during December, 1910, January, February, and March, 1911, and signed employment cards.
Supplements Cotts' Exhibit No. 6.
Cotts.
Recalled-Direct—
Record, p. 334, l. 26–43.
Recalled-Cross—
Record, p. 336, l. 11–20.
(Original document transmitted to U. S. Supreme Court.)
Koch's Exhibit No. 1.
A small pamphlet entitled "United Mine Workers of America, District No. 6, Ohio, issued by the authority of the executive board of District No. 6, Ohio miners, United Mine Workers of America, G. W. Savage, Secretary-Treasurer, for scale year, April 1, 1908, to March 31, 1910."

Koch.
Direct—
Record, p. 277, l. 16–25.
(Original document transmitted to U. S. Supreme Court.)
Koch's Exhibit No. 2.
Paper purporting to be an official mining scale of the Pittsburgh vein of Sub-District 5 of District No. 6, U. M. W. of A., at Belmont, Jefferson, and part of Harrison counties, Ohio, and the Panhandle District of West Virginia. "All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations."
Koch.
Direct—
Record, p. 277, l. 26–35.
(Original document transmitted to U. S. Supreme Court.)
Koch's Exhibit No. 3.
Paper headed "Official Mining Scale, United Mine Workers of America of the Panhandle District of West Virginia, in effect April 1, 1903, and ending March 31, 1904. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations."
Koch.
Direct—
Record, p. 277, l. 36–50.
(Original document transmitted to U. S. Supreme Court.)
Koch's Exhibit No. 4.
Document consisting of four typewritten pages, which is headed: "The following conditions

are attached as an amendment to the official mining scale, United Mine Workers of America of the Panhandle District of West Virginia, and are to be considered by both the United Mine Workers as well as the Hitchman Coal & Coke Company, as a part of said scale." The paper has attached to it on the third page under the heading, "Signed for operator, W. H. Koch, Manager for Hitchman Coal & Coke Company, 5-22-'03," and under the heading, "Signed for miners," are the names "G. W. Savage, Secretary and Treasurer; John Stevenson, President Sub-District 5 of 6; William Daugherty, John F. Jewel, Z. C. Martin." Attached to that agreement and as the fourth page there is matter which contains at the foot the following: "For the company: J. C. McKinley, George W. Savage, John Stevenson."

The above document covered special conditions that were not covered by the regular scale.

Koch.

Direct—

Record, p. 278, l. 1–51.
Record, p. 288, l. 6–50.
Record, p. 289, l. 1–47.

Recalled-Cross—

Record, p. 298, l. 9–50.
Record, pp. 299, 300, 301, l. 1–5.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 5.

Paper headed, "Scale for month of April, 1904," and sub-headed, "Wheeling, W. Va., April

14, 1904. At a joint conference of operators and miners of Sub-District 5 of District 6, Ohio, the following resolutions were unanimously adopted. First: This convention do now adjourn to meet Tuesday, April 26, 1904, at 9 o'clock a. m., at Wheeling, W. Va.; that last year's scale and conditions shall prevail until the 30th of April, with the reduction called for by the Indianapolis convention. Second: That a committee of two operators be appointed to examine the scale and issue statement to superintendents and miners of the District. Committee for the Miners, W. H. Worker and Lee Rankin. Committee for the Operators, J. J. Robey and P. McBride." Another sub-heading reads as follows: "The Official Mining Scale, U. M. W. of A., of the Pittsburgh Vein of Sub-District 5 of District No. 6, in effect April 1, 1904, to end April 30, 1904. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations." This paper has at the bottom of it, on one side, the following signatures: "James Minder, Hugh Mullen, James Jarrett, Com." and on the other side having the printed signatures. "Signed on behalf of the operators: J. J. Robey, P. McBride. On behalf of the Miners: W. H. Worker, Lee Rankin," and in writing the signature, "Hitchman Coal & Coke Company. W. H. Koch, Manager, 4-18-'04."

Koch.

Direct—

Record, p. 279, l. 1-37.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 6.

A printed paper having attached to it a typewritten sheet of paper; the paper has upon it the following heading: "Official Mine Scale between the Operators and United Mine Workers of America, for the Panhandle District of West Virginia. All persons accepting employment in this mine hereby agree to be governed by the following rules and regulations. In effect April 1, 1904, and ending March 31, 1906." The typewritten sheet attached to the printed paper just identified has the following heading: "The following local rules are made as a part of the Panhandle scale of W. Va., as adopted for the period April 30, 1904, to March 31, 1906, and are to be recognized as such by both operator and miners interested." And immediately following that heading are four short rules, which read as follows:

"Rule 1. The check weighman, if possible, must be an employee of the company, but should he be chosen from the outside, he must not be objectionable to the company.

"Rule 2. Day labor is allowed to work overtime and to be paid scale price for such overtime. This to be done without any recess between the end of the eight-hour day and the overtime.

"Rule 3. Enough men to report for work and work on holidays, Sundays and days on which a death by accident to an employee

might occur, to keep fuel supplied for engines.

"Rule 4. Work shall begin at seven o'clock a. m.; work until eleven o'clock; one hour for dinner and work from twelve m. until four o'clock p. m., eastern standard time."

At the foot of that paper and the language, "Signed and agreed to on behalf of the company," is the signature, "W. H. Koch." On the other side of the same sheet of paper, and opposite the signature of W. H. Koch, and under the heading, "Signed and agreed to on behalf of the miners," are the signatures, "James Jarrett, Walter Miller, S. P. Rowand, James Conoway."

Koch.

Direct—

Record, p. 279, l. 38–51.

Record, p. 280, l. 1–29.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 7.

A printed paper purporting to be a mine scale between the employees of the Hitchman Coal & Coke Company, and the Hitchman Coal & Coke Company, in effect April 1, 1906, and ending March 31, 1908, and having also at the head, in writing, these words: "All persons accepting employment at the mine hereby agree to be governed by the following rules and regulations." The paper has some modifications of the printed scale by marking in ink of certain figures opposite the printed figures, indicative of the price to be paid for the particular service,

and it has crossed out in ink the following language: "Rule 9. We adopt the check-off system as a part of the agreement in this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, or local union, or the party upon whom the fine is imposed object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. Check-off lists shall be handed in at my office not later than 5 p. m., on the 2d and 17th days of each month; otherwise, operators shall not be required to check off same." In addition to having that rule I have just quoted and which is printed, stricken out in ink, the following rule, No. 10, is also stricken out in ink. "Rule No. 10. No strike shall take place at any mine under the jurisdiction of Sub-District 5 of District 6, except for specific violation of agreement. That is, screens irregular; failure to pay on pay day without explanation; violation of mining laws by operators, or reduction from scale wages, until the grievance of the mine affected has been thoroughly investigated by the officers of District 6, U. M. W. of A., and operators interested. Any man or men that cause a stoppage of work at any time in violation of this rule, shall be subject to dismissal at the will of the company." In addition to

this rule, No. 10, last referred to as being stricken out in ink, the third paragraph of Rule No. 19 is stricken out in ink. That paragraph reads as follows: "Miner so suspended shall have the right of appeal to officials U. M. W. of A., and operators interested;" and in addition to having that third paragraph of Rule No. 19 stricken out, Rule No. 22 is stricken out in ink. Rule No. 22 reads as follows: "Mines to be placed on a screen basis; run of mine to be paid for on an average of each man's screened coal per day. The price of run of mine from Boggs Run mine shall be 61 cents per car." And in addition to having Rule No. 22, as above, stricken out in ink, Rule No. 25 is also stricken out in ink. Rule No. 25 reads: "No new rule, either local nor general, shall be permitted unless mutually agreed upon by operators and miners interested." Attached to this printed scale is a slip of paper upon which is written: "Rule 22. Run of mine coal used at bin to be paid for at the rate of (32⅓) thirty-two and one-third cents per ton, r. of m." This printed scale has attached to it for the purpose of signature a piece of paper upon which is written: "Hitchman Coal & Coke Company, W. H. Koch, Manager."

Koch.

Direct—

Record, p. 280, l. 30–52.
Record, p. 281, l. 1–34.
Record, p. 282, l. 23–51.
Record, pp. 283, 284, l. 1–25.

(Original document transmitted to U. S. Supreme Court.)

Koch's Exhibit No. 8.

A printed paper headed, "Official Mining Scale of Association of Pittsburgh Vein Operators, of Ohio, for their mines in Belmont, Harrison, and Jefferson counties, Ohio, and the United Mine Workers of America. All persons accepting employment in these mines hereby agree to be governed by the following rules and regulations. In effect April 1, 1906, and ending March 31, 1908."

Koch.

Direct—

Record, p. 281, l. 35–41.

(Original document transmitted to U. S. Supreme Court.)

McKinley's Exhibit No. 1.

A paper-backed book having upon its title page the following: "Inter-state Conventions, 1906, Joint Conference Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana, and Illinois. Indianapolis, Indiana, January 25 to February 2, and March 20 to 29, 1906. Stenographic Report by Mrs. Mary Burke East, Indianapolis, Indiana. Revised and edited by C. L. Scroggs, Springfield, Illinois. Allied Printing Trade's Council, Joliet, Illinois. Union Label."

McKinley.

Direct—

Record, p. 291, l. 1–14.

Cross—

Record, p. 293, l. 26–35.

Lewis.
Cross—
Record, p. 610, l. 17–51.
Record, pp. 611, 612, l. 1–14.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 2.
A paper-backed book or pamphlet having on its title page the following: "Joint Convention of the Illinois Coal Operators' Association and the United Mine Workers of America, District Twelve, held at Springfield, Illinois, May 17 to June 1, 1906. Stenographically reported by Mrs. Mary Burke East, Indianapolis, Indiana. Revised and edited by C. L. Scroggs, Room 525, Odd Fellows' Building, Springfield, Illinois; Joliet Republican Printing Company. Allied Printing Trade's Council, Joliet, Illinois. Union Label."
McKinley.
Direct—
Record, p. 291, l. 15–25.
Cross—
Record, p. 293, l. 36–43.
Lewis.
Cross—
Record, p. 608, l. 11–52.
Record, pp. 609, 610, l. 1–16.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 3.
A paper-backed book, having on its title page the following: "Inter-state Convention of 1908. Joint Conference of Coal Miners and Opera-

tors of Western Pennsylvania, Ohio, and Indiana, held at Toledo, Ohio, April 14–17, 1908. Stenographically reported by Ella Shera Green, Indianapolis, Indiana. Revised and edited by F. S. Brooks, Secretary. Allied Printing Trade's Council, Columbus. Union Label."

McKinley.

Direct—

Record, p. 291, l. 26–36.

Cross—

Record, p. 293, l. 44–49.

(Original document transmitted to U. S. Supreme Court.)

McKinley's Exhibit No. 4. (Same as Upstill's Exhibit No. 1.)

A paper-backed book having on its title page the following: "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio, and Indiana, Cincinnati, March 8–29, 1910. Revised and edited by F. S. Brooks, Secretary. Allied Trade's Council, Columbus, Ohio. Union Label."

For References—

See Upstill's Exhibit No. 1.

(Original document transmitted to U. S. Supreme Court.)

McKinley's Exhibit No. 5.

A pamphlet having on its outside cover the following: "Report of President T. L. Lewis, Twentieth Annual Convention of United Mine Workers of America. Allied Printing Trade's Council, Indianapolis. Union Label." and the figures, "13."

McKinley.
Direct—
Record, p. 291, l. 49, 50.
Record, p. 292, l. 1–9.
Cross—
Record, p. 293, l. 44–49.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 6.
A pamphlet which has on its outside cover, "Report of Vice-President John T. White, Twentieth Annual Convention of United Mine Workers of America. Allied Printing Trade's Council, Indianapolis, Union Label;" figures "13" and on the first page having the following: "Vice-President White's Report, Indianapolis, Indiana, January 19, 1909."
McKinley.
Direct—
Record, p. 292, l. 10–21.
Cross—
Record, p. 293, l. 44–49.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 7.
A paper-backed book or pamphlet having on its outside cover the following: "Report of Secretary W. D. Ryan, Twentieth Annual Convention of United Mine Workers of America. Allied Printing Trade's Council, Indianapolis. Union Label;" and the figures "13," and on the first page the following: "Report of Secretary Ryan."

McKinley.
Direct—
Record, p. 292, l. 22–34.
Cross—
Record, p. 293, l. 44–49.
Lewis.
Cross—
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 8.
A pamphlet having on its title page the following: "Official Mining Scale of Association of Pittsburgh Vein Operators of Ohio for their mines in Belmont, Harrison, and Jefferson counties, Ohio, and the United Mine Workers of America," and on the first page the following: "Conditions of the Columbus Day Wage Scale, 1898." In effect April 1, 1906, and ending March 31, 1908.
McKinley.
Direct—
Record, p. 292, l. 35–47.
Cross—
Record, p. 293, l. 50, 51.
Record, p. 294, l. 1–8.
(Original document transmitted to U. S. Supreme Court.)
McKinley's Exhibit No. 9.
A small book which has on the title page, "Official Mining Scale of Association of Pittsburgh Vein Operators, for their mines in Belmont, Harrison, and Jefferson counties, Ohio, and the United Mine Workers of America.

Adopted May 19, 1910. In effect April 1, 1910, and ending March 31, 1912."

McKinley.

Recalled-Direct—

Record, p. 388, l. 6–36.

Savage.

Direct—

Record, p. 496, l. 42–50.

Record, p. 497, l. 1–18.

(Original document transmitted to U. S. Supreme Court.)

Pickett's Exhibit No. 1.

A printed card which reads as follows: "Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 p. m., at Nick Heil's Baseball Grounds, for the purpose of discussing the principles of organization. President Green will be present and all miners are cordially invited to attend."

Pickett.

Recalled-Direct—

Record, p. 338, l. 3–23.

Recalled-Cross—

Record, p. 340, l. 30–43.

(Original document transmitted to U. S. Supreme Court.)

Pickett's Exhibit No. 2.

A card which reads as follows: "Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 p. m., at Nick Heil's Baseball Grounds, for the purpose of discussing the principles of organization. President Green will be present. All miners are cordially invited to attend."

Pickett.
Recalled-Direct—
Record, p. 338, l. 25–47.
Recalled-Cross—
Record, p. 340, l. 44–51.
Record, p. 341, l. 1, 2.
(Original document transmitted to U. S. Supreme Court.)
Albert Jarrett's Exhibit No. 1.
Charter of the Independent Mine Workers of West Virginia, as it is printed in the published report of the Secretary of State of the State of West Virginia, March 4, 1905, to March 1, 1907, page 567, printed at Charleston in 1907.
Jarrett, Albert.
Direct—
Record, p. 376, l. 20–45.
Record, p. 377, l. 1–41.
Jarrett, James.
Cross—
Record, p. 386, l. 4–22.
(Original document transmitted to U. S. Supreme Court.)
Austin's Exhibit No. 1.
A card upon which is printed the following language: "Notice. To the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 p. m., at Nick Heil's Baseball Grounds for the purpose of discussing the principles of organization. President William Green will be present. All miners are cordially invited to attend."

Austin.
Direct—
Record, p. 437, l. 9–39.
Cross—
Record, p. 438, l. 32–43.
(Original document transmitted to U. S. Supreme Court.)
Austin's Exhibit No. 2.
A card upon which appears, in black stencil, the following: "Notice. A meeting for Hitchman's miners at 6.30 p. m., Friday, September 27. President Green will be there."
Austin.
Direct—
Record, p. 437, l. 40–48.
Record, p. 438, l. 1–3.
Cross—
Record, p. 438, l. 44–49.
Record, p. 439, l. 1–39.
Knapp.
Direct—
Record, p. 440, l. 6–46.
Cross—
Record, p. 441, l. 5–50.
Record, p. 442, l. 1–51.
Re-Direct—
Record, p. 443, l. 4–12.
Re-Cross—
Record, p. 443, l. 17–22.
(Original document transmitted to U. S. Supreme Court.)
Upstill's Exhibit No. 1. (Same as McKinley's Exhibit No. 4.)
A book which says on its title page, "Proceedings of Joint Conference of Coal Operators and

Coal Miners of Western Pennsylvania, Ohio, and Indiana. Cincinnati, Ohio, March 8–29, 1910. Revised and edited by F. S. Brooks, Secretary."

McKinley.
Direct—
Record, p. 291, l. 37–48.
Cross—
Record, p. 293, l. 44–49.
Recalled-Direct—
Record, p. 412, l. 27–50.
Record, pp. 413, 414, l. 1–12.

Upstill.
Direct—
Record, p. 484, l. 43–51.
Record, p. 485, l. 1–3.

Savage.
Cross—
Record, pp. 503, 504, l. 1–38.
Re-Direct—
Record, p. 506, l. 25–27.

Lewis.
Direct—
Record, p. 527, l. 6–52.
Record, p. 528, l. 1–21.
Cross—
Record, p. 538, l. 50, 51.
Record, pp. 539, 540, 541, 542, 543, 544, 545, 547, 548.
Record, pp. 549, 550, 551, 552, 553, l. 1–44.
Record, p. 558, l. 35–51.
Record, p. 559, l. 1–22.
Record, p. 576, l. 3–51.
Record, pp. 577, 578, 579, l. 1–12.
Record, p. 612, l. 27–51.
Record, pp. 613, 614, 615.

(*d*) Defendants' Witnesses' Exhibits numbered, introduced by plaintiff.

Savage's Exhibit No. 1.

Strike Order of the Ohio Miners, March, 1911.

Savage.

Cross—

Record, p. 502, l. 49–51.
Record, p. 505, l. 30–53.

Sullivan.

Cross—

Record, p. 635, l. 52.
Record, p. 636, l. 1–48.

(Original document transmitted to U. S. Supreme Court.)

Lewis' Exhibit No. 1.

President Lewis' Report; See United Mine Workers' Journal, Indianapolis, Indiana, Thursday, January 19, 1911, pages 1 to 8.

Lewis.

Cross—

Record, p. 560, l. 10–41.
Record, pp. 561, 562, 563, l. 1–33.
Record, pp. 601, 602, l. 1–17.
Record, pp. 616, 617.

(Original document transmitted to U. S. Supreme Court.)

Lewis' Exhibit No. 2.

Tabulation "Expenditures;" See United Mine Workers' Journal, Thursday, January 26, 1911.

Lewis.

Cross—

Record, p. 563, l. 34–49.
Record, pp. 564, 565, l. 1–33.

(Original document transmitted to U. S. Supreme Court.)

Lewis' Exhibit No. 3.
Tabulation showing income of U. M. W. of A. for the year 1910; See United Mine Workers' Journal, Thursday, January 26, 1911.
Lewis.
Cross—
Record, p. 604, l. 50–53.
Record, p. 605, l. 1–7.
(Original document transmitted to U. S. Supreme Court.)
Lewis' Exhibit No. 4.
A short report headed: "Annual Report of International Auditors," in which the income and expenditures and a recapitulation for the year 1910 are given, covering the money received and the money paid out. See United Mine Workers' Journal, Thursday, January 26, 1911.
Lewis.
Cross—
Record, p. 605, l. 8–16.
(Original document transmitted to U. S. Supreme Court.)

FREIGHT RATE.
See Competitive Field.

GILCHRIST, AFFIDAVIT OF GEORGE R. E.
Exhibit No. 1.
Record, p. 218.
Letter, Gilchrist to Littlepage, January 20, 1908.
Record, p. 219.
Exhibit No. 2.
Letter, Littlepage to Gilchrist, January 27, 1908.
Record, p. 219.

Exhibit No. 3.
Letter, Littlepage to Gilchrist, February 5, 1908.
Record, p. 219.
Exhibit No. 4.
Letter, Gilchrist to Littlepage, February 7, 1908.
Record, p. 220.
Exhibit No. 5.
Record, p. 221.

GLENDALE MINE, FACTS ABOUT.
(*a*) Same Board of Directors and same management as and run from office of Hitchman Coal & Coke Company.
Koch.
Direct—
Record, p. 272, l. 23–45.
(*b*) Has about 1,200 acres of coal.
Koch.
Direct—
Record, p. 281, l. 42–45.
(*c*) Method of employment of men is same as at Hitchman mine.
Koch.
Recalled-Direct—
Record, p. 297, l. 26–28.
(*d*) Is a shaft mine about 90 feet deep.
Koch.
Recalled-Direct—
Record, p. 297, l. 29, 30.
(*e*) Men who quit.
Pickett.
Direct—
Record, p. 306, l. 36–51.
Record, p. 307, l. 1–6.

Cross—
Record, p. 310, l. 30–51.
Record, p. 311, l. 1–3.
Re-Direct—
Record, p. 312, l. 33–48.
Record, p. 313, l. 1–25.
Cotts.
Recalled-Direct—
Record, p. 334, l. 47–50.
Record, p. 335, l. 1–18.
Recalled-Cross—
Record, p. 335, l. 22–38.
Pickett.
Recalled-Direct—
Record, p. 336, l. 45–48.
Record, p. 337, l. 1–10.
Recalled-Cross—
Record, p. 339, l. 18–42.

GRIEVANCE OF MEN.
Against the Company. None.
See Complaint.

HART, J. W.
Direct—
Record, pp. 369–371.
Cross—
Record, pp. 371–375.

HITCHMAN, E. T.
Direct—
Record, pp. 248–255.
Cross—
Record, pp. 255–258.

HITCHMAN COAL & COKE COMPANY.
Incorporated January 11, 1902.
Certificate of Incorporation filed and marked Hitchman's Exhibit No. 1.

Hitchman.
Direct—
Record, p. 249, l. 45–49.
(Original document transmitted to U. S. Supreme Court.)

HITCHMAN MINE, FACTS ABOUT.

(*a*) When and why opened, 1902.
By whom opened.
Designed primarily to supply coal to the B. & O. R. R. engines at its yards at Benwood, W. Va., four miles below Wheeling, for which trade a contract was made before the mine was opened. Such coal is termed "Engine Coal."
Secondarily, the mine was designed to ship coal to the general markets, local and otherwise, as its production became great enough in the course of its development to admit of that trade. Such coal is termed "Commercial Coal."
Hitchman.
Direct—
Record, p. 248, l. 20–43.
Record, pp. 249, 250, l. 1–6.
(*b*) Was opened "non-union" in 1902, and was first run "non-union," and then was "unionized" April 1, 1903.
Hitchman.
Direct—
Record, p. 249, l. 1–13.
Cross—
Record, p. 255, l. 28–51.
Record, p. 256, l. 1–7.

Koch.
Direct—
Record, p. 272, l. 45–49.
Record, p. 273, l. 1–35.
Pickett.
Direct—
Record, p. 301, l. 13–18.
Lewis.
Direct—
Record, p. 518, l. 50, 51.
(*c*) Hitchman mine was run "union" from April 1, 1903, to April 16, 1906.
Strikes occurred during that time.
Hitchman.
Direct—
Record, p. 249, l. 1–13.
Record, p. 250, l. 25–41.
Cross—
Record, p. 256, l. 36–50.
Record, p. 257, l. 1–21.
Koch.
Direct—
Record, p. 273, l. 30–51.
Record, p. 274, l. 1–6.
Record, p. 276, l. 25–41.
Pickett.
Direct—
Record, p. 301, l. 13–18.
Lewis.
Direct—
Record, p. 518, l. 50, 51.
See Strikes.
(*d*) Hitchman mine has been run "non-union" since June 12, 1906.
No strikes have occurred in that time.

Cotts.
Direct—
Record, p. 263, l. 12–17.
Koch.
Direct—
Record, p. 274, l. 33–36.
Record, p. 295, l. 40–42.
Myers.
Direct—
Record, p. 458, l. 18–34.
Popage.
Direct—
Record, p. 466, l. 6, 7.
(*e*) Has lost no time by reason of labor troubles since June 12, 1906.
Hitchman.
Direct—
Record, p. 254, l. 32–34.
(*f*) Has about 5,000 acres of coal.
Koch.
Direct—
Record, p. 281, l. 43, 44.
(*g*) Is equipped with electrical mining machinery and haulage.
Koch.
Direct—
Record, p. 281, l. 45, 46.
Record, p. 295, l. 7–9.
(*h*) Has a 1200 ft. steel trestle running from the mine through the yards of the B. & O. R. R. at Benwood to large bins for the storage of coal located near the R. R. Co.'s round house.
Koch.
Direct.
Record, p. 281, l. 47–53.

(*i*) Has loading device for loading coal cars on main track and on a siding at the mine also.

Koch.

Direct—

Record, p. 281, l. 53.

Record, p. 282, l. 1, 2.

(*j*) Its trade.

Engine one-half and commercial one-half.

Hitchman.

Direct—

Record, p. 253, l. 26–34.

(*k*) Engine coal.

Engine coal must be mined and delivered with regularity and without shut downs that are incident to strikes.

Koch.

Direct—

Record, p. 282, l. 9–23.

(*l*) Lake coal.

The same is true as to mine coal for the lake trade. It can only be mined and shipped while lake navigation is open.

Koch.

Direct—

Record, p. 282, l. 2–5.

Recalled-Direct—

Record, p. 296, l. 8–46.

(*m*) Ships considerable coal locally and to Lorain, Ohio, for the lake trade while navigation on the lake is open—which usually is from the first of April to the first of December.

Koch.

Direct—

Record, p. 282, l. 2–5.

Recalled-Direct—

Record, p. 296, l. 8–46.

(*n*) Vein of coal operated is about 5 feet 8 inches thick.

Koch.

Direct—

Record, p. 282, l. 6–8.

(*o*) Daily output when running in full is from 1800 to 2000 tons.

Koch.

Direct—

Record, p. 282, l. 9–11.

(*p*) Supplies approximately 110 engines daily to the B. & O.

Koch.

Direct—

Record, p. 282, l. 11–23.

(*q*) The Hitchman mine is a slope mine about 900 feet slope and about 80 feet deep vertically.

Koch.

Recalled-Direct—

Record, p. 295, l. 4–7.

(*r*) List of men who signed statement which was filed with the bill October 24, 1907, saying they were satisfied with their employment, their wages and work and would like to remain in the Company's employ.

Pickett.

Recalled-Direct—

Record, p. 336, l. 31–44.

Recalled-Cross—

Record, p. 341, l. 3–51.

Record, p. 342, l. 1–17.

Re-Direct—

Record, p. 342, l. 38–49.

Record, p. 343, l. 1–7.

(*s*) Men were engaged to go to work, and then after having been seen in conversation with Hughes left and failed to report for work

Pickett.
Recalled-Direct—
Record, p. 337, l. 22–36.
Recalled-Cross—
Record, p. 339, l. 43–49.
Record, p. 340, l. 1–24.

(*t*) Street car line runs by the Hitchman and by the Glendale mine, and is the route and means usually adopted by the public in going from Wheeling to Benwood, those two mines and to Moundsville.

Pickett.
Recalled-Direct—
Record, p. 337, l. 37–51.
Record, p. 338, l. 1, 2.
Recalled-Cross—
Record, p. 340, l. 25–29.

(*u*) Real difference between running "Union" and "non-union" at the Hitchman mine.

Daugherty.
Cross—
Record, p. 363, l. 24–50.
Record, p. 364, l. 1–46.
Lewis.
Direct—
Record, p. 518, l. 51.
Record, p. 519, l. 1, 2.

(*v*) Defendants were about to close it down, unless the management consented to unionize it.

McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.

Leonard.
Direct—
Record, p. 429, l. 3–49.
Record, p. 430, l. 1–26.
Record, p. 431, l. 49–50.
Record, p. 432, l. 1–31.
Stewart.
Direct—
Record, p. 470, l. 15–28.
(*w*) Bins are near the B. & O. round house.
Mooney.
Direct—
Record, p. 448, l. 3, 4.

HITCHMAN "NON-UNION" COAL WAS DISPLACED IN LAKE TRADE BY OHIO "UNION" MINED COAL, RESULTANT UPON EFFORTS OF UNITED MINE WORKERS ORGANIZATION TO UNIONIZE HITCHMAN MINE IN SUMMER OF 1907.
Koch.
Recalled-Direct—
Record, p. 296, l. 8–52.
Record, p. 297, l. 1–15.
Upstill.
Direct—
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 487, l. 51, 52.
Record, p. 488, l. 1–33.

HOMES.
Some of the Hitchman men own their own homes—only partly paid for.
Daugherty.
Direct—
Record, p. 356, l. 24–34.

Myers.
Direct—
Record, p. 456, l. 27–49.
Record, p. 459, l. 37–42.
Cross—
Record, p. 460, l. 44–46.

HOUSES BELONGING TO THE COMPANY AND THE USE MADE OF THEM.
Men were allowed to still live in them while they were out on strike in 1903, 1904 and 1906.
Hitchman.
Direct—
Record, p. 253, l. 42–47.
Cross—
Record, p. 257, l. 38–50.
Record, p. 258, l. 1, 2.
Koch.
Direct—
Record, p. 285, l. 41–48.

HUGHES, THOMAS.
(*a*) He was employed in 1907 by District No. 6 as an organizer.
Savage.
Direct—
Record, p. 499, l. 17–20.
(*b*) Visits, acts and words of—
Koch.
Recalled-Direct—
Record, p. 297, l. 32–49.
Record, p. 298, l. 1–4.
Pickett.
Direct—
Record, p. 305, l. 31–51.
Record, pp. 306, 307, l. 1–28.

Cross—
Record, p. 308, l. 46–52.
Record, pp. 309, 310, 311, 312, l. 1–30.
Re-Direct—
Record, p. 312, l. 35–48.
Record, p. 313, l. 1–25.
Recalled-Direct—
Record, p. 338, l. 3–47.
Record, p. 339, l. 1–13.
Recalled-Cross—
Record, p. 340, l. 30–51.
Record, p. 341, l. 1, 2.
Record, p. 342, l. 18–33.
Corns.
Direct—
Record, p. 330, l. 33–52.
Cross—
Record, p. 332, l. 41–51.
Record, p. 333, l. 1–27.
Daugherty.
Direct—
Record, p. 356, l. 17–51.
Record, pp. 357, 358, l. 1–36.
Cross—
Record, p. 364, l. 47–52.
Record, pp. 365, 366, l. 1–22.
Hart.
Direct—
Record, p. 370, l. 6–52.
Record, p. 371, l. 1–14.
Cross—
Record, p. 371, l. 16–50.
Record, pp. 372, 373, 374, 375, l. 1–7.
Jarrett, Albert.
Direct—
Record, p. 377, l. 42–46.
Record, p. 378, l. 1–14.

Jarrett, James.
Direct—
Record, p. 382, l. 41–52.
Record, p. 383, l. 1–22.
Cross—
Record, p. 386, l. 23–52.
Record, p. 387, l. 1–12.
Record, p. 387, l. 34–52.
McKinley.
Recalled-Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Leonard.
Direct—
Record, p. 428, l. 32–47.
Record, pp. 429, 430, 431, 432, l. 1–31.
Cross—
Record, p. 433, l. 44–51.
Record, pp. 434, 435, 436, l. 1–42.
Austin.
Direct—
Record, p. 436, l. 46, 47.
Record, pp. 437, 438, l. 1, 2.
Cross—
Record, p. 438, l. 26–49.
Record, p. 439, l. 1–39.
Knapp.
Direct—
Record, p. 439, l. 43–49.
Record, p. 440, l. 1–46.
Cross—
Record, p. 440, l. 49, 50.
Record, pp. 441, 442, l. 1–51.
Re-Direct—
Record, p. 443, l. 4–12.
Re-Cross—
Record, p. 443, l. 17–22.

Logston.
Direct—
Record, p. 452, l. 18–41.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.
Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–42.
Cross—
Record, p. 460, l. 36–49.
Record, p. 461, l. 1–15.
Popage.
Direct—
Record, p. 466, l. 26–50.
Record, p. 467, l. 1–37.
Stewart.
Direct—
Record, p. 468, l. 28–50.
Record, pp. 469, 470, l. 1–28.
Cross—
Record, p. 470, l. 33–48.
Record, p. 471, l. 1–53.

HUNDT, HERMAN A.
Direct—
Record, pp. 453–455.
No Cross.

ICE HOUSE (B. & O.).
Burned May 22, 1906.
See Lorain Coal & Dock Company mines.
Pickett.
Recalled-Direct—
Record, p. 337, l. 11–21.

Mooney.
Direct—
Record, p. 449, l. 5–21.

INDEPENDENT MINE WORKERS OF WEST VIRGINIA.
See—
Breaking away from Union.
Benefits.
Formation of, by men employed at the Hitchman mine.
Oliver.
Direct—
Record, p. 322, l. 32–52.
Record, pp. 323, 324, l. 1–33.
Cross—
Record, p. 326, l. 27–48
Record, p. 327, l. 1–13.
Jarrett, Albert.
Direct—
Record, p. 375, l. 48, 49.
Record, pp. 376, 377, l. 1–41.
Jarrett, James.
Cross—
Record, p. 385, l. 30–52.
Record, p. 386, l. 1–22.
Record, p. 387, l. 20–52.
Rowand.
Direct—
Record, p. 316, l. 1–5.

IRWIN FIELD, STRIKE IN.
As a result of an effort to organize it.
Lewis.
Cross—
Record, p. 560, l. 10–41.
Record, pp. 561, 562, 563, l. 1–33.
Record, p. 593, l. 31–51.

Record, p. 594, l. 1–7.
Record, p. 605, l. 17–44.
Record, pp. 606, 607, l. 1–30.

Savage.

Cross—

Record, p. 505, l. 1–26.

JARRETT, ALBERT.

Direct—

Record, pp. 375–378.

Cross—

Record, pp. 378–379.

JARRETT, JAMES.

Direct—

Record, pp. 379–383.

Cross—

Record, pp. 383–387.

JOINT INTERSTATE MOVEMENT.

(*a*) Central Competitive Field.

Started with the Chicago Convention of 1898.

Lewis.

Cross—

Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, 542, 543, l. 1–3.

(*b*) Southwest Competitive Field.

Started after the Joint Movement in the Central Competitive States.

Lewis.

Cross—

Record, p. 543, l. 3–26.

(*c*) Rocky Mountain Mining Districts.

U. M. W. of A. tried to establish, but failed.

Lewis.

Cross—

Record, p. 543, l. 6–32.

JOINT MOVEMENTS.
Are held in other States, where there is no Joint Interstate Movement.
Lewis.
Cross—
Record, p. 542, l. 45–51.
Record, pp. 543, 544, l. 1–45.

JOINT SCALE COMMITTEE MEETING.
Is secret.
Lewis.
Direct—
Record, p. 531, l. 44–49.

KNAPP, MARTIN.
Direct—
Record, pp. 439–440.
Cross—
Record, pp. 440–442.
Re-Direct—
Record, p. 443.
Re-Cross—
Record, p. 443.

KNOWLEDGE OF TEMPORARY ARRANGEMENT FOR MINING COAL FOLLOWING EXPIRATION OF SCALE, APRIL 1, 1906.
Defendants had knowledge of company's arrangement with its men to mine engine coal after April 1, 1906, during that national strike, pending agreement upon the national scale between United Mine Workers and operators' association, old scale to be paid at all events and new scale to be paid back to April 1, 1906, if more than expired scale.
Hitchman.
Direct—
Record, p. 253, l. 9–12.

Koch.
Direct—
Record, p. 282, l. 33–51.
Record, pp. 283, 284, l. 1–17.
Record, p. 287, l. 7–50.
Record, pp. 288, 289, l. 1–47.
Daugherty.
Direct—
Record, p. 346, l. 25–51.
Record, p. 347, l. 1–6.
Record, p. 348, l. 37–47.
Rowand.
Direct—
Record, p. 313, l. 39–49.
Record, p. 314, l. 1–46.

KNOWLEDGE OF CONTRACTUAL RELATIONS BETWEEN MEN AND COMPANY.
(*a*) Was in possession of the defendants prior to the attempt in 1907 to unionize the Hitchman mine, and such knowledge has since remained with them and they have such knowledge now.
Koch.
Direct—
Record, p. 285, l. 24–52.
Record, pp. 286, 287, l. 1–5.
(*b*) Hughes had such knowledge.
Daugherty.
Direct—
Record, p. 356, l. 19–51.
Record, pp. 357, 358, l. 1–36.
Hart.
Direct—
Record, p. 370, l. 47–52.
Record, p. 371, l. 1–8.

Logston.
Direct—
Record, p. 452, l. 18–38.
Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–42.
Stewart.
Direct—
Record, p. 468, l. 28–50.
Record, p. 469, l. 1–27.

KOCH, W. H.
Direct—
Record, pp. 272–289.
Recalled-Direct—
Record, pp. 294–298.
Cross—
Record, pp. 298–301.

LAKE TRADE.
What is meant by it.
See Loss.
Koch.
Recalled-Direct—
Record, p. 295, l. 40–51.
Record, pp. 296, 297, l. 1–25.

LEGISLATION.
Brought about by the U. M. W. of A.
Lewis.
Direct—
Record, p. 509, l. 47–52.
Record, p. 510, l. 1–31.

LEONARD, PAUL.
Direct—
Record, pp. 428–432.

Cross—
Record, pp. 432–436.

LEWIS, T. L.
Direct—
Record, pp. 506–535.
Cross—
Record, pp. 535–618.
Re-Direct—
Record, pp. 619–623.

LOGSTON, J. W.
Direct—
Record, pp. 451–452.
Cross—
Record, pp. 452–453.

LORAIN COAL & DOCK COMPANY MINES.
(*a*) Coal was procured from the Lorain Coal & Doc
Company's union mines in Ohio by the B.
O. R. R. Co. and furnished to the Hitchma
Company to be loaded by it under its co
tract with the B. & O. over its tipples an
into its bins and thence into the engines
the B. & O. at the same time that th
Union's officials refused to let the Hitc
man miners continue work during the 19
strike.
This was one of the causes which led the men at th
Hitchman mine to break away from th
Union.
See Breaking away from the Union.
Jarrett, Albert.
Direct—
Record, p. 378, l. 14–43.

Sivert.
Direct—
Record, p. 443, l. 30–46.
Record, pp. 444, 445, l. 1–17.
Cross—
Record, p. 445, l. 22–49.
Record, pp. 446, 447, l. 1–10.
Mooney.
Direct—
Record, p. 447, l. 14–49.
Record, pp. 448, 449, 450, l. 1–7.
Cross—
Record, p. 451, l. 12–39.
Rowand.
Recalled-Direct—
Record, p. 463, l. 5–51.
Record, p. 464, l. 1–10.
Recalled-Cross—
Record, p. 465, l. 3–29.
(*b*) Resumed work between May 16, 1906, and May 20, 1906.
Pickett.
Recalled-Direct—
Record, p. 337, l. 18–21.
Jarrett, Albert.
Direct—
Record, p. 378, l. 23–43.
Sullivan.
Cross—
Record, p. 634, l. 44–52.
Record, p. 635, l. 1–45.

LOSS—ON ACCOUNT OF STRIKES.
See—
Strikes.
Tonnage.

Price.
Stoppage of Mine.
Lake Trade.
Koch.
Direct—
Record, p. 273, l. 46–51.
Record, p. 274, l. 1–6.
Record, p. 275, l. 26–49.
Record, pp. 276, 277, l. 1–15.
Recalled-Direct—
Record, p. 296, l. 47–52.
Record, p. 297, l. 1–15.

1903 Strike	$4,590
	2,652
	$7,242

Koch.
Direct—
Record, p. 275, l. 37–49.
Record, p. 276, l. 1–24.

1904 Strike	$17,000

Koch.
Direct—
Record, p. 276, l. 25–48.

1906 Strike	$22,400
	2,100
	$24,500

Koch.
Direct—
Record, p. 276, l. 49–51.
Record, p. 277, l. 1–15.

Summary—
Loss by three strikes of what would have been the net profit of operations during such periods of enforced suspension.

1903	$7,242
1904	17,000
1906	24,500
Total	$48,742

McKINLEY, J. C.
Direct—
Record, pp. 290–292.
Cross—
Record, pp. 292–294.
Recalled-Direct—
Record, pp. 388–420.
Recalled-Cross—
Record, pp. 420–427.
Re-Direct—
Record, p. 427.
Re-Cross—
Record, pp. 427–428.
Re-Direct—
Record, p. 428.

MINE WORKERS' JOURNAL.
Daugherty.
Cross—
Record, p. 360, l. 47–51.
Record, p. 361, l. 1–19.

MINIMUM PRICE FOR COAL.
One of the objects of the U. M. W. of A. is to unite all employes in and around the mines in this country that the organization may fix a minimum wage scale and that the operator be compelled to fix a selling price for his coal which will admit of his paying this minimum wage to the members of the Union for mining coal.

Savage.
Direct—
Record, p. 495, l. 1–22.
Record, p. 495, l. 44–50.
Record, p. 496, l. 1–28.
Lewis.
Cross—
Record, p. 612, l. 27–51.
Record, p. 613, l. 1–53.

MOONEY, JOHN.
Direct—
Record, pp. 447–451.
Cross—
Record, p. 451.

MOTION AND PLEA OF THOMAS HUGHES.
Record, p. 212.

MOTION AND PLEA OF JOHN MITCHELL.
Record, p. 209.

MOTION AND PLEA OF W. B. WILSON.
Record, p. 212.

MOTION OF PLAINTIFF TO DENY MOTION OF DEFENDANTS TO DISMISS MITCHELL, WILSON AND HUGHES.
Record, p. 216.

MOUNT PLEASANT MINE, FACTS ABOUT.
(In Jefferson County, Ohio.)
(*a*) When opened—1902.
By whom opened—
By same persons mainly as owned and operated the Hitchman mine.
Hitchman.
Direct—
Record, p. 250, l. 11–16.

(*b*) Was opened "Union" 1902.
and
Was run "Union"
and
Hitchman, while in charge of the opening up and operating of the Mount Pleasant mine "Union" dealt with the defendants, Lewis, Sullivan, Savage, Watkins and Rankin as officers of the United Mine Workers in signing up the scale to operate the Mount Pleasant mine under the rules and regulations of the United Mine Workers.

Hitchman.
Direct—
Record, p. 250, l. 17–24.
Cross—
Record, p. 255, l. 41–51.
Record, p. 256, l. 1–5.
Record, p. 256, l. 20–22.

(*c*) During the spring of 1903 and prior to April 1, 1903, the Hitchman mine was operated "non-union" and Hitchman himself was spending the most of his time running the Mount Pleasant mine in Ohio.

These defendants, Lewis, Sullivan, Savage, Watkins, and Rankin, officers of the United Mine Workers, with whom Hitchman dealt regarding the Mount Pleasant mine, threatened to close down the Mount Pleasant mine unless the management would unionize the Hitchman mine.

So the Hitchman mine was unionized April, 1903, resultant upon that threat, and then there was a strike and the Hitchman mine was idle for 51 days.

Hitchman.
Direct—
Record, p. 250, l. 17–41.

MYERS, ROBERT.
Direct—
Record, pp. 455–460.
Cross—
Record, pp. 460–461.

"NON-UNION" DEFINED.
Daugherty.
Direct—
Record, p. 343, l. 19–23.

NOTICES OF MEETINGS.
Held by Hughes in trying to organize Hitchman miners.
See—
Chalk Marks on Pavements.
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
Pickett's Exhibit No. 1.
Pickett's Exhibit No. 2.
Austin.
Direct—
Record, p. 437, l. 9–48.
Record, p. 438, l. 1–3.
Cross—
Record, p. 438, l. 26–49.
Record, p. 439, l. 1–39.
Knapp.
Direct—
Record, p. 439, l. 43–49.
Record, p. 440, l. 1–46.
Cross—
Record, p. 440, l. 49, 50.
Record, pp. 441, 442, l. 1–51.

Re-Direct—
Record, p. 443, l. 1–12.
Re-Cross—
Record, p. 443, l. 15–22.

NO. 8 COAL.
Mined at Hitchman mine on West Virginia side of Ohio River, near Wheeling.
Mined also in Eastern Ohio, in Belmont, Harrison, and Jefferson counties, near Wheeling.
Upstill.
Direct—
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

OLIVER, JOHN.
Direct—
Record, pp. 319–324.
Cross—
Record, pp. 324–327.

OPERATORS' ASSOCIATION.
(*a*) Hitchman Company was not connected with the operators' association which was dealing with the U. M. W. of A.
1903.
Koch.
Direct—
Record, p. 273, l. 38–41.
1906.
Koch.
Direct—
Record, p. 282, l. 28–31.

(*b*) Hitchman Company was not connected with the operators' association at all.

Koch.

Direct—

Record, p. 282, l. 31, 32.

(*c*) Members were competitors of Hitchman Coal & Coke Company.

Hitchman.

Direct—

Record, p. 252, l. 36–46.

(*d*) Lorain Coal & Dock Company was member of.

Excerpt 274.

See—

McKinley's Exhibit No. 1.

(Proceedings of Interstate Convention, 1906.)

p. 132, l. 31.

McKinley's Exhibit No. 3.

(Proceedings of Interstate Convention, 1908.)

p. 235, l. 14.

McKinley's Exhibit No. 4.

(Proceedings of Interstate Convention, 1910.)

p. 358, l. 7.

(Original documents transmitted to U. S. Supreme Court.)

(*e*) Coal bought by Upstill in 1907 to fill contracts of Hitchman Company, which Hitchman Company was unable to fill on account of efforts to unionize Company's mine, was bought from an Ohio "Union" operator, a competitor of the Hitchman Company.

Upstill.

Direct—

Record, p. 477, l. 51.

Record, p. 478, l. 1–3.

Record, p. 482, l. 43–51.

Record, p. 483, l. 1–36.
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

"ORGANIZED" DEFINED.
Daugherty.
Direct—
Record, p. 343, l. 19–23.

ORGANIZED MINE.
Same as "Unionized."
See Unionized Mine Defined.
Lewis.
Cross—
Record, p. 568, l. 24–30.
Re-Direct—
Record, p. 623, l. 5–28.
Sullivan.
Direct—
Record, p. 624, l. 45–49.

ORGANIZERS.
Were secretly put into mine in the spring of 1903.
Koch.
Direct—
Record, p. 273, l. 1–29.
Recalled-Cross—
Record, p. 300, l. 39–51.
Record, p. 301, l. 1–5.
Daugherty.
Direct—
Record, p. 343, l. 27–48.
Record, pp. 344, 345, l. 1–8.

Jarrett, James.
Direct—
Record, p. 379, l. 39–45.
Cross—
Record, p. 383, l. 25–34.
Logston.
Direct—
Record, p. 452, l. 1–6.
Popage.
Direct—
Record, p. 465, l. 40–46.

ORGANIZING.
Admitted reasons for trying to organize "non-union" mines.
Lewis.
Cross—
Record, p. 616, l. 44–52.
Record, pp. 617, 618, l. 1–50.
Re-Direct—
Record, p. 619, l. 12–14.

PANHANDLE DISTRICT OF WEST VIRGINIA.
"Non-union" mines in
Glendale Mine.
Hitchman Mine.
Moundsville Mine.
Elm Grove Mine.
Richland Mine.
Beech Bottom Mine.
McKinley.
Recalled-Direct—
Record, p. 414, l. 31–49.
Record, p. 415, l. 1–33.

Leonard.
Direct—
Record, p. 428, l. 38–47.
Cross—
Record, p. 433, l. 16–19.

PICKETT, E. C.
Direct—
Record, pp. 301–307.
Cross—
Record, pp. 307–312.
Re-Direct—
Record, pp. 312–313.

POPAGE, MIKE.
Direct—
Record, pp. 465–467.
No Cross.

PRICE.
Received for engine and for commercial coal covered by tabulations referred to under Tonnage.
See—
Tonnage.
Strikes.
Cotts.
Direct—
Record, p. 261, l. 47–51.
Record, pp. 262, 263, l. 1–11.
Recalled-Direct—
Record, p. 334, l. 19–24.
Recalled-Cross—
Record, p. 335, l. 39–49.
Record, p. 336, l. 1–10.

RANKIN, LEE.
Not in Union now.
Forfeited his membership.
Savage.
Direct—
Record, p. 501, l. 31–34.

REASONS FOR OPPOSING THE UNION.
(1) Prior to April 1, 1903.
(*a*) Hitchman's experience in running mines union and non-union in Pennsylvania prior to coming to Benwood and opening up the Hitchman mine.
Hitchman.
Direct—
Record, p. 248, l. 20–32.
Record, p. 251, l. 1–16.
Cross—
Record, p. 258, l. 9–17.
Koch.
Direct—
Record, p. 272, l. 35–40.
Record, p. 273, l. 3–5.
(*b*) That experience coupled with the fact that the Hitchman mine was opened up primarily to supply the B. & O. with engine fuel at its yards at Benwood, which business would not admit of arbitrary stoppages and strikes, caused the management to open up that mine non-union.
Hitchman.
Direct—
Record, p. 251, l. 17–28.
(2) After June 12, 1906.
(*a*) Experience with the Union while the mine was run Union from April 1, 1903, when the

mine was unionized, to June 12, 1906, when the mine again started up non-union.

Hitchman.

Direct—

Record, p. 251, l. 29–53.

Record, pp. 252, 253, 254, 255, l. 1–26.

Koch.

Recalled-Direct—

Record, p. 297, l. 22–25.

RESOLUTION NO. 8.

(*a*) Text of.

McKinley.

Recalled-Direct—

Record, p. 414, l. 31–42.

Plaintiff's Documentary Exhibit No. 5, p. 28. (Original document transmitted to U. S. Supreme Court.)

(*b*) Referred to Panhandle District of West Virginia.

McKinley.

Recalled-Direct—

Record, p. 414, l. 21–30.

(*c*) Hitchman mine was one of those intended to be organized under this Resolution.

McKinley.

Recalled-Direct—

Record, p. 415, l. 15–22.

Leonard.

Direct—

Record, p. 428, l. 38–47.

(*d*) The Glendale mine and the Richland mine were also intended to be organized under this Resolution.

McKinley.

Recalled-Direct—

Record, p. 414, l. 13–49.

Record, p. 415, l. 1–48.

(e) Efforts made by defendants to induce Company to agree to again run a Union mine after it started up non-union June 12, 1906, and before Hughes appeared at the mine in the fall of 1907.

Koch.

Direct—

Record, p. 285, l. 50–52.
Record, pp. 286, 287, l. 1–24.

Recalled-Direct—

Record, p. 294, l. 14–48.
Record, p. 295, l. 1, 2.

Pickett.

Direct—

Record, p. 302, l. 47–52.
Record, p. 303, l. 1–21.

Daugherty.

Direct—

Record, p. 358, l. 13–36.

Cross—

Record, p. 364, l. 47–52.
Record, p. 365, l. 1–23.
Record, p. 366, l. 20–22.

Jarrett, Albert.

Direct—

Record, p. 377, l. 42–46.
Record, p. 378, l. 1–10.

(f) Efforts made by some of the defendants who tried to induce Company to re-unionize before Hughes appeared to assist Hughes in his work after Hughes appeared; thus connecting them up with Hughes in the entire scheme.

Daugherty.

Direct—

Record, p. 358, l. 17–36.

"Notices of Meetings."
Austin's Exhibit No. 1.
Austin's Exhibit No. 2.
McKinley.
Direct—
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Hundt.
Direct—
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.

(g) Efforts of Hughes and other defendants were about to be successful at the time the restraining order was granted in the Hitchman case October 24, 1907, so Hughes claimed, and the mine was to be shut down and to be kept shut down until Company agreed to run Union.

McKinley.
Direct—
Record, p. 415, l. 11–33.
Leonard.
Direct—
Record, p. 429, l. 3–49.
Record, p. 430, l. 1–26.
Record, p. 431, l. 49, 50.
Record, p. 432, l. 1–31.
Logston.
Direct—
Record, p. 452, l. 20–33.
Myers.
Direct—
Record, p. 458, l. 35–51.
Record, p. 459, l. 1–27.

Stewart.
Direct—
Record, p. 469, l. 3–14.
Record, p. 470, l. 22–25.

(*h*) Efforts made by defendants to unionize Hitchman mine after the restraining order of October 24, 1907, was granted.

Hitchman.
Direct—
Record, p. 255, l. 9–26.
Cross—
Record, p. 258, l. 34–37.

(*i*) Efforts to unionize the Hitchman mine would still be made if the injunction forbidding it were out of the way.

Lewis.
Direct—
Record, p. 534, l. 17–21.
Sullivan.
Direct—
Record, p. 628, l. 50–53.
Record, p. 629, l. 1–11.
Savage.
Cross—
Record, p. 503, l. 34, 35.

RICHLAND AND GLENDALE CASES BY AGREEMENT OF COUNSEL AND COURT HAVE BEEN STAYED UNTIL THERE IS A FINAL DECISION BY THE SUPREME COURT IN THE HITCHMAN CASE.

The Richland, the Glendale and the Hitchman Companies filed their bills for injunctions in the District (then Circuit) Court of the United States for the Northern District of West

Virginia, and were awarded temporary restraining orders. Temporary injunctions were granted later on in each case and by agreement of counsel and Court further progress in the Richland case and in the Glendale case was stayed until there should be a final decision by the Supreme Court in the Hitchman case, which it was agreed, should be made a test case.

See Plaintiff's Documentary Exhibits Nos. 7, 15, 11 and 16, and decree of November 5, 1910, in the Glendale case, suspending further action in the Glendale case, pending disposition of the Hitchman case, all of which documentary exhibits and the decree mentioned are, as introduced in evidence in the Hitchman case, before the Supreme Court.

(Original documents transmitted to U. S. Supreme Court.)

RICHLAND MINE.

Facts about its men being unionized by Hughes and then shut down.

McKinley.

Recalled-Direct—

Record, p. 414, l. 13–19.
Record, p. 415, l. 1–48.

Leonard.

Direct—

Record, p. 428, l. 32–47.
Record, pp. 429, 430, 431, 432, l. 1–31.

Cross—

Record, p. 433, l. 44–51.
Record, pp. 434, 435, 436, l. 1–43.

ROWAND, B. C.
Direct—
Record, pp. 313–316.
Cross—
Record, pp. 316–319.
Re-Direct—
Record, p. 319.
Recalled-Direct—
Record, pp. 462–464.
Recalled-Cross—
Record, pp. 464–465.

RUN OF MINE.
See—
Scale.
Wages.
Average.
Cotts.
Direct—
Record, p. 263, l. 27–51.
Record, p. 264, l. 1–37.
Cross—
Record, p. 268, l. 29–52.
Record, pp. 269, 270, l. 1–38.
Koch.
Direct—
Record, p. 289, l. 38–47.
Cross—
Record, p. 298, l. 9–50.
Record, pp. 299, 300, l. 1–38.
Pickett.
Direct—
Record, p. 303, l. 9–50.
Record, p. 304, l. 1–26.
Cross—
Record, p. 308, l. 1–45.

Rowand.
Direct—
Record, p. 316, l. 6–43.
Cross—
Record, p. 316, l. 45–49.
Record, pp. 317, 318, 319, l. 1–11.
Oliver.
Direct—
Record, p. 319, l. 30–46.
Daugherty.
Cross—
Record, p. 366, l. 23–46.
McKinley.
Recalled-Cross—
Record, p. 426, l. 25–49.
Re-Cross—
Record, p. 427, l. 44–48.
Record, p. 428, l. 1–17.
Re-Direct—
Record, p. 428, l. 20–28.
Logston.
Direct—
Record, p. 452, l. 11–15.
Cross—
Record, p. 453, l. 1–37.

SAVAGE, GEORGE W.
Direct—
Record, pp. 490–501.
Cross—
Record, pp. 501–506.
Re-Direct—
Record, p. 506.

SCALE, 1906.
Same as 1903 scale which was restored or readopted.
Savage.
Direct—
Record, p. 497, l. 19–24.

SCALE.
See—
Wages.
Run of Mine.
(*a*) For scale signed May 22, 1903, at the close of the strike of April 2, 1903, immediately following the unionizing of the mine, April 1, 1903.
Koch.
Direct—
Record, p. 277, l. 36–50.
Koch's Exhibit No. 3.
(Original document transmitted to U. S. Supreme Court.)
(*b*) For modification of scale on the "Run of mine" price, as part of that settlement of May 22, 1903.
Koch.
Direct—
Record, p. 278, l. 1–51.
Koch's Exhibit No. 4.
(Original document transmitted to U. S. Supreme Court.)
(*c*) For scale signed April 18, 1904, to cover month of April, 1904, the 30-day extension agreed on between the operators and miners in convention, owing to there having been a failure to agree on a national scale for the year beginning April 1, 1904, and after which signing by Koch on April 18, 1904, the men

were ordered out on strike and struck on April 20, 1904, and by which the mine remained idle until June 15, 1904.

Koch.

Direct—

Record, p. 279, l. 1–37.

Koch's Exhibit No. 5.

(Original document transmitted to U. S. Supreme Court.)

(*d*) For scale signed on the resumption of mining June 15, 1904, at the end of the 1904 strike.

See for special modifications.

Koch.

Direct—

Record, p. 279, l. 38–51.
Record, p. 280, l. 1–29.

Koch's Exhibit No. 6.

(Original document transmitted to U. S. Supreme Court.)

(*e*) For scale signed between the Company and its men when work was resumed non-union June 12, 1906, after the close of the strike called by the Union April 1, 1906, and obeyed April 16, 1906.

Koch.

Direct—

Record, p. 280, l. 30–52.
Record, p. 281, l. 1–34.

*Note the special modifications and elimination of everything in the printed form which would show any recognition of the United Mine Workers.

Koch's Exhibit No. 7.

(Original document transmitted to U. S. Supreme Court.)

SCREEN.
at Hitchman mine
is the same as when the mine ran Union.
Daugherty.
Cross—
Record, p. 366, l. 47–50.
Re-Direct—
Record, p. 368, l. 43–47.

SIVERT, JOHN H.
Direct—
Record, pp. 443–445.
Cross—
Record, pp. 445–447.

STEWART, JAMES.
Direct—
Record, pp. 467–470.
Cross—
Record, pp. 470–472.

STOPPAGES OF MINE.
(*a*) Always entail loss apart from the loss of trade.
See Loss.
Koch.
Recalled-Direct—
Record, p. 295, l. 11–39.
(*b*) Affect the ability of a mine to get trade.
Koch.
Recalled-Direct—
Record, p. 295, l. 40–51.
Record, p. 296, l. 1–7.

STRIKE OF 1897.
Lewis.
Cross—
Record, p. 577, l. 1–5.
Re-Direct—
Record, p. 622, l. 27–29.

STRIKES.
While running Union from April 1, 1903, to June 12, 1906.
See
Tonnage.
Price.
Loss.
(*a*) 1903 April 2 to May 23.
Hitchman.
Direct—
Record, p. 250, l. 40, 41.
Cotts.
Direct—
Record, p. 263, l. 12–17.
Koch.
Direct—
Record, p. 273, l. 30–46.
Cross—
Record, p. 298, l. 9–50.
Record, pp. 299, 300, 301, l. 1–5.
Pickett.
Direct—
Record, p. 303, l. 22–50.
Record, p. 304, l. 1–5.
(*b*) 1904 April 20 to June 15.
Hitchman.
Direct—
Record, p. 251, l. 29–53.
Cotts.
Direct—
Record, p. 263, l. 12–17.
Koch.
Direct—
Record, p. 276, l. 42–48.
Record, p. 279, l. 1–51.
Record, p. 280, l. 1–29.

Oliver.
Direct—
Record, p. 319, l. 33–43.
(c) 1906 April 16 to June 12.
Hitchman.
Direct—
Record, p. 252, l. 6–51.
Record, p. 253, l. 1–18.
Cross—
Record, p. 258, l. 37–45.
Cotts.
Direct—
Record, p. 263, l. 12–17.
Record, p. 265, l. 41–51.
Record, p. 266, l. 1–19.
Cross—
Record, p. 266, l. 21–37.
Record, p. 268, l. 29–52.
Record, pp. 269, 270, l. 1–38.
Koch.
Direct—
Record, p. 274, l. 37–50.
Record, p. 275, l. 1–25.
Record, p. 282, l. 23–51.
Record, pp. 283, 284, l. 1–17.
Recalled-Cross—
Record, p. 300, l. 13–38.
Pickett.
Direct—
Record, p. 301, l. 20–49.
Record, p. 302, l. 1–30.
Record, p. 304, l. 6–26.
Rowand.
Direct—
Record, p. 313, l. 29–49.
Record, pp. 314, 315, l. 1–33.

Oliver.
Direct—
Record, p. 320, l. 1–33.
Corns.
Direct—
Record, p. 328, l. 11–49.
Record, p. 329, l. 1–18.
Cross—
Record, p. 331, l. 1–51.
Record, p. 332, l. 1–40.
Daugherty.
Direct—
Record, p. 345, l. 9–51.
Record, pp. 346, 348, 349, 350, l. 1–38.
Record, p. 351, l. 37–51.
Jarrett, Albert.
Direct—
Record, p. 375, l. 14–36.
Record, p. 378, l. 14–43.
Jarrett, James.
Direct—
Record, p. 381, l. 9–15.
Cross—
Record, p. 383, l. 34–49.
Record, p. 384, l. 1–44.
Myers.
Direct—
Record, p. 455, l. 30–48.
Record, p. 456, l. 1–49.

STRIKES.
While running non-union before unionizing April 1, 1903, and since resuming non-union June 12, 1906.
None to date.
Cotts.
Direct—
Record, p. 263, l. 12–17.

Koch.
Direct—
Record, p. 274, l. 33–36.
Record, p. 295, l. 40–42.
Myers.
Direct—
Record, p. 458, l. 18–34.
Popage.
Direct—
Record, p. 466, l. 6, 7.

SULLIVAN, D. H.
Direct—
Record, pp. 623–630.
Cross—
Record, pp. 630–642.
Re-Direct—
Record, pp. 642–643.

SYMPATHETIC STRIKE IN EASTERN OHIO AND WESTERN PENNSYLVANIA.
Called to coerce operators in the Tuscarawas field whose men were on strike.
Savage.
Direct—
Record, p. 496, l. 42–50.
Record, p. 497, l. 1–18.
Cross—
Record, p. 502, l. 49–51.
Record, p. 505, l. 30–53.
Lewis.
Cross—
Record, p. 578, l. 22–49.
Record, p. 581, l. 6–52.
Record, pp. 582–590, l. 1–15, incl.

Sullivan.
Cross—
Record, p. 635, l. 52.
Record, p. 636, l. 1–44.

TONNAGE.
See—
Price.
Strikes.
Trade.
(*a*) For one month before and one month after each strike, both commercial and engine coal.
(*b*) Annual production of mine since 1902, both commercial and engine coal.
Cotts.
Direct—
Record, p. 259, l. 3–44.
Cross—
Record, p. 266, l. 38–49.
Record, pp. 267, 268, l. 1–26.
(*a*) For one month before and one month after each strike, both commercial and engine coal.
Cotts.
Direct—
Record, p. 259, l. 45–49.
Record, p. 260, l. 1–20.
Koch.
Direct—
Record, p. 274, l. 7–50.
Record, pp. 275, 276, 277, l. 1–15.
(*b*) Annual production of mine since 1902, both commercial and engine coal.
Cotts.
Direct—
Record, p. 260, l. 21–51.
Record, p. 261, l. 1–46.

Recalled-Direct—
Record, p. 333, l. 33–47.
Record, p. 334, l. 1–16.

TRADE OF HITCHMAN MINE.
(*a*) Generally.
(*b*) At times of strikes.
(*c*) At the time of the attempted unionizing of the m
in the summer and fall of 1907.

(*a*) Generally.
Hitchman.
Direct—
Record, p. 249, l. 29–45.
Record, p. 253, l. 19–42.
Cross—
Record, p. 255, l. 28–31.

(*b*) At times of strikes.
1903 Strike.
Hitchman.
Direct—
Record, p. 250, l. 38–50.
Record, p. 253, l. 30, 31.
Record, p. 253, l. 40–42.
Koch.
Direct—
Record, p. 273, l. 46–51.
Record, p. 274, l. 1–6.
Record, p. 282, l. 17–19.
1904 Strike.
Hitchman.
Direct—
Record, p. 251, l. 29–53.
Record, p. 253, l. 26–34.
Record, p. 253, l. 34–42.

Koch.
Direct—
Record, p. 274, l. 17–36.
Record, p. 276, l. 25–37.
Record, p. 282, l. 19–22.
1906 Strike.
Hitchman.
Direct—
Record, p. 253, l. 13–25.
Record, p. 253, l. 26–39.
Koch.
Direct—
Record, p. 274, l. 39–50.
Record, p. 275, l. 1–25.
Record, p. 276, l. 38–41, l. 49–51.
Record, p. 277, l. 1–15.
Record, p. 282, l. 22, 23.
Record, p. 282, l. 35–51.
Record, pp. 283, 284, l. 1–17.
Cotts.
Direct—
Record, p. 265, l. 41–51.
Record, p. 266, l. 1–19.
Jarrett, Albert.
Direct—
Record, p. 378, l. 14–43.
Sivert.
Direct—
Record, p. 443, l. 26–46.
Record, pp. 444, 445, l. 1–17.
Cross—
Record, p. 445, l. 22–49.
Record, pp. 446, 447, l. 1–10.
Mooney.
Direct—
Record, p. 447, l. 14–49.
Record, pp. 448, 449, 450, 451, l. 1–7.

Cross—
Record, p. 451, l. 12–39.
Myers.
Direct—
Record, p. 456, l. 11–17.
Record, p. 459, l. 28–50.
Record, p. 460, l. 1–27.
Rowand.
Recalled-Direct—
Record, p. 462, l. 5–48.
Record, pp. 463, 464, l. 1–10.
Recalled-Cross—
Record, p. 464, l. 26–49.
Record, p. 465, l. 1–29.
(*c*) At the time of the attempted unionizing of the mine in the summer and fall of 1907.
Koch.
Recalled-Direct—
Record, p. 296, l. 47–52.
Record, p. 297, l. 1–15.
Upstill.
Direct—
Record, p. 485, l. 5–30.
Cross—
Record, p. 485, l. 34–47.
Record, p. 487, l. 51, 52.
Record, p. 488, l. 1–7.

"UNION" DEFINED.
Daugherty.
Direct—
Record, p. 343, l. 19–23.

"UNION" AND "NON-UNION."
Difference between running.

Daugherty.
Cross—
Record, p. 361, l. 50, 51.
Record, pp. 362, 363, 364, l. 1–46.

UNIONISM.
Net effect of.
(*a*) Men must not strike without permit or approval of officers.
Daugherty.
Direct—
Record, p. 351, l. 12–31.
(*b*) Men must strike if ordered to do so by officers.
Daugherty.
Direct—
Record, p. 351, l. 32–36.
(*c*) Men in 1906 struck on orders of officials, although men wanted to work, and employer wanted them to work, and there was no dispute between them and their employer.
Daugherty.
Direct—
Record, p. 351, l. 37–51.

"UNION" MINED COAL FROM LORAIN COAL & DOCK COMPANY MINE IN OHIO, NEAR WHEELING, SUPPLANTED HITCHMAN MINE COAL FOR B. & O. ENGINES DURING THE STRIKE WHICH WAS ORDERED APRIL 16, 1906.
Myers.
Direct—
Record, p. 460, l. 1–27.
Sivert.
Direct—
Record, p. 443, l. 30–46.
Record, pp. 444, 445, l. 1–17.

Cross—
Record, p. 445, l. 22–49.
Record, pp. 446, 447, l. 1–10.
Mooney.
Direct—
Record, p. 447, l. 14–49.
Record, pp. 448, 449, 450, l. 1–7.
Cross—
Record, p. 451, l. 12–39.
Rowand.
Recalled-Direct—
Record, p. 463, l. 5–51.
Record, p. 464, l. 1–10.
Recalled-Cross—
Record, p. 465, l. 3–29.
Pickett.
Recalled-Direct—
Record, p. 337, l. 18–21.
Jarrett, Albert.
Direct—
Record, p. 378, l. 14–43.
Sullivan.
Cross—
Record, p. 634, l. 44–52.
Record, p. 635, l. 1–45.
Daugherty.
Direct—
Record, p. 353, l. 19–34.
Record, p. 355, l. 22–50.
Record, p. 356, l. 1–16.

UNIONIZING OR ORGANIZING MEN, DEFINED.

Savage.
Direct—
Record, p. 496, l. 32–41.

Lewis.
Cross—
Record, p. 616, l. 44–52.
Record, pp. 617, 618, l. 1–50.
Re-Direct—
Record, p. 619, l. 12–14.
Record, p. 623, l. 5–28.
Sullivan.
Direct—
Record, p. 624, l. 45–49.

UNIONIZING MINE, DEFINED.
See Organized Mine.
"Creating joint relations between the employers and the employees."
Savage.
Direct—
Record, p. 496, l. 32–41.
Record, p. 496, l. 42–50.
Record, p. 497, l. 1–18.
NOTE.—This is done by the officers of the U. M. W. of A. after the men join that organization. Hence by unionizing the men the officials get into position to force their will upon the employer.
Savage.
Direct—
Record, p. 496, l. 32–41.
Record, p. 500, l. 9–20.
Lewis.
Re-Direct—
Record, p. 623, l. 5–28.
Sullivan.
Direct—
Record, p. 624, l. 45–49.

UNITED MINE WORKERS OF AMERICA.
(*a*) Origin of (in 1890).
Lewis.
Direct—
Record, p. 532, l. 17–45.
Cross—
Record, p. 538, l. 5–15.
Record, p. 542, l. 13–44.
(*b*) Absorbed all other organizations for mining of coal.
Lewis.
Cross—
Record, p. 542, l. 13–44.
(*c*) Principles, Procedure and Practices.
McKinley.
Recalled-Direct—
Record, p. 388, l. 3–51.
Record, pp. 389–420, l. 1–22, incl.
Cross—
Record, p. 420, l. 25–50.
Record, p. 427, l. 1–6.
Re-Direct—
Record, p. 427, l. 11–31.
Re-Cross—
Record, p. 427, l. 34–48.
Record, p. 428, l. 1–17.
Re-Direct—
Record, p. 428, l. 20–28.
Savage.
Direct—
Record, pp. 490–501, l. 1–34, incl.
Cross—
Record, p. 501, l. 36–50.
Record, p. 506, l. 1–12.
Re-Direct—
Record, p. 506, l. 14–27.

Lewis.

Direct—

Record, p. 506, l. 29–49.
Record, pp. 507–535, l. 1–41, incl.

Cross—

Record, p. 554, l. 4–51.
Record, pp. 555–565, l. 1–19.
Record, p. 565, l. 34–49.
Record, pp. 566, 567, 568, l. 1–27.
Record, p. 574, l. 9–49.
Record, pp. 575–618, l. 1–50.

Re-Direct—

Record, p. 619, l. 1–51.
Record, pp. 620, 622, 623, l. 1–28.

Sullivan.

Direct—

Record, p. 623, l. 30–49.
Record, pp. 624–630, l. 1–21, incl.

Cross—

Record, p. 630, l. 23–49.
Record, pp. 631–642, l. 1–20, incl.

Re-Direct—

Record, p. 642, l. 23–41.

(*d*) Neither the national organization of U. M. W. of A. nor the district bodies nor the sub-district bodies are incorporated.

Savage.

Cross—

Record, p. 505, l. 27–29.

(*e*) Patterned after the United States Government, and after the State and County and Township Government.

Lewis.

Direct—

Record, p. 522, l. 1–52.
Record, p. 523, l. 1–11.

(*f*) Do not furnish union men to work for an operator who wishes to run a Union mine, *i. e.*, the organization is not an employment agency, but it claims to supervise the men after they are employed, and may prevent their discharge.

Lewis.
Direct—
Record, p. 520, l. 40–51.
Record, p. 521, l. 1–42.
Cross—
Record, p. 587, l. 37–51.
Record, pp. 588, 589, l. 1–35.

(*g*) The closed shop did not exist in the coal mining industry until it was established by contract between the operators and miners of the Central Competitive States as the result of the Chicago Agreement of 1898.

Lewis.
Cross—
Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 618, l. 25–50.

(*h*) Part of the American Federation of Labor, with the largest voting strength of any delegation.

Lewis.
Cross—
Record, p. 553, l. 45–53.
Record, p. 554, l. 1–3.
Re-Direct—
Record, p. 621, l. 1–24.
Savage.
Cross—
Record, p. 502, l. 34–43.

(*i*) Amount of money expended in strikes.
Lewis.
Cross—
Record, p. 560, l. 10–41.
Record, pp. 561, 562, 563, 564, 565, l. 1–33.
Re-Direct—
Record, p. 622, l. 5–14.
(*j*) Largest labor organization in the world.
Lewis.
Cross—
Record, p. 569, l. 40–43.
(*k*) Had about 20,000 members in 1897 when organized.
Lewis.
Cross—
Record, p. 559, l. 36, 37.
(*l*) Membership fell to about 10,000 in 1897.
Lewis.
Cross—
Record, p. 559, l. 37–44.
(*m*) About 300,000 members now.
Lewis.
Cross—
Record, p. 559, l. 31–33.
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.
(*n*) Membership for each year since 1890.
Excerpt 431 (*d*).
(*o*) Aims to organize every mine on the American Continent.
Lewis.
Cross—
Record, p. 569, l. 48–52.
Record, pp. 570, 571, l. 1–15.
Re-Direct—
Record, p. 619, l. 12–14.

(*p*) Districts and their geographical location and number of members.

Lewis.

Cross—

Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

(*q*) United Mine Workers of America consider that those operators that ship coal west should be a part of their Central Competitive Field.

Lewis.

Cross—

Record, p. 571, l. 1–3.

(*r*) United Mine Workers of America sent men into Hitchman Company's employ in 1903 for purpose of secretly creating discontent and organizing the Hitchman Company's men.

Koch.

Direct—

Record, p. 273, l. 1–35.

(*s*) The Hitchman Company after being unionized in 1903 and while running union the mine was idle for 164 days due to strikes called by the Union's officials.

Cotts.

Direct—

Record, p. 263, l. 12–17.

Koch.

Direct—

Record, p. 273, l. 30–51.
Record, pp. 274, 275, 276, 277, l. 1–15.

(*t*) Hitchman Company's reasons for running non-union are the necessity for continuous service in furnishing engine coal and to the fact that shipment for lake trade must be made during

the season of the year while navigation is open.

Under contract supplies coal to B. & O. engines at its Benwood terminal near the bridge crossing Ohio River at Benwood to Bellaire, Ohio.

Hitchman.

Direct—

Record, p. 249, l. 10–49.

(*u*) Hitchman Company is engaged in the lake trade under which coal is contracted to be furnished and must be furnished during the lake season, *i. e.*, usually between April and November.

Koch.

Recalled-Direct—

Record, p. 295, l. 43–51.

Record, pp. 296, 297, l. 1–25.

(*v*) Hitchman Company never had any shut down or suspension even for one day running non-union, neither before the Company was running union nor since when running non-union.

Koch.

Direct—

Record, p. 274, l. 30–36.

"UNORGANIZED" DEFINED.

Daugherty.

Direct—

Record, p. 343, l. 19–23.

UPSTILL, E. A.

Direct—

Record, pp. 472–485.

Cross—

Record, pp. 485–490.

Re-Direct—
Record, p. 490.

WAGES PAID BY HITCHMAN COAL & COKE CO.
See—
Scale.
Run of mine.
(*a*) Same except in one instance and in that instance a little better than the wages paid by mines operating under the United Mine Workers' Scale.
Ever since the mine resumed non-union June 12, 1906, and now.
Cotts.
Direct—
Record, p. 263, l. 18–27.
(*b*) Men were paid the advance wages on April 25, 1906, for the sixteen days they worked loading engine coal before being required by the Union's officials to quit work.
Cotts.
Direct—
Record, p. 263, l. 27–45.
Cross—
Record, p. 266, l. 21–37.
Record, p. 268, l. 29–52.
Record, pp. 269, 270, l. 1–38.
Koch.
Direct—
Record, p. 287, l. 28–50.
Record, pp. 288, 289, l. 1–47.

WAGE SCALE.
How made and against whom enforced.
See Competitive Field Scale.

WARNING WAS GIVEN TO THE DEFENDANTS PRIOR TO THE 1906 STRIKE THAT IF THE MEN WERE CALLED OUT THE MINE WOULD NOT RUN "UNION" AGAIN, BUT WOULD RUN "NON-UNION."

Hitchman.

Direct—

Record, p. 254, l. 35–51.
Record, p. 255, l. 1–8.

Cross—

Record, p. 258, l. 3–8.

Koch.

Direct—

Record, p. 283, l. 27–47.

Rowand.

Recalled-Direct—

Record, p. 462, l. 41–48.
Record, p. 463, l. 1–4.

WESTERN FEDERATION OF MINERS.

Its relation to the U. M. W. of A., and to the American Federation of Labor.

Lewis.

Cross—

Record, p. 554, l. 4–51.
Record, pp. 555, 556, 557, l. 1–20.
Record, p. 599, l. 14–48.
Record, pp. 600, 601, l. 1–9.
Record, p. 601, l. 10–51.
Record, pp. 602, 603, l. 1–35.

WESTERN SUPPLY COMPANY.

Austin.

Cross—

Record, p. 438, l. 6–23.

WITNESSES.

(See Individual's name.)

(*a*) For Plaintiff.

(*b*) For Defendants.

(*a*) For Plaintiff.

Austin, R. G., Record, p. 436.
Corns, Wesley, Record, p. 327.
Cotts, R. J., Record, p. 259.
Cotts, R. J. (recalled), Record, p. 333.
Daugherty, William, Record, p. 343.
Hart, J. W., Record, p. 369.
Hitchman, E. T., Record, p. 248.
Hundt, Herman A., Record, p. 453.
Jarrett, Albert, Record, p. 375.
Jarrett, James, Record, p. 379.
Knapp, M. C., Record, p. 439.
Koch, W. H., Record, p. 272.
Koch, W. H. (recalled), Record, p. 294.
Leonard, Paul, Record, p. 428.
Logston, J. W., Record, p. 451.
Mooney, John, Record, p. 447.
Myers, Robert, Record, p. 455.
McKinley, J. C., Record, p. 290.
McKinley, J. C. (recalled), Record, p. 388.
Oliver, John, Record, p. 319.
Pickett, E. C., Record, p. 301.
Pickett, E. C. (recalled), Record, p. 336.
Popage, Mike, Record, p. 465.
Rowand, B. C., Record, p. 313.
Rowand, B. C. (recalled), Record, p. 462.
Sivert, John H., Record, p. 443.
Stewart, James, Record, p. 467.
Upstill, E. A., Record, p. 472.

(*b*) For Defendants.
Lewis, T. L., Record, p. 506.
Savage, G. W., Record, p. 490.
Sullivan, D. H., Record, p. 623.

YARDAGE.
Rowand.
Re-Direct—
Record, p. 319, l. 13–17.

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Western Federation of Miners now part of.
Excerpt 437 (j).
United Mine Workers in National Convention in 191
took action for the establishing of a minin
department under the jurisdiction of th
American Federation of Labor to contr
the mining industry of the American Con
tinent.
Excerpt 437 (j).

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Federation of Labor, and applied by th
United Mine Workers' organization t
compel men working in or around the min
being members of separate mechanic
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and join the United Mine Workers
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Caused much dissatisfaction, and inquiries of wh
had become of the money.
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BOYCOTT.
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CHECK-OFF SYSTEM.
Was granted to the United Mine Workers of America by the operators of the four states making up the Joint Interstate Movement of the Central Competitive States, *i. e.*, Western Pennsylvania, Ohio, Indiana and Illinois.
Excerpt 245.

CHICAGO AGREEMENT OF 1898.
By it the operators granted an eight-hour day in return for an agreement on the part of the United Mine Workers that the United Mine Workers would protect the operators, parties to the agreement, from the competition coming from the unorganized—otherwise known as the non-union fields—West Virginia being amongst the non-union fields.
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Excerpt 231.
For eight-hour provision.
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Maurer.
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COAL.
Markets for.
All coal after you leave the Pittsburg District goes west.
Mitchell.
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COAL MINING INDUSTRY.
Recognized by United Mine Workers as one of the most important industries in the Country.
Lewis—Joint Interstate Convention of Miners and Operators 1910.
Excerpt 1.
In the United States.
United Mine Workers practically control it.
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CONSTITUTION OF THE INTERNATIONAL UNION OF UNITED MINE WORKERS OF AMERICA.
Some provisions of the.
Excerpts 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381.

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CONSTITUTION OF SUB-DISTRICT 5 OF DISTRICT 6 UNITED MINE WORKERS OF AMERICA.
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Excerpts 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410.

CONTRACT BETWEEN MINERS AND OPERATORS.
Second to none in this country in its importance.
Lewis—Joint Interstate Convention of Miners and Operators 1910.
Excerpt 1.

DEFENDANTS.
Names of some of them appear on Chicago Agreement of 1898, Columbus Day Wage Scale Agreement of 1898 and each Joint Interstate Agreement entered into between the United Mine Workers' organization and operators of so-called Central Competitive Field from 1898 to date.
Excerpts 231, 232, 416, 417, 418, 419, 420, 421, 422, 423.

DISCHARGE OF MAN.
For incompetency or inefficiency.
United Mine Workers insist that the operator shall give such man some other job.
Excerpts 86, 87, 99, 155, 222, 224, 225, 251, 252, 373.

Claimed to be the most practical solution of the labor problem yet discovered by the United Mine Workers of America.
Lewis—Joint Interstate Convention, 1910.
Excerpt 2, 19.
Purposes of and practices under, in detail.
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Contemplates bringing into one convention the operators and miners of every State in the Union.
Mitchell.
Excerpt 245.
Green.
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Excerpts 428 (a), 433 (f).
In the Central Competitive States.
Is a close corporation so far as the four States are concerned, between the miners and the operators.
Chapman.
Excerpts 246, 281, 282.

Operators who are not parties, but whose mines are within Union territory, are required to abide by the scale and rules and regulations of the Union established by the Joint Interstate Movement whether they want to do so or not, or else remain idle.

Excerpts 132, 133, 134.

Entire membership of United Mine Workers determines finally what the miners in Joint Interstate Conventions with operators of certain states may work for, and the miners of those particular states are not allowed to contract on terms that may be satisfactory to themselves and to their employers, unless the terms of the agreement have met, or else meet the approval of the entire body of United Mine Workers throughout the country, which necessarily means the approval of officers high in power who hold the destiny of the United Mine Workers in their hands.

Excerpts 237, 242, 243, 271, 272, 281, 421.

United Mine Workers compelled operators to join the operators' association in return for the operators' association compelling the miners to join the United Mine Workers.

Mitchell.

Excerpts 294, 296, 298, 299, 310.

Denial in 1906 of any unlawful purposes made by representatives of miners and operators as a result of an outspoken declaration of unlawful purposes made by J. H. Walker.

Excerpts 255, 256, 270, 273, 288, 294, 306, 307, 366.

JOINT INTERSTATE CONVENTION, 1910, CINCINNATI.
Was made up of the accredited representatives of Western Pennsylvania operators and miners, the accredited representatives of Ohio operators and miners, the accredited representatives of Indiana operators and miners, the National officers of the United Mine Workers, the Executive Board Members of the United Mine Workers, and the Secretaries and commissioners of the Operators' Associations.
Excerpt 3.
All questions affecting the proposed scale and agreement required to be carried by unanimous vote.
Excerpt 4.
Same rule in 1908.
McKinley's Exhibit No. 3—pg. 16, l. 36–39.
Same rule in 1906.
Excerpt 244.
Miners' Proposition.
See Miners' Propositions.

JOINT INTERSTATE CONVENTION, 1908.
Was brought about after months of work on the part of the Mine Workers' organization.
Feehan.
Excerpt 233.
See also
Operators and Miners in Central Competitive Field.
Illinois Operators and Miners.

JOINT INTERSTATE CONVENTION, 1906.
United Mine Workers tried to enlarge the 1906 Convention so as to take in the miners and operators of the Southwest territory, which

territory had a separate Joint Interstate Movement similar to that of the Central Competitive Field.

Mitchell.

Excerpts 245, 281.

JOINT SCALE COMMITTEE.

Meet in secret session.

Excerpts 67, 68.

LEWIS, T. L.

One of the founders of the United Mine Workers of America.

Excerpt 322.

National Convention of United Mine Workers of 1907 disapproves of Vice-President Lewis' criticism of the adoption at the Special Convention of United Mine Workers in 1906 of Mitchell's plan to effect local or district settlements, instead of a settlement for all operators, or none as Lewis held out for.

Excerpts 333, 353, 428 (a).

LORAIN COAL & DOCK COMPANY.

A party to and represented by Edward Johnson at the following Joint Interstate Conventions.

1910—Excerpt 274.

1908—Excerpt 274.

1906—Excerpt 274.

MEMBERSHIP OF UNITED MINE WORKERS OF AMERICA.

Tabulation of.

See United Mine Workers of America.

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Tabulation of.

See United Mine Workers of America.

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NON-UNION MINES IN PANHANDLE OF WEST VIRGINIA.
In re organization of.
Excerpts 358, 360, 362, 363, 364.

OHIO COAL.
Local consumption does not keep up with the supply, and the only other legitimate market Ohio has is to the west.
Excerpt 302.

OHIO OPERATORS.
Wanted to withdraw from the Convention held at Cincinnati in 1910.
Maurer—Spokesman for Ohio Operators.
Excerpt 136.

OPERATORS AND MINERS IN CENTRAL COMPETITIVE FIELD.
Meet in annual or biennial joint conference, and fix the wages and conditions of employment in the coal mining industry representing a produc-

tion in 1906 of over 100,000,000 tons, or about one-third of all the bituminous coal produced in the United States.

Mitchell—1907 National Convention of United Mine Workers.

Excerpts 315, 428 (a).

Renewal of Joint Interstate Conference urged by United Mine Workers upon the operators of the Central Competitive Field and a convention sought for some time prior to April 1, 1908.

Mitchell—1907 National Convention of United Mine Workers.

Excerpts 315, 331, 333, 428 (a).

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OPERATORS IN ILLINOIS WHO WOULD NOT ENTER THE JOINT INTERSTATE MOVEMENT WERE PENALIZED.

The United Mine Workers' organization made rates that placed them at a disadvantage.

Excerpts 278, 292, 293, 294, 295, 310.

ORGANIZE.

United Mine Workers of America insist that they have the right to organize the mine workers in every state in the Union.

Excerpts 434 (g).

Why the United Mine Workers want to organize all the mines in the country.

Excerpt 435 (h).

ORGANIZERS, USE OF.
Mitchell served notice on the Pittsburg operators that he would stop every mine in the Pittsburg District if he had to fill the mines with organizers in order to get a 20 per cent advance for outside day labor.
Excerpts 253, 291.

ORGANIZERS.
Used to organize Locals.
Constitution of the International Union.
Article I, Section 2.
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ORGANIZERS, FORCE OF.
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Excerpt 317.
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Action of National Convention of United Mine Workers of America, 1907.
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United Mine Workers' organization urged to adopt some plan to organize five non-union mines.
Rankin's Report to 1907 Convention.
Excerpt 362.
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Excerpt 363—Resolution No. 8.
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RESOLUTION NO. 8.
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RESOLUTION NO. 10.
Excerpt 364.
See Panhandle of West Virginia, non-union mines in.

ROOSEVELT, PRESIDENT.
Note to Mitchell and Robbins dated February 24, 1906.
Excerpt 275.

RULES AND CONDITIONS.
The rule prohibiting men from working on idle days should be enforced.
Watkins' Report to 1907 Convention.
Excerpts 359, 395, 410.
Day men may work on idle days when necessary, but such work must be distributed equally amongst the employes.
Excerpts 149, 179.
If cars are not at mine within thirty minutes after starting time in the morning the miners are to go home and not work that day.
Excerpts 150, 167, 178, 187, 217, 257, 258, 259, 290.
If the operator shall so manage his business that four of his employees are out of cutting or drilling when work time comes in the morning, the mine committee may shut the mine down for the next day.
Excerpts 151, 165.

If miner receives a car in time to load it before quitting time he shall load it provided he has enough coal mined to do so; but if as a result the car is derailed the operator must take charge of that car.

Excerpts 158, 162.

Sons of members of United Mine Workers are to be given the preference of going into mines when becoming of proper age.

Excerpts 152, 186, 394.

Each two men shall have two working places in the mine and the operator is not allowed to employ more men until each two men have two working places.

Excerpts 164, 176, 216, 412, 422, 426.

The Union regulates the speed with which the operator may drive entries by providing that the turn shall be uniform throughout the mine, and the same rule operates to control the operator in mining the coal in rooms.

Excerpts 174, 183, 196, 201, 207, 219, 220, 22 230, 413, 422, 426.

If operator insists on machine men cutting places, the operator shall pay for all coal lost by place falling in.

Excerpts 170, 177, 185.

Members of the mine committee are not required to remain at their working places in the mine if while away from their work they are looking after the proper interests of the Union.

Excerpts 197, 414, 422.

A minimum pay for two hours is exacted whether the mine works two hours or not.

Excerpts 147, 157, 161, 193, 421, 426.

Excerpt 232—Columbus Day Wage Scale—See Resolution IV.

Membership of engineers, firemen, electricians and machinists in U. M. W. of A., considered and solidarity of Union insisted on.

Excerpts 199, 313, 422, 428 (a).

Engineers, firemen, pumpers, and other necessary men may work during suspension of work—otherwise during a strike—provided that the operator does not produce coal by non-union labor, and if in addition the operator pays the rate of wages which may subsequently be agreed upon.

Excerpts 153, 159, 163, 168, 180, 188, 198, 206, 214, 228, 422, 426, 428 (a).

Operator must have water out of working place at starting time and keep it out during working hours. Where loaders bail water the operator shall furnish sufficient barrels and pay loader ten cents per barrel for water bailed.

Excerpts 202, 422, 426.

Spike team drivers shall harness but one mule.

Excerpt 203.

There shall be but one loader in each entry.

Excerpts 204, 209.

Operator is given permission to close down his mine if miners fail to observe contract to produce clean coal.

Excerpts 148, 215.

Miner may not be transferred from his place inside to outside the mine unless he consents and in addition unless he is paid inside scale wages.

Excerpts 166, 181, 194, 422.

Work day is eight hours of forty-eight hours a week of six days of eight hours per day.

Excerpt 192.

Excerpt 231—Chicago Agreement 1898—Rule 5.

Excerpt 232—Columbus Day Wage Scale—Resolution III.

Day laborers working at the mine must be members of the Union.

Excerpt 213.

Operators must keep people out of engine room.

Excerpt 229.

Where any company operates more than one mine on the same line of road in the same vein of coal, the work between the respective mines shall be as nearly as business conditions will permit equally divided.

Excerpt 218.

In case of emergency work, if the mine committee approve of the work being done on overtime, the men engaged thereon shall not be required to lay off until their time is equalized with the others working in such mine.

Excerpt 227.

If for any grievance, real or supposed, any of the workmen shut down the mine, each employee shall pay the Company one dollar per day during shut down; and if because of any grievance with any employee, real or supposed, the Company shuts down its mine it shall pay one dollar per day to each workman in and about the mine during such shut down.

Excerpts 226, 238.

RUN OF MINE.
Is 5-7 of the price of Pick Mining—or on a 95-cent scale–.6785 cents per ton.
Excerpts 146, 173, 182, 190, 200.
In Ohio the practice is to pay for it on a screened coal basis. The coal is run over the screen and then the screened coal, the nut and slack are all put together again.
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Excerpts 15, 72, 73, 74, 75.
RYAN RESOLUTION.
Excerpts 280, 340, 350.
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SALARIES OF OFFICERS OF SUB-DISTRICT 5 OF DISTRICT 6.
Go up or down with the scale.
Constitution of Sub-District 5 of District 6, United Mine Workers of America.
Excerpt 407.
SCALE.
Eastern Ohio Scale applied to the Panhandle Counties of West Virginia by virtue of the action of the United Mine Workers' Annual Convention of 1906.
Watkins' Report to 1907 Convention of Sub-District 5 of District 6, held at Wheeling, March 14, 15, 16, 18 and 19, 1907.
Excerpt 358.
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Constitution of District 6, Article II section 1.
Excerpt 386.

The scale of wages agreed on between the United Mine Workers of America as an organization and those operators who meet with the United Mine Workers in Joint Interstate Conventions is not made on the earning power of the men, but is a competitive scale; and that competitive scale is the one that is enforced against operators not parties to the agreement, or else the mine must remain idle.
Excerpts 277, 279, 281, 341.

SCALE, 1910–1912.
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Excerpts 189, 424.
Outside day labor not satisfied with scale for outside day labor must be given an average place in the mine.
Excerpt 191.

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1898 Columbus Day Wage—
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1899 —Excerpt 416.
1900 —Excerpt 417.
1901 —Excerpt 417.
1902 —Excerpt 418.
1903 —Excerpt 419.
1904–06—Excerpt 420.
1908–10—Excerpts 421, 422, 423.
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SHERMAN ANTI-TRUST LAW.
United Mine Workers urged in National Convention by Lewis, President, to aid in the repeal of.
Excerpt 436 (i).

SHOT FIRERS' LAW.
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STOPPAGES OF WORK.
At mine for even a single day involve unnecessary cost in the production of coal.
Excerpts 110, 257.

STORE ORDERS.
Given in place of money because money had run out during the strike of 1906.
Rankin's Report to 1907 Convention.
Excerpts 360, 397, 398, 399.
See Strike of 1906.
See also
Excerpt 370.

STRIKES, NATIONAL.
Policy of United Mine Workers as to.
See National Strikes.
Policy of United Mine Workers in reference to.
See also National Strikes.
Results of some.

STRIKES, COST OF.
See United Mine Workers of America.

STRIKE OF 1906.
Was most bitter in the history of Sub-District 5 of District 6.
Rankin's Report to 1907 Convention.
Excerpt 350.

United Mine Workers' organization gave store orders as benefits because money ran out.
Rankin's Report to 1907 Convention.
Excerpts 360, 397, 398, 399.
See Store Orders.
See also Excerpt 370.
Operators of Panhandle Counties of West Virginia refused to meet the United Mine Workers of America in Joint Convention to sign a scale.
Watkins' Report to 1907 Convention.
Excerpt 358.
Some of the men in the Panhandle district of West Virginia went to work without any Union or without getting a scale signed.
Watkins' Report to 1907 Convention.
Excerpt 358.
Was not settled in Sub-District 5 of District 6 until the last Joint Convention held in Wheeling, July 24, 25, 26 and 27, 1906.
Watkins, President of Sub-District 5 of District 6 U. M. W. of A., in address to Annual Convention of United Mine Workers of Sub-District 5 of District 6, held at Wheeling, March 14, 15, 16, 18 and 19, 1907.
Excerpt 357.
As a result of this strike mines started up non-union in the Panhandle Counties of West Virginia, and the United Mine Workers in Convention in 1907 were urged to organize every mine worker in that section and establish scale rates.
Watkins' Report to 1907 Convention, and its action.
Excerpts 358, 362, 363, 364.

SUB-DISTRICT 5 OF DISTRICT 6.
Had 108 Locals and a paid up membership of 12,500 on March 1, 1907.
Rankin's Report to 1907 Convention.
Excerpt 361.

TABULATIONS.
See United Mine Workers of America.

UNITED MINE WORKERS OF AMERICA.
Constitutional provisions of.
See
Constitution of the International Union.
Constitution of District No. 6.
Constitution of Sub-District 5 of District 6.
Some provisions of the.

UNITED MINE WORKERS OF AMERICA.
Districts of.
May adopt such laws as they deem necessary provided they do not conflict with the International Union.
Excerpt 375.

UNITED MINE WORKERS OF AMERICA.
Sub-Districts of.
May adopt such laws as they deem necessary provided they do not conflict with International and District Constitutions, or agreements entered into.
Excerpts 376, 377.

UNITED MINE WORKERS OF AMERICA.
Is a secret organization.
Has pass-word.
Article I, section 2.
Article XIII, section 3.
Constitution of International Union.
Excerpts 377, 382.

See also
Constitution of Sub-District 5 of District 6.
Excerpt 400.
None but members admitted to meetings of.
Manual. Constitution of District No. 6 United Mine Workers of America.
Excerpt 382.
Manual. Constitution Sub-District 5 of District 6.
Excerpt 400.
Procured Joint Wage Agreements.
Excerpt 433 (f).
See Joint Interstate Movement.
Aim to compel men in and around mine to belong to no union but the United Mine Workers of America.
See Autonomy Resolution.
Aim to be a monopoly and to have all wage agreements expire on the same date, both in the Anthracite and Bituminous fields, and then by strike or cessation of work throughout the entire United States compel compliance with their demands.
Lewis—1907 National Convention of United Mine Workers of America.
Excerpts 323, 324, 325, 334, 366, 386, 391, 402, 403, 428 (a), 429 (b).
Political activity of.
Excerpt 318.
Put operators at a disadvantage who refused to go into the Joint Interstate Movement.
See Operators in Illinois.
Put men in the field to boycott the coal coming from West Virginia.
Excerpt 336.

If strong enough they compel all men at a mine to join their organization, but if not strong enough they work quietly and gradually until they are able to accomplish their end.

Excerpt 343.

Owe their strength as an organization to the check-off which the operators meeting with them in joint Interstate Conventions conceded to them. The operators collect and pay over to the United Mine Workers' officers the money which sustains that organization, and supports its officers, and enables the Union to fight the operators, who consent to that sort of business because they have benefited and hope to benefit more by the efforts of the United Mine Workers' organization to place and keep their non-union competitors at a disadvantage.

Excerpts 245, 311.

Claim they have the right to organize the mine workers in every state in the Union.

Excerpt 434 (g).

Why they want to organize all the mines in the country.

Excerpt 435 (h).

Compelled operators in the Southwest territory to join the operators association in that territory.

See Joint Interstate Movement.

Excerpts 294, 296, 298, 299, 310.

Constantly aim and plan to involve West Virginia and other non-union fields in local or national strikes.

Excerpts 347, 348, 349.

Threatened to stop every mine in the Pittsburg District by filling them with organizers.

See Organizers, Use of.

Man forfeits his membership and must be initiated over again, pay an initiation fee and maybe a fine in addition which may be imposed by the local union if he works in a non-union mine.
Walker—Mitchell.
1907 National Convention United Mine Workers.
Excerpt 329.
See also
Excerpts 371, 396, 409.
Officers may close down mines whenever they deem it to be for the best interests of the Union.
Excerpts 373, 374, 389, 390, 406.
Held a special National Convention in 1906 and failing to effect an agreement with the operators of the Central Competitive Field, the United Mine Workers in their special National Convention determined to sign local or district agreements in the absence of an agreement with the operators of the Central Competitive Field.
Excerpts 319, 321, 331, 333, 334, 335, 336, 337, 338, 339, 340, 342, 344, 345, 346, 347, 350, 351, 352, 428 (a).
Suffered a tremendous loss of membership as a result of the 1906 strike.
Excerpt 320.
Recognize organizing the mine workers of the non-union fields as the all-important problem which confronts the Union.
Excerpt 432 (e).
1907 National Convention passed a resolution declaring for immediate establishment of the initiative, referendum and recall.
Excerpts 355, 356.

1910 Convention took action in favor of solidifying forces with forces of the Western Federation of Miners.

Excerpt 437 (j).

Took action in National Convention of 1910 for establishing a mining department under the jurisdiction of the American Federation of Labor to control the mining industry of the American Continent.

Excerpt 437 (j).

Under threat to withdraw from American Federation of Labor in National Convention, 1911, compelled the American Federation of Labor to grant a charter to the Western Federation of Miners giving to the Western Federation of Miners a status with reference to control of all men employed in and around the mines the same as the control of the United Mine Workers of America.

Excerpt 437 (j).

Urged to aid in the repeal of the Sherman Anti-Trust Law.

Excerpt 436 (i).

Tabulation of Income and Expenditures for year 1906.

Excerpt 327.

Tabulation of Expenditures for 1910.

Excerpt 438.

Tabulation of Income for 1910.

Excerpt 439.

Annual Report of International Auditors showing Receipts and Disbursements for 1910.

Excerpt 440.

Tabulation of Membership of.

Excerpt 431 (d).

Tabulation of Cost of Strikes, declared by.
Excerpt 430 (c).

WAGES OF MINERS.
More than double now what they were when the Chicago Agreement of 1898 was entered into.
Excerpts 145, 262, 263, 264, 428 (a).

WEST VIRGINIA.
Non-union fields and mines are the constant objective of the United Mine Workers of America in their scheme to fasten their monopoly upon the American public.
Excerpt 432 (e).
United Mine Workers of America aim to involve West Virginia miners in strikes.
See United Mine Workers of America.
Arising out of efforts to unionize West Virginia the United Mine Workers have had almost continuous litigation in the State.
Excerpt 316.

WEST VIRGINIA COAL.
Boycotted by United Mine Workers through men sent out to the different coal markets for that purpose.
Excerpt 336.

WEST VIRGINIA OPERATORS.
Are intentionally put to and kept at a continual expense by the United Mine Workers' organization through organizers for the purpose of aiding Union operators by increasing the cost to the non-union operator of the coal produced at his non-union mine and which comes into competition with the Union product.
Excerpt 108.

See Joint Interstate Movement.
Purposes of and Practices under, in detail.

WESTERN FEDERATION OF MINERS.
United Mine Workers of America at their 1910 Annual Convention passed a resolution recommending the solidification of the organized forces now enlisted under the names of Western Federation of Miners and the United Mine Workers of America.
Excerpt 437 (j).
Now part of the American Federation of Labor.
Excerpt 437 (j).

EXCERPTS FROM ORIGINAL DOCUMENTS TRANSMITTED TO THIS COURT NOT IN PRINTED RECORD.

Excerpts from Book entitled "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8-29, 1910."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 4 and as Upstill's Exhibit No. 1. [Record pp. 706, 291, 484, 485.]

(1) "It may be fitting to say at this time, before we proceed with the organization of the convention, to our friends who are here as visitors, to the men in public life and to the great American people through the press representatives who are here, that the eyes of the United States are focused on Cincinnati this week. We have assembled here as representatives of one of the most important industries in the country. We have come here for the purpose of negotiating a wage contract that will directly and indirectly affect half a million men who are wage earners in the coal mines of this country. We have come here for the purpose of negotiating a wage contract to govern an industry whose value cannot be counted in millions, but in hundreds of millions in actual money value. We are here to negotiate a contract the importance of which is second to no other in this country. Every wheel of industry, whether in the mill or the factory or on our transportation lines, revolves as a direct result of the commodity we produce as mine

workers, and the commodity the operators are responsible for placing on the market."

Chairman Lewis.
p. 6, l. 48–50.
p. 7, l. 1–15.

(2) "The joint movement may have its defects; it has its good qualities, and if there are any imperfections in it let us work to remedy them. There is one thing to be said for this joint movement, and that is that to our minds it is the most practical solution of the labor problem we have yet discovered. There may be another solution, there may be another time when we will find something more practical than the method we have adopted in the mining industry; but I am unwilling to give this method up and go to work and experiment with another at this time. In other words, I am from Missouri temporarily, and I must not only be shown, but I must be convinced that there is some other method more practical than this before I am willing to surrender this method for another.

"Let us express the hope that when we leave Cincinnati it will be with an agreement that will be reasonably satisfactory to all concerned, and that it will mean industrial peace in the mining industry of our country for two years from April 1, 1910."

Chairman Lewis.
p. 8, l. 1–17.

(3) "Upon the reconvening of the session Mr. Savage, secretary of the Committee on Credentials, reported as follows:

"The report of the committee is not written out, but we are ready to make a verbal report. The full report will be prepared for the two secretaries. The committee organized and elected Mr. P. H. Penna, chairman, and G. W. Savage, secretary. A motion was made that the accredited

representatives of Western Pennsylvania, operators and miners; the accredited representatives of Ohio, operators and miners, and the accredited representatives of Indiana, operators and miners, be seated in this convention. That was carried by unanimous vote. Another motion was made that the national officers of the United Mine Workers and the Executive Board members and the Secretaries and Commissioners of the Operators' Associations be seated in the convention.

"Mr. Zerbe, Ohio: That they be seated as ex-officio members.

"Mr. Savage: As ex-officio members. We find the approximate number of delegates as follows: Western Pennsylvania, operators 25, miners 140; Ohio, operators 48, miners 140; Indiana Bituminous, operators 25, miners 90; Indiana Block, operators 2, miners 10.

"On motion the report of the committee was adopted."

p. 10, l. 1–22.

(4) "Fourth. That each state be allowed the same number of votes on the floor of the house—four votes on behalf of the operators and four votes on behalf of the miners in each State.

"Fifth. That no vote be declared carried unless upon the affirmative vote of the miners and operators of each State. That upon all questions of mere procedure the ordinary rules of parliamentary procedure, as stated in any standard manual, shall be the rules of this convention; and that in no event shall the rule requiring unanimous vote on all main and principal questions be suspended. Main and principal questions mean all questions affecting the proposed scale and agreement."

Mr. Dagger, secretary of the Committee on Rules and Order of Business and Permanent Organization—under "RULES."

p. 10, l. 39–46.
p. 11, l. 1–3.

(5) Mr. Lewis, for the miners and representatives, presented the following proposition:

MINERS PROPOSITION

"We, the representatives of the United Mine Workers, present to the Operators for their consideration the following proposition:

"1. That all coal be weighed before being screened and paid for on that basis. The mine-run rate in the different districts shall be at least equivalent to the screen coal prices.

"2. An advance of ten (10) cents per ton for pick mining and an equivalent advance for machine mining and a corresponding increase for all day work, dead work, yardage, etc.

"3. That we demand a uniform rate of wages for all classes of inside and outside day labor. Time and a half for overtime, Sundays and legal holidays.

"4. A change in the present eight hour day work day so as to provide for eight hours from starting time until quitting time, or what is commonly known as from 'bank to bank,' with a half holiday on Saturday.

"5. That the contract period shall be for two years from April 1, 1910.

"6. That all local inequalities and internal differences, both as to prices and conditions, be referred to the districts affected.

"7. That the International officials require all coal companies in the Pittsburg District, where new explosives have been introduced, to comply with all the terms of settlement made with the Charleroi Coal Company and the officials of our organization on the explosive question,

by either paying the miners on run-of-mine basis, or granting an increase of $5\frac{1}{2}$ per cent to miners working in wide rooms and 9 per cent in narrow rooms, and that the miners be furnished the new explosives at the same relative cost as black powder, which was formerly used, and where shot-firers are employed the company shall pay their wages, and that the International officers give the matter immediate attention.

"8. There shall be no limit to the amount of deductions for the organization.

"9. That no district under the control of the United Mine Workers be permitted to enter into an agreement to reimburse the operators for any money expended for labor, directly or indirectly, wherein the law says the expense shall be borne by the operators.

"Mr. Lewis: We are ready to hear from the operators."

p. 15, l. 34–42.
p. 16, l. 1–34.

(6) "Mr. Maurer, Ohio, read the following statement:

"The answer of the operators to the proposition of the miners, in order to be thoroughly understood, makes it necessary to recall the history of wage agreements, and trace with brevity the conditions under which we have from time to time met as operators and miners and effected such agreements, so as to show connectedly the factors which have controlled both parties up to the present time.

"In the years prior to any substantial agreement the conditions of the mining industry were very unsatisfactory in their influence upon both the operators of mines and the miners in the various competitive districts. A remedy for this state of chaos was earnestly sought by both parties and resulted in the early '80's in agreements between the operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois. In 1886 the institution of contracts

between miners and operators was effected. These contracts operated with varying degrees of success and failure for some years and until about the year 1894, when these relations were dissolved. The conditions again took on an aspect of demoralization, which continued with varying degrees of intensity, numerous strikes, lockouts and consequent loss in wages and profits and sometimes injuries to property, until in the year 1898.

"During this period the conditions were such, both as to the price received for coal by operators and the price paid to the miners, that it became imperative for the interests of each to re-establish in some form the former agreements. At this time the basing price of the Hocking district was 56 cents per ton for screened lump coal. For a short time immediately preceding that year, the mining rate was 51 cents. The working hours in the districts, parties to the early agreements, were from nine and a half to ten hours per day.

"The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sustained contractual relations with that organization. Some of the more important factors influencing these conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements.

"In order to correct these most harmful conditions a joint convention of operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois, at the solicitation of the miners officials, was called to meet at Chicago in January, 1898. At this convention an interstate joint agreement was established. After a long session of deliberation and negotiation, continuing over a period of about

three weeks, the basing price for mining in Ohio and Pennsylvania was increased from 56 to 66 cents per ton, an advance of practically 18 per cent, and both the existing price and method of screening and weighing of coal was made uniform throughout the entire territory covered by the terms of the contract. As a result of the Chicago convention a representative meeting was subsequently held at Columbus, at which a uniform day-wage scale was established for inside labor. All of these concessions made by the operators were of substantial benefit to the miners.

"In addition to the advance in the price of mining and the other important concessions enumerated, the action of this convention had an effect of the most far-reaching and salutary character, not alone for the mine workers but for the entire labor world, in the recognition of eight hours as constituting a day's labor, this being the first recognition of the eight-hour day by any large body of employers in the United States.

"The granting of the eight-hour day by the operators, after making these numerous other important concessions, was with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting states adequate protection against the competition of the unorganized fields. From year to year they have been called upon to fulfill that promise.

"The operators, parties to that agreement, at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroachments upon them by their competitors of the unorganized fields. The tonnage of the non-union fields entering into the competitive market, particularly of West Virginia and Kentucky, at that time was not so large, as it was aggressive and threatening, the total ton-

nage entering directly into competition from those fields being approximately 600,000 tons. Since, however, coal from this unorganized territory coming into direct competition with Ohio and Pennsylvania has so increased that a fair estimate places this competitive tonnage at 8,000,000 tons, which does not include the tonnage from non-union fields adjacent to the Pittsburg district. The markets in western and northern Ohio, eastern Indiana, and Michigan, from year to year have been encroached upon by coal from the unorganized districts until at the present time nearly 50 per cent of the coal consumed in these markets is supplied from fields operated with non-union labor. To find a market for the union tonnage displaced in the territory named, the mine owners of Ohio and Pennsylvania within the past five years, have made heavy investments and built and equipped large coal docks to secure the markets at the upper lake ports; but these operators now find the non-union coal rapidly commanding a heavy percentage of this market, when, at the time of the Chicago agreement the non-union fields had but a small fraction of this trade, and unless these conditions are corrected the markets so secured will soon be replaced by the tonnage from West Virginia and Kentucky.

"Though in the very heart of the consuming territory, on account of the wide difference between the price of labor in the organized fields of Ohio and Pennsylvania and the unorganized fields of West Virginia, Kentucky and the fields adjacent to the Pittsburg district, Ohio and western Pennsylvania are rapidly losing the markets at their very doors.

"It is evident to any candid observer that such unfair conditions should not be imposed upon the operators and miners of the unionized territory. That the interests of

operators and miners are mutual in every respect does not admit of controversy. Each is equally concerned in rescuing this business from its present peril."

p. 16, l. 45–48.
p. 17, l. 1–50.
p. 18, l. 1–51.
p. 19, l. 1–4.

(7) "Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concessions. It is now, in our view, not only to the interest of the miners, but their duty as well, to do their share to meet these conditions.

"It has been set forth as the controlling reason for an increased price for mining that the cost of living has increased during the past few years. Is it not fair, equitable or reasonable to believe that by making conditions in all competing districts equal, the districts which are parties to this agreement will benefit by a larger number of days employment, and thus the earning capacity of the miners of our district be largely increased?

"We believe this to be a true statement of facts, and therefore call upon you to relieve us as well as yourselves from the unfortunate situation in which we now find ourselves, due to the failure of the miners' organization to keep the faith pledged at Chicago in 1898.

"We therefore insist that your organization place the districts, parties to this agreement, on the same relative

basis as the unorganized districts with which we are compelled to compete."

p. 20, l. 17–42.

(8) "The Hocking District of Ohio is the basing point for this state, and if we were to accept unchallenged the statement made by our friend, Mr. Maurer, in behalf of the operators, the impression would naturally go out that the miners of this country have had their wages advanced from 56 cents a ton in 1897 to 90 cents a ton in the past two years. Let your minds go back to another period in the Hocking District, the winter of 1880, or the fall of 1879, if we must go into history. The miners of the Hocking District received for their labor as miners 60 cents a ton, 75 cents a ton, a dollar a ton, and then back to 80 cents a ton inside of two months. Market conditions caused the fluctuation, and the ability of the miners at that time to take advantage of the market conditions. That was only a temporary arrangement, but from that arrangement was established the mining rate in the Hocking District of 80 cents a ton in the winter and 70 cents a ton in the summer, and that continued year after year until 1884 when the operators of the Hocking District conceived the idea of going into a movement to reduce our wages, and after a strike of eleven months we got a beautiful trouncing at the hands of the operators. Our wages went away down, so far down that neither the miners or the operators could live or make a profit. Out of that condition, which was demoralizing to all, grew the Interstate movement of 1886. That continued, as stated by Mr. Maurer, until 1894, when the operators of the country again concluded they could do better business by running the business themselves, and we had a contest. The result was that it was settled by a compromise and everybody tried to do business the best they could until

1897. The methods of doing business 'as best they could' created another sliding scale. That scale carried with it the sliding of men's wages from one point to another until we struck not 56 cents, but 45 cents in the Hocking District, 51 cents in Eastern Ohio, and different rates all over the country. Then the operators awakened to the fact that they were going into bankruptcy, and we awakened to the fact that we were headed for the poor houses. We engaged in another contest in 1897 and as a result of that contest a compromise was effected, and this present interstate joint movement was re-established."

Mr. Lewis.
p. 21, l. 4–40.

(9) "I don't know whether or not all the business that transpired at Chicago was simply and purely a mutuality. I am not prepared to admit that it was. It was more a question of bargain and sale, we selling our labor at the most favorable conditions we could get you to agree with us upon, and you seeking to buy our labor at the most favorable terms you could induce us to believe you could pay for the labor you purchased."

Mr. Lewis.
p. 22, l. 17–23.

(10) "So far as establishing other conditions at Chicago is concerned, we endeavored to establish a uniform mining rate, at least in the basing points in the several competitive fields, namely, the thin vein district of Western Pennsylvania, the Hocking District of Ohio, the Bituminous District of Indiana, and the Danville District of Illinois."

Mr. Lewis.
p. 22, l. 50, 51.
p. 23, l. 1–4.

(11) "One delegation of operators and miners is absent from this meeting. That is Illinois, and the operators and

miners of that state are absent because they say while they are on the outside they will not come back until we agree to grant them relief, and relief is a peculiar word unless you have it interpreted. I have endeavored to get from the Illinois operators what they mean by relief, just the same as we endeavored to get from some Ohio operators last year what they meant by relief from the present situation. It sounds all right to make the statement. So far as our friends in Illinois are concerned, I said to the official representatives of the operators, 'Come into this movement, and join with us; present all the questions that you want relief from, and we will present a few to you that we want relief from in Illinois, and we will count noses to see who is right and who is wrong.' They are not here."

Mr. Lewis.
p. 23, l. 14–28.

(12) "The real facts are that the operators from Western Pennsylvania and Ohio that are going into the districts the operators complain of resort to the same tactics as the West Virginia operators do to keep the United Mine Workers out of that field."

Mr. Lewis.
p. 23, l. 50, 51.
p. 24, l. 1–3.

(13) "It is not a question with us of seeing how cheap we can work, and it is not a question with you of giving your coal away."

Mr. Lewis.
p. 24, l. 30–32.

(14) "If I have a proper conception of this movement it means the uplifting of the industry. If I have a proper conception of this movement, it does not mean that either operators or miners can publicly say, 'We will organize

West Virginia in order that the miners of Ohio or Indiana can get more work.' That has done more to prevent the organization of West Virginia than anything I know of. Coupled with that is the attitude of Ohio and Western Pennsylvania, probably of Indiana, and I know of some Illinois operators who have gone to West Virginia and have built human fences around their properties. I mean by that that they surround their properties with pickets, men who, even when the organizers of the United Mine Workers want to walk along a county or township road passing through the properties, is met at the property line and compelled to state what his business is before he can walk on the public highway. Men will say that that is not possible in a free country, but I say it is possible. It is possible in some mining districts in this country, and I believe they are in the United States because they are in West Virginia, Kentucky, Tennessee, Alabama and a few places in Pennsylvania."

Mr. Lewis.
p. 24, l. 37–51.
p. 25, l. 1–5.

(15) "It would be interesting for the American public to know how much coal from the screened coal mines is sold as mine run notwithstanding the fact that it is mined and paid for on the screened coal basis. It is hardly necessary to go into a discussion of that, because everybody who understands the mining situation knows that the steam trade of this country is a mine-run proposition. Go wherever you will in Ohio and see the engines coaled at the mines, and you will discover that where the coal is run over the screen and the nut and slack coal run through it is all put back into the bins and put on the engine tender. Of course the operators will tell us—and I do not want to make their arguments either, by the way—that

they are paying the equivalent of mine-run when they are paying on a screened coal basis at the present price. We are willing to admit that it was sought to fix the equivalents on that basis, but in order that there will be no argument about the equivalent we are ready to wipe out the screened coal basis, wipe out your equivalents, and go on the run of mine basis in order that there may be no argument about that."

Mr. Lewis.
p. 25, l. 31–49.

(16) "There is another reason and we all recognize the force of it. If the operators of this country are not willing to get together to get living profits on their investments the mine workers of this country are not responsible, and we are not going to be parties to a condition that keeps us down to a point where we cannot meet our honest obligations and pay our debts out of the wages we receive for our labor. We want to say, and we say it kindly but positively to the gentlemen on the other side of the house, 'Get together and organize, not only in Ohio and West Virginia—and I know a lot of you have influence enough over there, if you do as much work as we do to organize them."

Mr. Lewis.
p. 26, l. 20–30.

(17) "Our third demand was for a uniform rate of wages for all classes of inside and outside labor, and time and a half for overtime, Sundays and holidays. Why do we want uniform wages for different classes of outside labor? What do we mean by uniformity? We have, generally speaking, a uniform scale for inside day labor of different classes, but for outside labor we haven't. We are unwilling to see one operator operate his mine and pay

a dumper a certain rate of wages, and another operator who is his competitor in an organized district, selling his coal in the same market, pay a dumper in a mine of the same capacity a less price for his labor. What is true of the dumper is true of the engineer, the trimmer, and all the men who work on the outside of the mine."

Mr. Lewis.
p. 26, l. 31–43.

(18) "Our eighth proposition is 'that there shall be no limit to the amount of deductions for the organization.' We mean by that that there shall be no restriction on the amount of deduction we ask from our wages to turn over to our organization. It is true that in some of the districts there is no limitation, but in other districts there is a limitation. And while I am not one of those people who believe in organizing West Virginia to close up their mines, I am one of those people who believe in organizing West Virginia in order that the operators of the Central Competitive Field as well as West Virginia operators can get better returns on their investments, and in order that we can get better returns for our labor. If we are unable to get the operators to co-operate, to get the West Virginia operators to come into the joint movement, as was originally intended in Chicago, the only other method we have is to spend our money to organize that state and enable the operators to do business."

Mr. Lewis.
p. 27, l. 49–51.
p. 28, l. 1–13.

(19) "I believe every man sitting here today will admit that this method of settling our differences has been mutually advantageous; that it has worked for the good of the industry and has provided the best way of arranging our wage contracts. As a result of it improved conditions

of employment and increased wages have come to the miners, and I believe better returns on their investments have come to the gentlemen on the other side of the house. I believe it was the method by which the coal industry was put on a paying and profitable basis. I do not think any man here wishes to resort to the old method, and I do not believe there is an operator in the Central Competitive Field who has a contract with the United Mine Workers of America who would want to resort to the old method that brought about such bitter experiences and such unprofitable returns."

Mr. Green.
p. 29, l. 28–41.

(20) "Our friend, Mr. Maurer, in the well prepared statement he has submitted to this convention, referred to an obligation he claims was assumed by the United Mine Workers of America in the meeting at Chicago in 1898. Mr. Chairman and gentlemen, we agreed that to a certain extent that was right; but I do not believe it was ever understood that one party to this contract was obligated exclusively to carry out that promise. I believe it was intended to be a mutual understanding and that both sides would co-operate in trying to organize West Virginia and other non-union districts in order to extend this businesslike basis of adjusting our differences to those fields.

"Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the

attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia.

"Is the fact that we have spent hundreds of thousands of dollars appropriated from the small earnings of our people in the Central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does not that show that we have honestly, sincerely and diligently attempted to redeem it? I believe, gentlemen, that if the operators had done one-half as much as the miners have done, if they had even co-operated with us in what we have done, West Virginia would be organized and the operators and miners of that state would be here today participating in this joint movement."

Mr. Green.
p. 29, l. 47–51.
p. 30, l. 1–31.

(21) "You on the one side have had your price of labor to consider; we have had the cost of transportation of your coal to market, where it is brought into competition with the product of other interests to consider. During this period of time your wages have remained the same; but the price of coal and the opportunity to market it from the districts of Western Pennsylvania and Ohio have been reduced. It is admitted by your president that the increase from competitive states has been much greater than the increase from other states that are recognized in this convention today."

Mr. W. P. Murray, Ohio.
p. 35, l. 40–44.
p. 36, l. 1–5.

(22) "We are unwilling that the non-union operators and miners of West Virginia or of any other coal field shall set the standard of prices and the standard of living for the intelligent operators and miners engaged in the mining industry in the states that are represented here. I believe that is the honest opinion of all of the operators who are present. It is unnecessary for me to refer to the fact that many of the operators who are represented here in this joint conference have interests in West Virginia and in other non-union coal fields whose products are going into the markets they are complaining of. It is true that they have contributed, with the other operators who are engaged in the industry in those states and districts, to keep the organization from obtaining a hold or becoming a factor in the industry in those fields of which they complain. If they will withdraw their objections to the establishment of the organization in those fields, I am sure they would not be confronted with those conditions, and we would be able to remove the evil in a very brief time. The practices resorted to by the non-union operators of West Virginia are un-American."

Mr. Feehan, Pennsylvania.
p. 42, l. 32–51.

(23) "If we were regulating the selling price of the product, I am sure we would not trouble the operators with our demands, but we would immediately force the consumer to pay an amount for coal that would allow those who produce it to live as respectable American working men should live."

Mr. Feehan.
p. 43, l. 10–15.

(24) "but I do propose to discuss that upon which every wage agreement must be made, and that is the best price that can be secured for the commodity you produce. A wage scale can be based on no other foundation."

Mr. Maurer, Ohio.
p. 44, l. 35–39.

(25) "To a greater or lesser extent these agreements become in the end a partnership."

Mr. Maurer, Ohio.
p. 44, l. 42–44.

(26) "We have a condition confronting this convention as grave as confronted the convention that met in Chicago in 1898. We have this great tonnage from the unorganized fields of West Virginia and Kentucky that is absolutely taking away from us our markets and taking away the employment which belongs to you. It is a condition that not one of us must meet, but that both of us must meet, not only for our protection but for your protection as well. The cost of living is only incident to it, and the mine-run basis is only incident to it. Every man who swings the pick will agree with me that we can pay you no more for mining coal than we can get for the product of your labor. And I am going to put up to you, I am willing to concede to this convention that West Virginia is not organized; that for ten or twelve long years the miners have done everything in their power to organize that field, and that they did it diligently and earnestly is admitted, nevertheless that field today is unorganized. Nobody is to blame. Neither the operator nor the miner is to blame for that condition; but it is a condition that we must meet and each one bear his share of the burden. Eight million tons of the coal from that unorganized state is today taking away from you the product of your labor, and taking away from the operator every cent of

profit he ever had in the business. You cannot correct that. You may say to us, 'You must get together and agree upon prices; you must get the West Virginia operators in and agree upon a price.' Why, every man who stands here knows that if the operators in the State of Ohio attempt it they do so in violation of the Valentine law and that the penitentiary stares them in the face. Every miner here knows that if in the States of Ohio and West Virginia the operators were to attempt anything of the kind, they would violate, not only the Valentine law of Ohio, but they would violate the Sherman Anti-trust Law. It is easy to tell us what to do, but you should also tell us how to do it. Does any miner here believe that the operators of the State of Ohio have not tried to get the best price they can for their commodity? We have some interest in our business, we have our money invested in it, and I assure you that for two years the miners and the railroads have got every cent there was in it, and more too."

Mr. Maurer, Ohio.
p. 45, l. 3–40.

(27) "However, we stayed in the market, we gave you employment. Now, it is up to the miners of this state to meet those conditions and bear their share of that burden. I want to tell you here that if the miners of the State of Ohio insist on an increased price of their coal they will lose every bit of business they have on the Great Lakes. You have already lost your commercial business. Who supplies Michigan today with commercial coal? Who supplies Detroit? Who supplies Toledo? Who supplies Marion? Who supplies Columbus, right in the heart of the Hocking District? Who supplies Eastern Indiana? Who supplies all of Western Ohio? Tell me, tell me you miners from the Hocking Valley who have seen your mines lay idle while West Virginia coal in train

load lots has gone past your mines! Tell me you miners in Eastern Ohio who have stood idly by and watched Fairmont coal in train load lots taking your markets! Ninety per cent of that market is supplied by West Virginia coal from the non-union fields. I say to you the cost of living does not enter into this. I say to you these other elements did not enter into this. I say to you that the best price we can get for our coal under the competitive conditions will not admit of it.

"You miners who mine coal in the State of Ohio, and, if you please, in Western Pennsylvania, know that every bit of the trade I refer to was formerly supplied by Ohio and Pennsylvania even down to the gas business, but it is now supplied by West Virginia."

Mr. Maurer, Ohio.
p. 46, l. 16–40.

(28) "If it is a partnership, deal with it as a partnership."

Mr. Maurer, Ohio.
p. 46, l. 46, 47.

(29) "We both have a condition confronting us, and as long as West Virginia is in the field with her increased production and her low cost of mining you have got to put us on a competitive basis or you have got to lose your business."

Mr. Maurer, Ohio.
p. 47, l. 3–7.

(30) "I appeal to you in all fairness, I appeal to you as fair-minded men engaged in a common purpose, and that purpose is to find a market for your commodity, to bear a share of this burden."

Mr. Maurer, Ohio.
p. 47, l. 13–16.

(31) "Now the argument is made that we ought to turn our attention to West Virginia and stop the competition from that state. I admit that argument is good; but in order for that argument to have strength it is necessary for the operators at home to stop the kind of guerilla warfare they have among themselves."

Mr. Lewis.
p 48, l. 18–23.

(32) "Mr. Maurer has very well said—and I am glad he has brought the subject up—that we say to the operators, 'Get a better price for your coal in order that you can pay us a better price for our labor.' Then he supplements that statement, and very properly, by the statement that if they were to organize to get a better price for their coal they would be haled into court under the provisions of the Valentine law of Ohio and possibly sent to the penitentiary. Probably we would too. He supplements that statement by asking us to tell them how to get a better price for their coal. I am going to tell you. First, stop making war on the railroads. The poor fellows need help! And this proposition is going to be no joke. I recognize what the mining industry is; I recognize that it is more important than transportation. I recognize that the Valentine law of the State of Ohio was put on the statute books by a lot of political demagogues who believed they were working in the interests of the dear people—and they did it once for the dear people and about twenty times for themselves! I recognize that this industry does not occupy the plane among the industries of the country that it ought to occupy, because we have met in joint conventions year after year and discussed our wage relations instead of devoting some of our time to going out and telling certain people to keep their hands off our business.

"The railroad companies of this country say to the mine owners, 'We want our fuel at a certain rate.' The mine owners, in order to get a part of the fuel trade of the railroads, put down the prices in some instances to cost, not because of competition, but because of your desire to get a part of that trade. Then after securing a part of that trade the official representatives of the railroads are in so close touch with the leaders of the manufacturing industries of our country that the steam trade, as we call it, buys fuel almost at as cheap a price as the railroad company. Then in order to make ends meet somebody must pay a better price, and it is usually the domestic consumers, the masses of the people. And that is where the political demagogues get their work in, because they are the people who have votes and that is why they have anti-conspiracy laws placed on the statute books.

"That is not the only phase of it that hurts us. In order to crowd out somebody or in order to get a better price for coal going into the markets our friends on the other side, finding that the miners' contract is signed on this end, that the railroads are insisting on a lower price on the other side, seek to get a readjustment of the freight rates in order that they may increase their returns on their investment. What is the result? They haul the railroads before the railroad commission or before the Interstate Commerce Commission and secure a readjustment of freight rates as was done in Ohio recently when the rate was made 20 cents a ton lower than it was last year. Of course that makes a railroad feel good! The railroads, like the rest of us have more or less resistance in their makeup against what they call unreasonable demands. They go into the courts, and the operators will very probably say that while they have a decision from the Ohio Railroad Commission the chances are it will not become

operative for a year or two because the railroads will fight it in the courts, the operators will do the same, and they will all spend money in legal fees that should go to paying our wages and go to giving you returns on your investment. It is true that that is what is transpiring, because you men deluded yourselves into the belief that the railroads are going to hold a dividing line along the Ohio River. Don't you think they will readjust the rates going over to West Virginia? Certainly. There is a well-founded suspicion in the minds of most men that the railroads have an indirect interest in the mines, not only in West Virginia, but in a great many other coal producing states. The railroads in Illinois have advanced freight rates 10 cents a ton on all of the coal to be handled there the coming year. The Illinois operators will probably meet us in conference, and they will say, 'We must get relief because the railroads have put on an increased rate of 10 cents, and you must meet the issue.' Of course we must meet the issue, no matter what we get. We are going to meet it. We are going to insist upon an advance in wages. We are going any length to enable you to get a better price for coal than you have been receiving; but we do not want so much competition in your own ranks. You should not come in here until you come, as they say in court, with clean hands on your own proposition."

Mr. Lewis.
p. 48, l. 38–51.
p. 49, l. 1–51.
p. 50, l. 1–11.

(33) "I am ready to admit with him that any system that sells to the big consumer, who can afford to pay a big price, a commodity at cost, or less than cost, and then in order to make up the deficiency taxes the little fellow who

cannot afford to pay a price larger than it would be necessary under ordinary circumstances, is wrong."

Mr. Penna.
p. 50, l. 42–48.

(34) "The very purpose of the union is to increase the price of labor, to reduce the hours of labor, and then when that is done in this meeting we go home and there are attempts made, and often enforced, that further increase the cost. That is the very purpose of unionism. It has no right to life on any other plane than that, or least we have never discovered it. It has no object in existing that we know anything about except to increase wages and decrease hours of work, and it has been successful in doing it. It is also a fact that not more than one-half of the miners of the United States are unionized. Those who are not unionized work more hours, perform more labor for less money, and as a result throw on the market a cheap product. Those are the non-union men, those are the men who are our mutual foes. They are your foe, and as long as you pursue a policy of trying to get more from the operators in the territory that is unionized, getting more directly and getting more by indirect methods, you are furnishing an inducement to the non-union miner and to the non-union coal operator to remain in that position, because they are better able to take your trade, they are better able to take our markets, they are better able to get your work, and the operators are better able to get our profits."

Mr. Penna.
p. 51, l. 6–26.

(35) "It is time for you to step up with us and say to those men in West Virginia, 'You will either decrease your hours of labor and increase your wages to meet these conditions or we will meet them.'"

Mr. Zerbe.
p. 60, l. 20–23.

(36) "There are three things that are the cause of present conditions—too high cost of production, discriminating freight rates, and the low prices caused by competition with non-union fields."

Mr. Chapman, Ohio.
p. 61, l. 18–20.

(37) "It is an admitted fact that there is a difference today of between 40 and 50 cents per ton in the cost of production of coal in the union fields of Ohio and the non-union fields of the trade east and south of us in West Virginia, Kentucky, Tennessee and Alabama, and three of those states, gentlemen, are competitors in the markets of Ohio Coal—West Virginia, Kentucky and Tennessee."

Mr. Chapman, Ohio.
p. 61, l. 41–47.

(38) "The production of West Virginia for 1907 was 40,043,311 gross tons, 44,091,000 being net tons. In 1908 the production was 44,091,000 net tons. In 1909 the production was 44,495,000 net tons."

Mr. Chapman.
p. 62, l. 17–20.

(39) "Ohio's production for 1907 was 32,365,949 net tons; in 1908, 26,287,800 net tons, and in 1909, 27,756,172 net tons."

Mr. Chapman.
p. 62, l. 33, 34.

(40) "There are some more interesting statistics connected with this proposition. The following are the numbers of days the miners worked in West Virginia during the years from 1904 to 1909: 1904, 209; 1905, 213; 1906, 237; 1907, 234; 1908, 211; 1909, 192; making an average of 216 days of ten hours per day, or a total of 2,160 hours worked each year. Reduced to eight hours per day would

be an average of 270 days each year. Ohio worked in 1904, 164 days; 1905, 171; 1906, 175; 1907, 204; 1908, 157; 1909, 165 days, an average for the six years of 173 days, or ninety-seven days less than the average work in West Virginia on the eight-hour basis."

Mr. Chapman.
p. 62, l. 44–51.
p. 63, l. 1–3.

(41) "Now gentlemen, it is useless, after the discussions that have taken place here by the gentlemen who preceded me, to discuss at any great length the market that the non-union fields have taken from Ohio in the past. It has been well said that they are putting coal into Columbus, into Michigan, into Detroit, taking the markets that heretofore have been enjoyed by Ohio coal. In the city of Athens, Ohio, which is within three miles of several of the large producing Hocking Valley mines, West Virginia coal is being sold. The gentlemen who are familiar with the situation have informed me that over 2,000 tons of West Virginia coal was sold there between the first of September and a short time ago. Even in the town of Logan, one of the points where Hocking Valley gathers its trains to start its coal out to the markets they have, West Virginia coal is taking that market. The gentlemen who were in the Toledo convention and returned on the Hocking Valley train, if they had their eyes open, would have seen full solid trains of Norfolk and Western coal passing up over that road to Toledo. There was not a single car of Hocking Valley coal in the trains. At the town of Bowling Green, twenty miles south of Toledo; when I came through a few weeks ago, I saw every car of coal standing on the side tracks were loaded with West Virginia coal.

"Think of the proposition, gentlemen! Toledo, the central point at which several Ohio coal roads bring every-

thing, and 60 per cent or more of the coal being consumed there is from West Virginia! The Pennsylvania people have a road coming in there, the Wheeling and Lake Erie have a road coming in there, the Toledo and Ohio Central goes in there, the Hocking Valley goes in there, and the D. T. & I. goes in there on a direct line. Now just consider that proposition for a minute, and is it any wonder that Ohio coal operators and interests are in the condition they are today with that state of affairs?

"It was well said by Mr. Lewis and Mr. Penna that people buy their fuel where they can buy it cheapest. I am not through with this proposition. I want to bring you to the city we are now holding this convention in and give you a few figures. In 1897 Pittsburg shipped by river, 1,401,000 tons of coal to the city of Cincinnati. The Kanawha region shipped by river 717,000 tons of coal. The Kanawha fields shipped by rail 704,000 tons. The other interests from West Virginia, Kentucky and Tennessee shipped here 275,400 tons. Now we will come to the year 1908.

"Pittsburg District shipped 535,000 tons to the city of Cincinnati in 1908 as against 10,401,000 in 1897. Kanawha shipped by river 867,000 tons in 1908, as against 717,000 tons in 1897, and Kanawha shipped by rail in 1908, 1,848,000 tons, as against 462,000 in 1897. The Pocahontas District, the Tennessee and Alabama fields shipped in 1908 by rail 1,512,000 tons to the city of Cincinnati as against 275,400 in 1907.

"Gentlemen, do you need any more statistics of this kind to show where the coal trade of Ohio and Pennsylsylvania is going? I do not want to worry you, but I have some more statistics that are interesting.

"Mr. Lewis: Go ahead.

"Mr. Chapman: I will now present the lake tonnage figures:

West Virginia—1901, 739,011 tons, 12.73 per cent;
1907, 3,249,505 tons, 19.02 per cent;
1908, 3,521,149 tons, 23.98 per cent;
1909, 3,793,517 tons, 25.61 per cent.

"Poor Hocking Valley, gentlemen, makes a bad showing.

"The following are the figures for Hocking Valley:

1901, 1,513,646 tons, 26.08 per cent;
1907, 2,125,692 tons, 12.64 per cent;
1908, 1,378,465 tons, 9.41 per cent;
1909, 1,199,670 tons, 8.10 per cent.

"The following are the figures for all Ohio:

1901, 1,824,507 tons, 21.37 per cent;
1907, 4,186,571 tons, 24.89 per cent.
1908, 3,484,845 tons, 23.81 per cent;
1909, 3,111,256 tons, 21.02 per cent.

"That shows what is becoming of Ohio's lake trade that we have heretofore enjoyed. These figures speak for themselves as to Ohio's condition."

p. 63, l. 20–51.
p. 64, l. 1–40.

(42) "Now I am going to say something that isn't very pleasant, but I will make the statement all the same. I have been told that some of the best lawyers in the country claim that your organization is liable under the same laws, if prosecuted, for combination in restraint of trade and that your check-off, although agreed to locally, is absolutely in violation of the law. These lawyers said they would be willing to take a case with their fees contingent upon their success in winning it."

Mr. Chapman.
p. 65, l. 3–10.

(43) "You made promises in 1898 that you have not kept. You may have tried to keep those promises, but you know what was said and what was done on the floor of the convention in 1898. I was a participant in it, as I have been in the preceding interstate movements. You know what the understanding was, and you know that at every session of every convention that has been held from that time down to the present we have asked you to carry out and make good what you said you would do at that first conference. In my opinion the only way you can ever hope to succeed in putting the union fields on a competitive basis in cost with the non-union fields, the only way you can give your people more work and the other fellows less is to reduce your wages to enable the operators to produce their coal at a cost that will enable them to take the trade. It can be done in no other way. You have tried the other process for twelve years and it has been a total failure; you are weaker now in the non-union fields than you ever were."

Mr. Chapman.
p. 65, l. 44–51.
p. 66, l. 1–9.

(44) "It has been intimated by some of the gentlemen to me—and I took Mr. Lewis' remarks to indicate when he was speaking on the subject of railroad freight reductions to mean this—that should the operators of Ohio succeed in getting discriminating freight rates removed to some extent you would feel you were entitled to part of it."

Mr. Chapman.
p. 66, l. 17–22.

(45) "In 1907 and 1908 the miners earned more money in West Virginia at the prices they were paid there than were earned by Ohio. In fact they earned from one

hundred to one hundred and fifty dollars more to the man. That tells the tale concerning that matter."

Mr. Chapman.
p. 66, l. 27–31.

(46) "'The controlling influence in Ohio has been the competition of West Virginia coals with the domestic product, unhampered by the restrictions that hamper states in which the miners are thoroughly organized, such as Ohio, and also because of the conditions of mining. The coals of West Virginia are said to be mined at about one-half the cost of producing Ohio coals and the West Virginia product has taken the Ohio markets to the full extent permitted by the difference in transportation expenses, leaving Ohio coals only such markets as may be near the mines, and as the means of transportation increases by which West Virginia coals are put farther into Ohio markets, the prospect of the Ohio mines is not bright.'"

Mr. Chapman.
p. 66, l. 40–51.

(47) "It is not surprising that West Virginia is on a mine-run basis. Why? Because a large per cent of all the fine coal that is produced in that State is made into coke. They even crush the lump coal after they produce it to make coke, which is much more valuable product to them and yields them more returns than the raw coal will. We haven't any of those coals in Ohio or Indiana and they have none of them in Western Pennsylvania outside of the coking coal as it is known there."

Mr. Chapman.
p. 68, l. 2–10.

(48) "The demands you make will mean the disruption of the joint movement."

Mr. Chapman.
p. 68, l. 17, 18.

(49) "West Virginia seems to be the stumbling block, the great obstacle in the way of bringing about an adjustment in the wage scale. Yesterday evening I met President Davis of the West Virginia miners' organization in the hotel lobby and asked him how many miners were here. He said there were quite a number of miners' representatives, and I told him I was going to make a proposition today to the operators, in view of the fact that West Virginia has been the subject of discussion here, that the operators and miners had both received a severe scoring, that President Davis and his miners be admitted. We have enough from the other side, from the Pittsburg District and Ohio who have interests in West Virginia to represent that State also for the operators. Let President Davis and his delegates who are here be admitted, become a part of the joint conference, make a scale for them, and then let the operators and miners jointly pledge themselves to go out after the agreement has been consummated and enforce its provisions on the operators who have not come here to be represented. I think in all fairness to both the operators and the mine workers that should be done. They should be given representation or they should not be the subjects of such severe criticism."

Mr. Feehan.
p. 78, l. 7–27.

(50) "I said yesterday that the mine workers of Western Pennsylvania, Ohio and Indiana who were represented here, were not going to permit either the miners or the operators of West Virginia to set a scale of wages for them or a standard of living. We are unwilling to accept their prices or conditions, although I have reason to believe there is not so much material difference as some of you would try to make it appear. I am unwilling, however, that they should be referred to, or that their conditions

of labor or prices should govern the working conditions or the prices of the mine workers of the districts here represented.

"There is one point I want to bring out that has not been made clear, and that is the disadvantage the operators of Eastern Ohio are put to in competing for the markets against the operators who have interests in West Virginia, and that is the character of the veins. In West Virginia it is not an uncommon thing to have them develop from six to ten feet of clean coal. There is no slate to remove; it is easily mined; it is a good grade of coal; it can find a market; and when you take into consideration the cost of producing a ton of that coal compared with the little five-foot vein of coal in Eastern Ohio with its many impurities and its thick slate, and the Pittsburg District, with its weak roof, where in many cases it is difficult to operate a machine, as well as many other natural disadvantages the operators have, herein lies the cause of the competition more than in the cost of labor. The cost of labor is not the important factor that is crowding the Eastern Ohio operators out of the market on the lakes or elsewhere. It is the natural disadvantages that is doing it. There is one advantage the operators in Eastern Ohio have, and that is their geographical situation. They are nearer the lake markets and other markets, and I believe they have an advantage of from 15 to 25 cents a ton in freight rates. I understand that when the decision of the Interstate Commerce Commission goes into effect they will have even greater advantages in freight rates. It is fortunate for them that they have these advantages. Were it not for their advantages in the matter of freight rates I am positive that many of the veins of coal now being worked in Ohio and elsewhere would be abandoned, and they would wait until the big veins with the greater natural advantages in

West Virginia were worked out before they would again operate there. These factors have not been seriously enough considered heretofore."

Mr. Feehan.
p. 78, l. 28–51.
p. 79, l. 1–17.

(51) "A demand has been made for the run-of-mine system. I am not expressing the opinion of the Pittsburg operators now, I am speaking as an individual. If I had the power of the Czar of Russia and could enforce what I wished, I would have all the coal in the United States mined on the run-of-mine basis, provided the miners would be a little less human, provided they would be fair and give us the same grade of coal they are now giving us when on a screened coal basis. That would do away with the trouble. But our experience in years gone by and our experience now is quite the reverse of that. In 1898 we found where we were on run-of-mine our coal was simply shattered and shot to pieces. The increase in fine coal that is going through the screen after run-of-mine is a very large per cent. You know as well as I do that nobody will do work that he does not have to. We are all after short cuts, and after the easy way. The miner is not going to shoot his coal so carefully when he is paid for everything he brings down and loads out, as when he is on a screened coal basis and he knows he will be paid on what comes to him after screening. The kind of coal we want in the Pittsburg District, by reason of trade conditions, is clean, good, large lump coal, and that we must have to retain our trade.

Mr. Schleuderberg.
p. 84, l. 29–49.

(52) "If there are any men going from Western Pennsylvania to West Virginia is it not because they want to

get where some of them at least feel they will be free men, where they will not be subject to the authority of the organization, and subject to the payments that some of them are required to make? Is not that perhaps just as good a reason as any that have been advanced?"

Mr. Schleuderberg.
p. 85, l. 48–51.
p. 86, l. 1–3.

(53) "Every mining locality has certain local markets that are designated as particularly their own. I presume that is true of every district represented in this joint conference. Western Pennsylvania, Ohio and Indiana have markets that are designated as their own. That is proper and right. These markets are contiguous to the railroads traversing their property, and by reason of natural conditions, favorable location, freight rates and other things that are advantageous to them, these markets can be claimed as their own. I think any man must admit that so far as West Virginia is concerned her markets within her borders are very limited compared with the great production of coal in that district. It is an admitted fact that West Virginia must seek a market for practically the entire product outside the borders of that State. Ohio, by reason of her peculiar location perhaps suffers to a greater extent than the other districts. The great markets of the Northwest are sought by both the West Virginia producers of coal and by the producers of coal in Ohio. There is keen competition for those markets, and practically 90 per cent of the tonnage that seeks a market in the Northwest from West Virginia traverses the State of Ohio."

Mr. Green, Ohio.
p. 88, l. 25–44.

(54) "The railway systems of this country are the great consumers of coal, and it is a notorious fact that, notwith-

standing they are better able to pay for the fuel they use than are the men who consume the coal that goes to what is ordinarily known as the domestic trade, these great railway corporations get their fuel cheaper than anybody else who buys coal. There is where a lot of trouble on this proposition is, and I repeat what has been said by my colleagues in support of my proposition, that one way by which you can pay us this advance in wages is to compel these great corporations that are getting their coal at ridiculously low prices to pay more for it. That will prevent you from longer giving away your product to those who are able to pay for it."

Mr. Green, Ohio.
p. 90, l. 27–39.

(55) "There is too much of a tendency existing in the minds of the men connected with the mining industry to see how much coal they can pick out of the hills and convert, as they believe, into value in the form of property or money, and in their anxiety to do it they go to work and take contracts at prices that they should not even consider. As a result some one has to suffer. When some of the operators suffer I do not blame them at all for their efforts to try to convince us we ought to bear the burdens and responsibility and share in the mistakes they have made. If they can convince us we ought to do that, I haven't a single word of complaint to make; but there will have to be more than mere statements made to convince me that that is the correct way of bargaining in selling and buying labor in these joint conventions."

Mr. Lewis.
p. 102, l. 15–28.

(56) "I agree with Mr. Green that the great State of West Virginia is reaching out in every direction. The gentleman that preceded him on the floor from the miners'

side stated that, as far as Eastern Ohio was concerned, we had such a coal that we could not hope to market it, or something to that effect. If we cannot market our coal, what becomes of the 15,000 miners in our employ? That does not apply only to Eastern Ohio coal, but to every ton of coal that is produced in the State of Ohio. Our domestic coal is being supplanted by West Virginia coal. You know what district formerly supplied the great Northwest with its dock coal for domestic consumption—the Hocking district of the State of Ohio. Where is the great supply of domestic coal for the great Northwest coming from today? From the splint coal fields of West Virginia. It is not the cheap coal you refer to, but it is the domestic coal, it is every coal in the State of Ohio that has been supplanted by the product of non-union labor from West Virginia."

Mr. Maurer, Ohio.
p. 104, l. 6–22.

(57) "And I want to say to you that it is not the railroad corporations of the State of Ohio or any other State that pay the lowest price for coal. The lowest-priced coal that was sold in the State of Ohio was the coal that went on the docks to the great Northwest to hold the market in competition with West Virginia coals. When West Virginia named the price, $1.75 f. o. b. docks, Lake Erie ports, either Ohio had to meet it or go out of business in the Northwest. The operators of Ohio met the price and went into the markets and have protected them up to this time. If this is a partnership agreement that condition must be met, and for that reason I say the cost of living is but an incident. The cost of materials for the mines has increased, the cost of iron and lumber and locomotives and machinery has increased; but the price of coal has not increased and

it has not increased because of the ruinous competition from West Virginia and Kentucky."

Mr. Maurer, Ohio.
p. 104, l. 30–45.

(58) "Now the question is this: Do the miners, 60,000 of them in the State of Ohio, who are in partnership with the mine owners of this State, expect to maintain their market or not? I want to say to you in all fairness that if the price of coal in Ohio is increased 10 cents or 5 cents per ton, two years from today the West Virginia competition in Ohio will not be 8,000,000 tons but 15,000,000. Now let's get down to the meat of the cocoanut, and what is it? Is it the cost of living? It is the best price we can get for the commodity we have to sell. It is your commodity and it is our commodity. It is your bread and butter and it is our bread and butter. It does not belong to West Virginia; it is ours. Are you going to stand with us and protect it?"

Mr. Maurer, Ohio.
p. 104, l. 46–51.
p. 105, l. 1–6.

(59) "Keep one thing in mind—keep the facts staring you in the face that for two years your mines have laid idle while West Virginia non-union tonnage took the markets that belonged to you and to us. We stand next to these markets. In order to maintain our markets we on this side invested our money in the great Northwest and built docks to keep the market for you. That market today is in jeopardy on account of the competition from West Virginia."

Mr. Maurer, Ohio.
p. 105, l. 35–42.

(60) "I called attention the other day to the fact of what we believed the railroads of this country ought to do. What was that? That they ought to pay a higher price for fuel. That is not the first time I have talked about that. We have talked higher price fuel to the railroads in public more than all the operators in the United States put together. I don't know what they have talked behind the scenes. I made the statement also, as far as my memory serves me, that the Ohio operators had gone before the Ohio Railroad Commission and had secured a decision reducing freight rates 20 cents a ton from Eastern Ohio to lake points. I pointed out where, in my opinion, the transportation industry and the mining industry ought to be closer together than they are. I pointed out where, in my judgment, the operators should say to the railroad men, instead of having each other hauled into the courts, before railroad commissions and the Interstate Commerce Commission, fighting each other and paying large legal fees, they should get together and the mining industry ought to impress upon the minds of the railroad interests the necessity of paying a higher price for fuel. That is in substance what I said. And if the other interpretation was placed upon it, I am sorry for it, but it does not change my opinion in regard to the matter.

"Now let me tell you something else. In the face of the fact that Ohio has secured a reduction in the freight rates for lake points as against this non-union competition, in the face of the fact that they have secured a reduction of 20 cents a ton, I would not even take advantage of that and say you ought to give us half of that. I said you would probably have to fight that in the courts for a year. I pointed out all of those things in my discussion so there would be no element of unfairness in what I said. This is the first time in a joint conference, so far as I know,

where the operators have undertaken to say I have resorted to unfair methods of discussion. I am sorry that has been said here. That is not my way of negotiating contracts. I tell our people when they are wrong just as quick as I do you."

Mr. Lewis.
p. 109, l. 38–44.
p. 110, l. 1–28.

(61) "So far as the railroad interests are concerned, and so far as I am concerned, if I had my way—and perhaps it is a good thing for the railroads I have not—they would not be able to buy a ton of coal anywhere in the United States for less than $1.25."

Mr. Lewis.
p. 110, l. 44–46.
p. 111, l. 1, 2.

(62) "Mr. Savage, Ohio: I was surprised a minute ago to hear that some of the operators were not in sympathy with the men in trying to get a readjustment of their freight rates in Ohio. I know as one miner we did all we possibly could in giving testimony before the commission in Columbus, and from what I heard then I believed, and I believe now, that the operators were absolutely right in asking for this readjustment. I believe I can assure you that we will help you in every manner that we can to get that readjustment. But we would ask you, on the other hand, if we are willing to help you—and by helping you we agree we are helping ourselves—if you operators from Ohio and Pennsylvania will lend us the same assistance in West Virginia in getting the mining price up so that competition will not prevail. When we ask that what do we find? Operators have told me in years past that they were willing to have the miners organize in Ohio, but they were not willing that their miners should

be organized in West Virginia. We find as great opposition on the part of the operators from this State who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union State. Go down there and practice what you preach in Ohio. Help us get the protection of the law in that State and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that State. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of those men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe those contracts as religiously as the miners in Ohio, Pennsylvania, Indiana or any other State."

Mr. Savage, Ohio.
p. 112, l. 41–50.
p. 113, l. 1–23.

(63) "You men are in a position to get for the product of the mines a fair profit. You are the men who make the prices, and if you do not make the prices it is not the fault of the miners. If the miners had the power to make prices on your product, I assure you Eastern Ohio would not be selling 85-cent coal. As long as you continue to do as you are, you are the people who are responsible. If you want any assistance from the miners to raise the price of coal, we are at your command any time, but we are not going to raise it by taking a reduction in wages or working for the wages we are now getting. That is our position, and I believe you men understand it. As Mr. Lewis has stated

to you, we know that selling coal at 85 cents a ton is not a very profitable business, and as long as you continue to do it you are going to be the losers. It is in your hands to remedy this condition and I hope you will do it or turn over the selling of your coal to the miners. If you do that the railroads of this country will not get 85-cent coal."

Mr. Savage, Ohio.
p. 114, l. 17–34.

(64) "We believe in doing all we can to rectify the wrongs that now exist between the different coal competing states. We believe in the operators in Virginia bringing up the standard of the miners there. If the operators would put their shoulders to the wheel and do what they could to make it possible for us to go over there and talk to them we might be able to do something with them. You may say, 'Oh, you may say we can do that now.' Are you not all members of the great political parties which control the politics of West Virginia? How many of you have appealed through the press of the country against the outrageous assaults and murders of our men? I have never seen a protest coming from you men in regard to the conduct of the operators in West Virginia when they hire men to kill our people, and where the law makers and the law executors of that State sit by and say nothing of the assaults and murders. If you men did half as much as we have done toward organizing West Virginia and making conditions better, I believe there would be a change in the coal industry of this country. But we are not going to compete the way your proposition presents itself; we are not going to compete along those lines until first you have wiped out every vestige of organization there is in this country, and then we are not going to do it. If it were done, from the ashes of the organization you destroyed, would arise another organization more compact and power-

ful that would resist any such thing as that. The law of evolution is working along social and industrial lines, and we must place ourselves in position to accept the inevitable. The miners, like all the working men of this country, through the medium of machinery increasing the productiveness of the working people, have reached the point where we produce more than the world consumes."

Mr. McCullough.
p. 118, l. 49–51.
p. 119, l. 1–27.

(65) "A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one State to another to furnish fuel for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon them burdens in the organized fields that do not exist in the unorganized fields. By reason of the fact that you cannot control in the production of this commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self-defense find it necessary, in order to carry out contracts and fulfill their obligations to those who take this commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated."

Mr. Zerbe, Ohio.
p. 122, l. 21–40.

"We might argue this up one side and down another for a year and we would be no nearer a solution of this proposition. We are, when we get through, right up against the one proposition we cannot get through which has been created by the competition brought to bear against us by the operators and the miners of West Virginia in the unorganized field."

Mr. Zerbe, Ohio.
p. 123, l. 46–51.

(67) "Chairman Kolsem: The question now is on the adoption of the motion to accept the proposition of the miners. If you are ready to vote the Secretary will call the roll.

"Secretary Brooks called the roll of States. The operators of Western Pennsylvania, Ohio and Indiana, voted in the negative; the miners of Western Pennsylvania, Ohio and Indiana, voted in the affirmative.

"Chairman Kolsem declared the motion lost for want of a unanimous affirmative vote.

"Mr. Lewis: I move that the entire proposition be referred to the Joint Scale Committee.

"The motion was seconded by Mr. Schluederberg and carried by unanimous viva voce vote."

p. 125, l. 18–30.

(68) "Mr. Lewis: In order to settle one matter I would like to know whether this is to be an open session. One or two newspaper representatives have asked me. I am not sure whether our Scale Committee meetings have been open or not.

"Mr. Zerbe: I move that the Scale Committee meet in executive session. (Seconded and carried.)"

p. 127, l. 6–11.

(69) Mr. Penna, Indiana: "I am going before this meeting is through, in very many instances, to accuse the miners of a lack of integrity, of absolute dishonesty, and having made the accusation I am going to prove it, and anybody that does not like it will have to dislike it; and if I am guilty, either through misunderstanding or wilfully so, I expect the miners to put it to me just as raw as I put it to them.

"Mr. Lewis: I expect we will."

p. 134, l. 42–49.

(70) "I don't believe in that. We must make up our minds that we are all friends and that we are working together against the common enemy."

Mr. Jones, Pennsylvania.

p. 135, l. 25–27.

(71) "Let us make up our minds that our interests are mutual and are not two sided. We have got to agree here upon a price at which we can market our goods as against the other fellow. Let us feel that we are one in negotiating this wage agreement."

Mr. Jones, Pennsylvania.

p. 135, l. 31–35.

(72) "Mr. Chapman, Ohio: Mr. Chairman and Gentlemen: I have only a few words to say this morning on this mine-run proposition that has been discussed in all the conventions we have held for many years. The reasons why we oppose it have been given. I desire to state, as I did on the floor of the convention that when an investigation was held in the State of Illinois by the operators there they reported that by reason of going on the mine-run basis, their coal had deteriorated in value from 14 to 21 cents per ton. The purpose and object should be to get out of the coal that is produced the kind that will yield

the most revenue in the selling of it to the purchaser. There are districts—as the gentleman who has preceded me knows, many of them in the State of Ohio, where it would be an impossibility upon any basis of mine-run to produce that coal for the markets it has to reach. And I say as one of the representatives of the Ohio operators that under no circumstances will they consider a proposition of mine-run coal for the product of Ohio."

p. 137, l. 16–32.

(73) "Prior to 1898 Indiana was based on the Hocking Valley price, and it was assumed, whether it was true or not, that we received the equivalent of the Hocking Valley screened coal price as a mine-run price. When we came into the Chicago convention a flat rate of 49 cents for mine-run coal was made for the Indiana district. The fact was brought out that the price made for mine-run was a better proposition to the operators than the Hocking Valley price, and it was so thoroughly believed by the operators of Indiana that they persistently insisted on remaining on a flat mine-run basis. I mean by this, regardless of whether they made screened coal or mine-run coal, they paid the miners of Indiana on a flat mine-run scale, when they could have had for their screened coal the Hocking Valley price.

"Now this condition remained in Indiana for a period of two years, over the protest of the miners, and was changed in 1900 in the city of Indianapolis by the adoption of a double standard, putting a clause in the contract that provided that where coal was shipped as mine-run it should be paid for on the mine-run basis, and where it was shipped screened coal it should be paid for on the screened coal basis. Since that time the miners of Indiana have been paid on a double standard. It is a fact in a majority of the mines in Indiana today that the miners do not know whether they are going to run screened coal one hour, two

hours, all day, or half a day, or whether they are going to run mine-run. That is the situation in Indiana."

Mr. Lackey, Indiana.
p. 141, l. 14–39.

(74) "The fact is that the Indiana coal operators as an association have always stood, and are standing today, flat-footed in opposition to the mine-run system. The last time that the matter was discussed our association determined to avoid it carefully and get as far from it as we could. In Indianapolis, the time the gentleman refers to, we simply bought the settlement. Indiana had to pay the price, as she usually has had to do in those interstate meetings."

Mr. Penna, Indiana.
p. 142, l. 21–28.

(75) "Regardless of the argument presented against the mine-run system, if we were in a position to definitely state—and I admit I am not—the amount of coal that is sold mine-run and paid for on a screened-coal basis, I believe it would be astonishing to everybody here—astonishing from the large amount of coal that is sold run-of-mine and paid for on a screened-coal basis. In many places the coal is screened, weighed and run back together again. I have no knowledge of just how much coal is sold in that way."

Mr. Lewis.
p. 160, l. 9–17.

(76) "But I do desire, for the sake of correcting the records, to challenge the statement made by my friend on the other side of the house that the Indiana miners paid for the Chicago agreement. I deny, gentlemen, that the Indiana miners, or the Ohio miners, or the miners of Pennsylvania, or any other miners involved in the Chicago

agreement paid for the settlement reached at that convention."

Mr. Ratchford, Ohio.
p. 166, l. 24–30.

(77) "Mr. Ratchford, Ohio: I have stated, Mr. Chairman, that I challenge the statement made this morning by a gentleman on the other side of the house that Indiana miners paid for the Chicago agreement. That is specific, I think. The statements made on the floor of the joint convention in connection with the Chicago agreement, and its relation to certain districts or parts of districts covered by this agreement, were made by Mr. Lewis. That I will discuss, and shall be glad to discuss with Mr. Lewis at any time, but I do not believe this is the proper place to discuss it. To be specific, Mr. Lewis stated, as I believe the records will show, that the Chicago convention was a matter of sale and barter and that the eight-hour work day secured at that time did not mean a material reduction in the hours of labor to certain miners in Ohio. That is what I referred to."

p. 166, l. 41–47.
p. 167, l. 1–7.

(78) "There were premiums paid by the operators and miners in Chicago to get an agreement. I do not care what other name you give it, that is the proper name. In Chicago the miners of Illinois got an advance of 3 cents in the mining rate on the mine-run basis, while in the other districts on screened coal they got 10 cents a ton, so far as Indiana and Ohio were concerned. In the Pittsburg District they wiped out an inch and a half screen—and what else? They accepted an inch and a quarter screen, accepted the rate and wiped out the 9-cent differential that existed between the Pittsburg thin-vein and Ohio. I do not care what you call it—there were premiums paid

for certain things. In Indiana, where there was a fixed differential made for Illinois in the Danville field of 10 cents, Indiana was placed in a position, wedged in between the two districts, where they accepted a 12½-cent differential. In Indiana the miners had been forced on the mine run system, and with the prices fixed on account of the relation of Indiana to Illinois, and Ohio to Pennsylvania, it would have been a reduction to our men in that state. On the other hand, Indiana operators, had they accepted the other end of the proposition and placed all their mines on a machine mine-run system, would not have secured the same advantage the Danville District of Illinois did under the Chicago agreement.

Mr. Lewis.
p. 167, l. 24–46.

(79) "Mr. Lackey stated that Indiana paid for the settlement in Chicago. I want to deny that in as positive language as I can and say to Mr. Lackey and to other gentlemen here from Indiana that no condition was imposed upon that State, intentionally or unintentionally, that was calculated to be a detriment to it. No condition was imposed upon the Pittsburg people, although they were called upon to yield 9 cents of their wages. The miners of Ohio might say with equal force that they paid for the Chicago agreement for several months of a strike. If what Mr. Lewis says of the Massillon miners is correct, they might say they paid for it by sacrificing a half holiday. The Hocking operators refused to become a party to the Chicago agreement until some time just prior to the first of April. Upon that general principle the miners of all the districts covered by the Chicago agreement were called upon to make some sacrifice somewhere to effect that agreement. The truth of the matter is—and you must all know it—that prior to the Chicago convention conditions

in the mining districts lacked uniformity to a very great extent, and in order to effect an agreement, it goes without saying, that they all had to give up something in order to be brought together. Indiana did its share. Ohio did its share, and Pennsylvania did its share. If the miners of any of those districts refused to do for the general good that which they were asked to do, there could have been no Chicago agreement."

Mr. Ratchford, Ohio.
p. 168, l. 38–50.
p. 169, l. 1–11.

(80) "In order to fix basing prices in the different districts and establish a general scale that was uniform in its application, with the purpose in view of bringing together all of the mine workers of the different States and all the day labor in the mines we had to make concessions here and there and everywhere in order to bring about that uniformity. In the Chicago convention, although it is made the subject of criticism more or less, more was accomplished for the mine workers of these states than has been accomplished by any convention since or before. The admission was made on the floor of the convention two years ago that the only advance you received since 1903 was 12½ per cent. The Chicago convention, saying nothing of any other considerations, secured a greater increase for you, besides equalizing the size of the screens—which were different sizes, lengths and breadths—made a uniform day wage scale and established an eight hour work day. It did more, it established the greatest co-operative association perhaps of employers and employes in the world, an association that has worked successfully for a greater number of years than any other similar organization, and has been of mutual advantage to both sides. The Chicago convention secured an advance of

nearly 18 cents. I hope in your criticism of it and of the proceedings of that meeting, both here and elsewhere, you will at least be fair and represent the facts as you know them."

Mr. Ratchford, Ohio.
p. 170, l. 1–23.

(81) "When I said that the outcome of the Chicago conference was a bargain and sale I told the truth. What else was it?"

Mr. Lewis.
p. 170, l. 38, 39.

(82) "I believe the Chicago convention was a great affair, I believe it was one of the greatest economic affairs that ever transpired in this country up to this time;"

Mr. Lackey, Indiana.
p. 172, l. 15–17.

(83) "The chairman stated that the question before the house was a motion to adopt Section 1 of the miners' proposition.

"Secretary Brooks called the roll of states, both operators and miners. The representatives of the miners all voted in the affirmative, the representatives of the operators all voted in the negative and the motion was declared lost.

"Secretary Brooks read the second section of the miners' proposition as follows:

" 'An advance of ten cents per ton for pick mining and an equivalent advance for machine mining and a corresponding increase for all day work, dead work, yardage, etc.'

Mr. Feehan, Pennsylvania: "I move the adoption of the section as read.

"The motion was seconded by Mr. Greene, of Ohio.

"Secretary Brooks called the roll of States, both operators and miners. The representatives of the miners all voted in the affirmative, the representatives of the operators all voted in the negative, and the motion was declared lost."

p. 173, l. 7–24.

(84) "I think the fundamental basis on which this movement is established is to bring about as near as possible equal competitive opportunities and relations between the different districts. I cannot understand by what process of reasoning you can say in one district, or part of a district, that a certain price shall be paid for a certain class of work, and in another district, or in another portion of the same district, that a different or lower price shall be paid. I believe our movement has for its purpose that the labor cost of a ton of coal shall be about equal in the different districts."

Mr. Green, Ohio.
p. 175, l. 34–44.

(85) "I maintain that if a trimmer trims one hundred tons of coal in Eastern Ohio at a certain rate of wages, another man trimming the same amount of coal in the Pittsburg district should be paid the same rate of wages. It is a fair proposition. And the same is true in the different sub-districts within the district. I believe that from a competitive standpoint we ought to be paid, because it enables you to each be on the same footing, with competitive equality, and competitive opportunities. The labor cost for the production of a ton of coal, when a uniform rate of wage if paid, is the same to all and no man should expect any more than a square deal and an equal opportunity with another man."

Mr. Green.
p. 176, l. 27–39.

(86) "Mr. Lewis: I would like to ask a question. You desire to dispense with the labor of those so-called inefficient men, whether drivers or any other class of labor. Does that carry with it that such an individual can get employment in the mine if he desires?

"Mr. Penna: Sometimes, and sometimes not.

"Mr. Lewis: That is the point I wanted to bring out. As an organization we have not insisted on the retention of men who were inefficient and incompetent. We have asked and I might say we have insisted, that under our contract provisions, when a man is taken away from his employment because of his incompetency or inefficiency, he ought to in all fairness have a job mining coal, or loading coal, or whatever employment of that kind the operator has for him."

p. 180, l. 45, 46.
p. 181, l. 1–11.

(87) "Mr. Penna: There could not very well be any exception taken to the statement of Mr. Lewis that their association has not insisted on the retention of men because of incompetency and inefficiency in the class of work they are performing. And I do not know but that can be said truthfully of every branch of the mine workers' association, but the local officers assume to decide upon the competency and the efficiency and the management is denied the right to decide that question. And invariably when there is an attempt made to move or to change men because of their incompetency or inefficiency, or because of common, ordinary laziness, we are accused of being prompted by ulterior motives, and it means a fight in the mines, a long drawn-out squabble, investigations, meetings of committees, argument—in fact, it is easier and cheaper for a coal operator oftentimes to keep a good for nothing cuss in his employ than it is for him to tread the devious course he

is required to do to get rid of him. That is the situation, and yet the fact remains that we do not insist on retaining incompetent men. I have said to our people, and have insisted as far as I have been able to, that if a man came to build a fence for me and I had to pay for it I would decide absolutely and without interference as to his competency or as to whether I wanted to continue him to do that work. If I hired him to drive my wagon I would be the same, and if I was running a coal mine I would do the same or I would not run. The man who pays the price is the man who should be satisfied with the character of the work performed, and he alone should be permitted to decide whether or not that man is satisfactory to him in the performance of that work. If not, he should be permitted to remove him, and remove him promptly. If the coal operators were permitted to do that they would with profit, not only agree on your demands for a uniform day wage price, but they could afford to pay you more wages. That is not the case; they are not allowed to. That work is delegated to a committee and the committees are not usually, or not always at least, the most intelligent men in the mine."

p. 181, l. 12–46.

(88) Chairman Whetzel: "Are you ready to vote on the motion before the house? The motion pending is that the third section of the miners' proposition be divided. If there are no objections, we will vote on the motion to divide the proposition.

"Secretary Brooks called the roll of States. All the operators voted in the affirmative, all of the miners voted in the affirmative, and the motion to divide the third section of the miners' proposition was declared carried.

"Chairman Whetzel: The vote will now be on the first part of the proposition, 'That we demand a uniform rate

of wages for all classes of inside and outside day labor.' The Secretary will call the roll.

"Secretary Brooks called the roll of states. All the miners' representatives voted in the affirmative, all the operators' representatives voted in the negative.

"Chairman Whetzel: Lacking a unanimous vote, the proposition is lost.

"Mr. Lewis moved the adoption of the second portion of the section, 'That time and a half be paid for over-time, Sundays and legal holidays.' (Seconded.)

"Secretary Brooks called the roll of States. All the miners voted in the affirmative, all the operators voted in the negative.

"Chairman Whetzel: Lacking a unanimous vote, the motion is lost."

p. 185, l. 12–35.

(89) "There being no further discussion on the proposition, the roll of States was called by Secretary Brooks. All the miners voted in the affirmative, all the operators voted in the negative, and the motion to adopt the fourth section of the miners' proposition was declared lost for want of a unanimous vote."

Mr. Lewis.
p. 186, l. 32–36.

(90) "I think the time is coming in the development of the coal industry of this country when we will be able to agree upon a minimum basis for mining and make it a perpetual contract. That is the kind of plan I have in mind. I do not know how soon it will come. There is only one thing in the way, and that is the lack of such an organization among the operators and the miners as we ought to have to govern the industry. I think if our friends on the other side could have a national organization

and we could have a complete national organization on our side the time will come when we will establish the relative mining prices in the different districts, and we can afford to fix a minimum basis as a wage scale and make it a perpetual contract. We could go from that up, but not below it. If anybody tried to get below it we would attempt to find out who was trying to injure the trade."

Mr. Lewis.
p. 187, l. 5–19.

(91) "Secretary Brooks called the roll of States. All of the operators voted in the affirmative, all of the miners voted in the affirmative, and the motion to defer action on the fifth and sixth sections of the miners' proposition was declared carried.

p. 188, l. 22–25.

(92) "Back in about 1870 and up to about 1880 the most prominent coal field in Ohio was that known as the Mahoning Valley. The coal was mined on the run-of-mine basis. It was in the No. 1 seam. About that time the Mining Department was organized. There were a great many accidents for the amount of coal produced in the State. That field began to diminish in output and the Hocking field began to increase in output. As the Hocking field began to increase and the Mahoning Valley to go down the Tuscarawas came up and accidents began to decrease. The Mining Department took credit for better supervision and for the reduced number of accidents. In my judgment it was a matter of natural conditions. In the early days of the Hocking Valley and up to within a few years I never saw a safer seam of coal for men to work in. In the largest mine in the Mahoning Field there were men killed frequently, in fact there were more men killed than in the entire Hocking Field for years. When

the Hocking Field was at its best the Eastern Ohio Fields were not very largely developed. There were a few mines around the Wheeling District, I believe, and there were a great many accidents. They had a bad roof. As the Eastern Ohio Field increased in production accidents began to increase. After the anthracite strike a great many coal mines were opened in Ohio."

Mr. Thomas, Pennsylvania.
p. 190, l. 14–36.

(93) "If we had secured legislation that would impose hardships on the operators during a contract, it would have been different. We obtained no new legislation, however, and the operators introduced these things without our consent."

Mr. Feehan.
p. 194, l. 8–12.

(94) "The operators were in no way responsible for the changing of the explosives. They were commanded to do it by the mining department of the State of Pennsylvania."

Mr. Dempster, Pennsylvania.
p. 194, l. 19–22.

(95) "The seventh section of the miners' proposition was voted on. All the miners voted in the affirmative, all the operators voted in the negative, and the motion was declared lost.

"Secretary Brooks read Section 8 of the miners' proposition as follows:

"'There shall be no limit to the amount of deductions for the organization.'

"Mr. Bitner, Pennsylvania: I move the adoption of the section.

"The motion was seconded by Mr. Rollins, of Indiana.

"There being no discussion on the motion, Secretary Brooks called the roll of States. All the operators voted in the negative, all the miners voted in the affirmative.

"Chairman Whetzel: The proposition not receiving a unanimous vote, under the rules is declared lost.

"Secretary Brooks read the ninth section of the miners' proposition as follows:

"'That no district under the control of the United Mine Workers be permitted to enter into an agreement to reimburse the operators for any money expended for labor, directly or indirectly, wherein the law says the expense shall be borne by the operators.'

"Mr. Donovan, Pennsylvania: I move the adoption of the section.

"The motion was seconded by Mr. Laverick, Pennsylvania.

"There being no discussion on the motion, Secretary Brooks called the roll of States. All the operators voted in the negative, all the miners in the affirmative, and the motion was declared lost."

p. 196, l. 47–49.
p. 197, l. 1–25.

(96) "Mr. Lewis: In order to get this before the committee, I move that we refer the entire subject matter we have had under discussion to a sub-committee of two miners and two operators from each of the districts represented in this conference.

"The motion was seconded by Mr. Zerbe."

p. 198, l. 13–17.

(97) "Mr. Green, Ohio: I believe this motion should be amended to provide that the commissioners from each district and the International officers from our side should be made members and participate in the work of the sub-

committee. While there may be two members from each district in the sub-committee from the miners' side, I am sure we want also the International officers.

"Mr. Chapman: They have always been in the committee.

"Mr. Green: If we ask to have them in I think it is no more than right that you should have on your side such commissioners as you may designate.

"Mr. Zerbe: Change that to commissioners of parties interested.

"Mr. Chapman: If that is understood there is no necessity of an amendment.

"Mr. Green: If there are no objections the motion is not necessary.

"Chairman Whetzel: In the Joint Convention you adopted the rules that governed the Toledo meeting. In this committee you adopted the rules that governed the Joint Committee in Toledo. When we say International officials, let it be understood as it was in Toledo to include the President, Vice-President and Secretary-Treasurer.

"The motion offered by Mr. Lewis was adopted."

p. 199, l. 17–40.

(98) "The miners announced the appointment of the following members of the sub-committee: Ohio, G. W. Savage, William Green; Pennsylvania, Francis Feehan, S. A. Whetzel; Indiana bituminous, W. P. Rollins, G. W. Lackey; Indiana block coal, George Morgenthaler, J. D. Holden."

p. 200, l. 6–10.

(99) "Mr. Sullivan, Ohio: Before you put the motion, I desire to make a statement. Yesterday afternoon in discussing the question of the men who are found to be incompetent to take charge of the different parts of the

work in the mines, I stated, and so did Mr. Lewis, that we had no objection to the removal of men if they are not competent, or if their habits are such that in handling dangerous machinery they would endanger their lives or the lives of others. We would certainly not object to the removal of such men. If a driver or a day man is found not doing his duty or neglecting his duty we will not object to his removal. We followed that up with a statement that you had a right to remove such men, but we hold the right to investigate as to whether or not the removal was correct. I want to remove a wrong impression the Indiana operators may have in regard to this matter. You give us an investigation at all times in regard to those men.

"Chairman Whetzel: We will take notice of that later on.

"Mr. Sullivan: I want to have the record clear on that question.

"Mr. Lewis: Whatever I said stands on the records. I am not going to ask the operators whether or not we are to have a right to investigate. If we make a contract that contract will determine the matter."

p. 200, l. 14–36.

(100) REPORT OF SUB-SCALE COMMITTEE.

"Secretary Brooks, for the committee, reported as follows:

"To the Scale Committee of Western Pennsylvania, Ohio and Indiana, Miners and Operators:

"Gentlemen: Your sub-scale committee, appointed by you Saturday, March 12, 1910, met at the Assembly Room of the Hotel Sinton on Monday, March 14, at 2 o'clock p. m., and organized by electing

Mr. S. A. McCullough, Chairman.

Mr. F. S. Brooks, Secretary.

Mr. Edwin Perry, Assistant Secretary.

"After this and further sessions through the mornings and afternoons of Tuesday and Wednesday, March 15 and 16, they now report that they have been unable to agree.

S. A. McCullough, Chairman.

F. S. Brooks, Secretary.

Edwin Perry, Assistant Secretary."

p. 201, l. 9–25.

(101) "Mr. Lewis: It is quite evident the sub-committee was not able to agree on anything. I think we have about reached the period in our deliberations now where we will probably have to report to the Interstate Joint Convention, unless it is the desire of the parties to take up for discussion the questions we have had before us. I realize that we have discussed practically every phase of the situation and have reached that point, according to the report of the sub-committee, where our business is practically at an end. I realize the seriousness of the situation. I realize what it means to the mining industry of this country. I appreciate the fact that if we go away from here without an agreement it means industrial war, with all the attendant hardships that naturally follow in the wake of such a condition. I think for that reason, even at this time, we can afford to make haste slowly. Unless we are going to take up again the discussion of the matter before we decide to adjourn and report to the Interstate Convention we desire to report to our own convention. The operators may wish to do the same. However, I am not speaking for the operators, but for our own people. There is nothing left for us to do but report the action of this Joint Committee to the Joint Convention. That is the body that created this committee, but before we report to them the miners would like to report to their own convention. We will then be able to join you in reporting to the Interstate Joint Convention."

p. 201, l. 31–43.
p. 202, l. 1–11.

(102) "Mr. Zerbe: I want it understood that this is not an Interstate Joint Convention; it is a Tri-State Conference. The Interstate Joint Convention is a thing of the past. We have not recognized it during the present meeting.

"Mr. Lewis: I do not want to split hairs, but in discussing this matter I want to use any language I wish to express my ideas. This is an Inter-State meeting. If you want to call it a Tri-State meeting it is all right; I have no objections, but I fail to see where there is any difference in the position taken by Mr. Zerbe and myself, but out of deference to his wishes we will call it the Tri-State Convention after this."

p. 202, l. 28–38.

(103) "One thing is certain, and that is that we would like to have an agreement; that we would like to avoid a suspension of operations in the mining industry. We are going to do everything in our power to avert such a contingency; but if we are unable to reach conclusions the natural outcome will be that you gentlemen will endeavor to fix the responsibility upon us and our people will endeavor to fix the responsibility upon you."

Mr. Lewis.
p. 204, l. 18–25.

(104) "I do know as a general proposition that men will buy where they can buy the cheapest, counting quality and quantity; and when it comes to coal it does not matter where it is mined, it does not matter by whom it is mined, the consumers of coal in this country are after cheap coal and they will buy it where they can get it for the least

possible price. They always have done that and they always will.

"I do not wish to refer to anything that was said in the sub-committee; but you gentlemen know that the difference between the cost of production in the union fields and the non-union fields is not what is paid to labor alone. After you have paid the laboring man in the union field more for mining coal and the day man more for doing their work, there is an additional cost in the union fields that they do not have in the non-union fields. There is a cost of production, and, whether you account for it or not, it is there and it must be charged up to the fact of the existence of the union and the union's meddlesomeness and unwarranted interference with the operation of the property. That is not a small item. I say to you people here now that the United Mine Workers, as we meet you here face to face as men doing business, are not the United Mine Workers we meet at home around the mines. You are two separate and distinct organizations. Here we meet you as men who profess to be fair and who try to be fair; but when we go home and undertake to operate the mines with union labor we meet with the criminally inclined, with the men who have no respect for law nor order nor the rights of others, who have no respect for anything but their own desires, with or without reason. And we meet with district officers who are depending upon that kind of votes to perpetuate and continue them in office, and they are ready to wink at the dishonorable conduct of the men, if not openly and squarely endorse it. In some instances they do that. Ten cents a ton advance for mining in a non-union field would not mean the same as it would in the union fields. Ten cents a ton advance in a union field in excess of a non-union field, with an additional cost for other labor around the mines, only represents a part of the in-

creased cost of production of coal in a union field as against a non-union field. I don't know how many of you know these things, but I know that some of you know them."

Mr. Penna, Indiana.
p. 207, l. 21–51.
p. 208, l. 1–8.

(105) "I don't know whether this institution is going to live or die. I have loved it and have worked for it. I have worked for it as faithfully and arduously as anybody could; but if in this institution we have reached a point where we are invited to go up against ultimatums, where we are met with propositions dubbed conservative—and you gentlemen the judges absolutely as to whether or not they are conservative—if we are to be told that things are reasonable, and you are to be the absolute judges of the correctness of that statement, then this institution ought to die. If it has reached that state it has ceased to be useful and thereby forfeited its right to life."

Mr. Penna, Indiana.
p. 208, l. 24–34.

(106) "The very inception of this movement was a competitive basis, competitive abilities, competitive relationships—these are the very fundamental principles on which this thing was organized many years ago and on which it was continued. All we say now is, 'Put us in a position where we can market our coal in competition with our mutual enemies and with each other and we ask no more.' Your position is, 'Competition or no competition, we want an advance, and we want it because we are big enough to take it.'

"Now I am not going to express any regret or sorrow at the breaking up of this institution. If it has to break up on this proposition, the breaking up ought to be a year of jubilee, because we cannot be any worse off and we may

possibly be better. At least we will get to squirming around and try to get something else as a substitute. We cannot find anything worse, and anything we find will have to be as good, if not a little bit better. If the movement has outlived its usefulness it ought to die. It will die, and the only sorrow I shall feel in connection with it will be the sorrow I would naturally feel at the passing of an old, old friend who could not, in the ordinary course of things, expect anything else and who, in the course of the law of nature, must die. This will pass the same way if it has to pass."

Mr. Penna, Indiana.
p. 210, l. 5–26.

(107) "Secretary Perry: I want to answer a few of the statements made. I am not ready to say that this joint movement has outlived its usefulness. For a number of years I have maintained the belief that it was founded as a result of linking together modern thought and advanced ideas to add stability to the mining industry. I believe it has, and I believe it will continue, if these latent forces exercise their function, to be a power for good in the future."

p. 211, l. 21–28.

(108) "The price paid for mining in West Virginia is not the only cost of production. Those men have bills to pay that you do not, and you know it. It is not necessary that I should mention what they are. As a result of the organization trying to organize that field there is an added cost to the production of those operators. In my judgment, as far as the unorganized fields are concerned, if the miners are paid an advance in the organized fields I do not believe it will be possible for the mines in West Virginia to operate and pay the present rate of wages."

Secretary Perry.
p. 211, l. 38–46.

(109) "The miner is not consulted about what coal is going to be sold for, and if we undertook to say to our friends on the other side what they should sell their coal for, if we were not told it in plain language, the intimation would be strongly conveyed to us that it was none of our business—and very properly so. On the other hand, we are unwilling for any operators to attempt to invade markets, when it comes to a standpoint of competition, and reduce the selling price of coal in order that that market may be enlarged, and then come back to us and tell us we must foot the bill. We are not going to do it.

"It is recognized that we have some right to help fix the standard of payment for our labor, and when the gentlemen on the other side agree with us on that standard, or fail to agree and we fix the standard ourselves, in order not to go out of business it becomes necessary for them to be a little more careful in regulating the selling price of coal."

Mr. Lewis.
p. 215, l. 12–28.

(110) "The extra cost in producing a ton of coal outside of contract provisions referred to in this meeting is recognized by myself as one of the representatives of the United Mine Workers. If a mine stops one single day when there is work to be done, contracts to be filled and cars on the sidings to be loaded, if everything is prepared to go ahead with the day's work, there is an unnecessary added cost in producing coal under such conditions."

Mr. Lewis.
p. 216, l. 3–9.

(111) "You have too much politics in the organization in the United Mine Workers of America. You are not

here in good faith; you are not here asking it because you need the advance in pay; you are asking it because some one committed himself by saying the miners would get it. We stand here in good faith and say that we have raised your pay from the time we started negotiating with you to the present, and now we have got to that level of the value of your labor where we cannot go any further and compete with those who do not pay the same."

Mr. Zerbe, Ohio.
p. 221, l. 28–36.

(112) "I recognize that there is competition from West Virginia; I recognize also that there has been keener competition between the operators making contracts with us than between them and the operators of West Virginia."

Mr. Lewis.
p. 224, l. 25–28.

(113) Mr. Feehan: "I know the miners I represent, and if they are going to starve, they will not starve in the mines. If they take my advice, they will get the advance they are asking for in these demands or the mines will be idle. It will be unprofitable for us to work, and we will find out whether or not it is unprofitable for the operators to operate under the figures we state.

"Mr. Dempster: I do not understand fully what you said about the profits and the stoppage of the mines.

"Mr. Feehan: I said if the miners take my advice they will get the advance they are asking for or the mines will be idle. It will be unprofitable for us to work, and we will find out whether or not it is unprofitable for the operators to operate at the figures we stated."

p. 226, l. 10–23.

(114) "You are going to give us an advance and you are going to give us better conditions because you can afford

to do so. You are going to get greater prices for your coal, and there is not going to be a suspension. If you do not sign an agreement here, you will realize before the first of April that it will be cheaper to pay the advance."

Mr. Feehan.
p. 227, l. 48.
p. 228, l. 1–5.

(115) "Mr. Dempster, Pennsylvania: Do you mean that you will take the position of laying down an ultimatum for us that we must sign a scale for run-of-mine, an advance in the price, and pledge ourselves to carry out certain conditions that may be included in that scale?

"Mr. Feehan: Those are the demands of the miners of our district.

"Mr. Dempster: Is that your ultimatum?

"Mr. Feehan: So far as I am concerned the ultimatum is the demands of the miners.

"Mr. Dempster: That is the ultimatum—either swallow that or choke?

"Mr. Feehan: So far as I am concerned."

p. 228, l. 14–26.

(116) "Mr. Zerbe: I did not state that any information was derived from any of the United Mine Workers when I spoke of politics in your organization. I am pleased to say I never heard a United Mine Worker express himself in that way yet; they have been always loyal to the organization. An advance was given you at one time in Indianapolis because one gentleman, I have good reason to believe, hoped to be made a United States Senator."

p. 230, l. 3–9.

(117) "Mr. Chapman: I have very few statements to make now; but I want to correct one statement made by Brother Lewis when he said there had been no serious com-

plaint from any part of Ohio concerning competition with West Virginia except from Eastern Ohio. If you will read the records you will find the statement I made was that the business of the Hocking Valley and other districts of Ohio was being absorbed and taken from every part of the territory in which Ohio coal had been sold, and I cited by name many sections of the country ranging from the Ohio River to the lakes where the business was being taken by West Virginia coal. That is the statement I made on the floor of the Joint Convention, in the Scale Committee and everywhere else."

p. 230, l. 20–31.

(118) "Secretary Brooks read section 8 of the miners' proposition, as follows:

"'There shall be no limit to the amount of deductions for the organization.'

"Mr. Bitner, Pennsylvania: I move the adoption of the section. (Seconded by Mr. Halapy.)

"Mr. Feehan: I believe this is a question that has not been given very much consideration. There have been practically no arguments on their demand for an unlimited deduction for the organization, and I want to say for the miners of the Pittsburg District that we believe we should regulate the amount of deductions, either for the organization or for other purposes, charitable or otherwise. This matter should be left exclusively with us. In view of the fact that it is a part of the agreements in other States that are represented here, we believe it should become part of the Interstate Agreement. I hope to see this part of the miners' demands agreed to.

"Secretary Brooks called the roll of States on the motion to adopt Section 8. All the miners voted in the affirma

tive, all the operators voted in the negative, and the motion was declared lost for want of a unanimous vote."

p. 235, l. 6–26.

(119) "During our deliberations on the question of conceding to the mine workers an advance in wages the operators' strongest argument was their inability to pay an advance because of the alleged competition from certain sections of West Virginia. Our answer to that argument has been that it was not competition from West Virginia that caused the low selling price of coal in the districts represented in this meeting. Our arguments and our statements have been that because of the competition among the gentlemen who are in this convention the selling price of coal is as low as they claim. We have challenged the operators to refute that statement, and up to this time they have not been able to successfully do so. We claim, Mr. Chairman, that we are on the eve—no, we are right in the midst—of the beginning of one of the most prosperous industrial periods this country has experienced in the last twenty-five or thirty years. We claim that the operators will share in this era of prosperity; we claim that every manufacturer in this country of ours will do likewise; we claim—and there is every evidence to support our proposition—that the railroad companies controlling the transportation systems, the men who purchase the largest part of the commodity we produce, will share likewise in this prosperity that now is here and that will grow brighter and better for the next few years. We claim that because of these conditions we, as mine workers, must share in these improved conditions, and we are unwilling to renew a wage contract that will not carry with it an advance in our wages. Our friends on the other side of this proposition have been compelled to acknowledge

the abnormal increase in the cost of living. There is no disputing the fact that our men, as far as their earning power is concerned, coupled with the purchasing power of the results of their labor, are not as well off today as they were ten years ago, or at any time between that period and the present.

"We have weighed well the consequence of failure to reach an agreement in this convention. We know what a suspension of work means to us, and we know what it means to the mining industry of this country. We know what inconvenience may result to all other branches of industry; we fully realize that we must discommode the American people. We have weighed all phases of the question carefully, and, having done so, we have made up our minds that any contract fixing the wages and governing our employment must carry with it an advance. (Applause.)"

Mr. Lewis.
p. 240, l. 29–49.
p. 241, l. 1–21.

(120) "We are entitled to the first consideration in these matters, and other people, outside of the mine workers, and the mine owners, are entitled to second consideration. I know that in making that declaration it may be hurled across the country that the mine workers are selfish men; that they are not mindful for the interest of other people. We have to consider that phase of the situation and count the cost in the event we are compelled to resort to a suspension of work in order that we can secure an advance in wages and meet our honest obligations."

Mr. Lewis.
p. 241, l. 44–51.
p. 242, l. 1, 2.

(121) "Mr. Lewis says that the present condition of the industry is due to unwise competition. The Government of the United States and the Government of the State of Ohio says that we must compete. There are probing investigations all over the United States today trying to find out whether or not there are combinations in restraint of trade, whether there are combinations being formed for the purpose of getting high prices. Do you think that in the face of that the operators sitting on this side of the house can in any manner or in any form get together and say, 'Our price is so and so'? I am free to admit that if it were not for this condition, and if the law of the land permitted it, if there were no restrictions, no complications, we might get together and fix the price of coal."

Mr. Maurer, Ohio.
p. 243, l. 5–17.

(122) "Every miner in the Hocking Valley knows that a few years ago your products went on the Great Lakes to supply the domestic markets of the great Northwest. The docks were filled with it. The homes and the business places of the Northwest were supplied with it. Who supplies them now? The splint coals of West Virginia. These coals are mined so cheap that Hocking coal cannot touch them. Is that competition? Tell me, Mr. Lewis, are the operators on this side of the house doing nothing to meet these conditions? They have invested millions in the Northwest in docks so that our coal can be placed there, so that we can take care of that market. People sitting on this side of the house, through their industrial efforts, have induced the great railroads of the Northwest to handle their coal and buy it for steam purposes. I went to the mines with one of the purchasing agents of one of those roads, Mr. McDonald. I went there with him to

demonstrate the value of our coal, and we supplied a million and a half tons of that coal to the Northwest for that trade. For the past two years, however, in order to keep those docks and protect our interests we sold that coal at 80 cents a ton to meet the competition of West Virginia. Is that competition? Every dock owner on this side of the house, were not his mining properties of more value than the docks, would have put Virginia coal in there because it was cheaper; they would not have put a pound of Ohio coal there. They have done their share to protect the industry.

"Have we no markets left that can be protected? Go to the city of Columbus, right in the heart of the Hocking District, and how much Hocking coal do you find there? Go into Marion, go into the little town of Lima, Ohio, and you will find a 100,000 tons of West Virginia coal supplying a contract there. Go into Toledo and what do you find? There was one contract of 60,000 that I went after myself, and if I could have made a price of 75 cents to meet the competition I could have had the business. And your President dares to tell me there is no competition from West Virginia! I know what I am talking about. I know what we sold coal for, and I know that every ton of coal we sold to meet those market conditions was sold at an absolute loss."

Mr. Maurer, Ohio.
p. 244, l. 10–46.

(123) "Am I fair? Gentlemen, there may be States in the Southwest, there may be other States and districts that are able to pay an advance; but do not crush this State between the upper and the nether millstone of high wages on the one side and non-union competition on the other."

Mr. Maurer, Ohio.
p. 245, l. 16–20.

(124) "I do say, however, that there is no law in this country to compel you to sell your coal or to give it away. There is no law in the United States that will compel us to labor if we don't want to."

Mr. Lewis.
p. 246, l. 35–38.

(125) "I do not propose to attempt to defend the non-union fields of West Virginia. I know, as do the other miners on this side, that the non-union product of West Virginia is a serious proposition. As evidence that we recognize that fact, out of the meager earnings of the men on this side we have contributed month after month and year after year to try to organize that field and bring them up to a competitive basis with our friends on this side."

Mr. Green, Ohio.
p. 251, l. 39–45.

(126) "Unfortunately we do not regulate the selling end of it. We have nothing to do except with the producing end of it."

Mr. Feehan, Pennsylvania.
p. 256, l. 32, 33.

(127) "I am not talking to the great American public, and I don't want to. I know what the American public will do for you and for this side of the house. The American public will get its fuel where it can get it cheapest, and the fact that your children are crying for bread will not influence the purchase of a single ton of coal if the American public can purchase the same amount of coal for five cents less. The American public will buy coal from the gentlemen on this side just as long as they can sell it a little cheaper than someone else, and they will pat them on the back while they do it; but when the other fellow comes

along and offers the same coal for a fraction of a cent less, regardless of the location of the market, regardless of wages or anything else, they will buy it from him. I admit no responsibility to anybody anywhere except from that side of the house to this, and from this side to that."

Mr. Penna, Indiana.
p. 259, l. 18–32.

(128) "The production of coal in itself is not a peculiar thing to those who know how to produce it. Marketing coal is not in itself a mysterious proposition. To secure a fair price when selling coal is not a difficult thing when those who have charge of fixing the selling price will endeavor to get together for that purpose."

Mr. Lewis.
p. 260, l. 12–16.

(129) "I pause, however, long enough to inquire, 'What is the use?' It is true that in every joint convention I have ever attended—and I believe that I have attended all of them that have been held—the miners formulated their demands, then came in and presented them; the operators formulated other and opposite demands sometimes and presented them; but in the miners' demands were no ultimatums and in the operators' demands were no ultimatums. Throughout the entire negotiations there was a position on both sides of flexibility—for want of a better term. If I could find a better term I would use it. Even my friend Lewis in attempting to refute my statement has said, and he has done persistently, that the contract must carry with it an advance in wages. Heretofore I have never seen the miners come into a joint convention in such a position and assume such an attitude."

Mr. Penna.
p. 262, l. 6–21.

(130) "What is the matter that we haven't the opportunity to work? Men who are producing the same commodity you are, cause your lack of opportunity to work."

Mr. Chapman.
p. 267, l. 44–46.

(131) "Isn't it time, gentlemen, that the industry in Ohio and in other States that are unionized should be protected? With more than half the entire product of the country produced by non-union men, if we are to protect and perpetuate our industry in Indiana, Ohio and Western Pennsylvania, we should call a halt. Do you want to destroy the industry in Ohio that in the past has been equal in value to all the wheat produced within the State? If you continue your demands you will bring that result to the industry."

Mr. Chapman.
p. 268, l. 11–19.

(132) "Mr. Chapman, Ohio: I ask by what authority any gentleman has the right to offer upon the part of Ohio a proposition for an advance of 5 cents a ton, except he be an Ohio man?

"Mr. Lewis: We have made contracts in the past for Ohio, even when the Ohio operators were not present. We have made agreements after the block coal operators of Indiana had taken part in the deliberations and withdrawn. We have agreed on the terms of a contract, and it was up to the miners then to see that it was carried into effect. Is there any motion before the house?"

p. 272, l. 3–12.

(133) "Mr. Lewis: In moving the adoption of the report of the committee I recognize that it brings this conference face to face with a crisis in the mining industry of our country. I recognize that the adoption of this motion

may carry with it a suspension of work in the mines of this country from one end to the other. The adoption of this motion, unless there is some method found to negotiate the provisions of a contract that may be reasonably satisfactory to the miners and operators, will carry with it the withdrawal of every proposition that has been under consideration, so far as the mine workers are concerned. It may mean the formulation by the convention of the United Mine Workers of a policy that will mean industrial war, with all the attendant hardships that are incident to such a condition in our mining affairs. I recognize that there are some men in the mining industry on the mine owners' side who may temporarily benefit by reason of a suspension of work. I know that there are men in the mining industry, as there are in Wall Street, New York, who are gambling in a commodity that is so important in the life of the industries of this country. I have every reason to believe there are some mine owners who have stocked a certain amount of coal contingent on being able to earn a large profit as a result of a suspension of operations. I recognize also the possibility of some of those men doing everything they can in their power, directly and indirectly, to force a suspension of the operation of the mines. I recognize in addition to that—and I want to state the position of the miners plainly and positively—that it has been the hope, the desire, the ambition and the work of some operators to prevent a settlement, with the expectation that the mine workers of this country would tie themselves up with a policy that everyone would have to sign a contract before anyone would be permitted to sign.

"I have said before, and I repeat now, that those operators can eliminate from their minds any such delusions as that, if they now possess them. I want also to emphasize the fact that in the event of these three States adjourning

this Joint Tri-State Conference without an agreement, it will not prevent the miners' representatives from inviting the representatives of the operators of a less number of states or a less number of districts than are here represented to come into a joint meeting for the purpose of endeavoring to negotiate the terms of a wage contract. And if we, as miners, and the operators of some districts are able to negotiate the terms of an agreement that will be reasonably satisfactory to the miners and the operators who may become parties to such an agreement. I want to emphasize another fact, and that is that the operators who may retire from this meeting and take no part at this time in negotiating a wage contract cannot expect to have the assurance that they will be able to negotiate a contract on the same basis as operators who may sign the agreement in this city before we leave. In other words, operators who retire from the movement do it of their own accord, accepting with it all the responsibilities, and must if they engage in a struggle, be governed by the conditions of that contest. If they are successful in an inevitable contest that will take place, I am willing to admit that they will fix the terms of any settlement that may be agreed upon between them and their employes. But if the mine workers are successful in that contest, then I want to say now, in order that our position may be clearly understood, that we will dictate the terms upon which any settlement is made with us. We want this understood at this time, in order that the people of this country will know our position as mine workers."

p. 285, l. 6–49.
p. 286, l. 1–17.

(134) "It must be borne in mind also that the mining industry of the country is depending upon the outcome of he negotiations in this city. It must be understood—

and it is known to the operators, whether they will admit it or not—that the operators of the outlying districts who are not represented in this conference will pay such an advance in wages as may be agreed upon by the operators and the miners of this Joint Convention. The operators who will cause the adjournment of this joint meeting are assuming more than the responsibility of causing a disagreement in this instance. They are assuming the responsibility of a possible suspension of mining operations from one end of the country to the other, and they will not be permitted to shirk that responsibility so far as we are concerned."

Mr. Lewis.
p. 286, l. 29–42.

(135) "The unfortunate situation is this—and that is why an inter-state or a tri-state agreement sometimes works a hardship upon both parties—but the situation is that upon the wage scale adopted here the whole bituminous fields of the country base their wage scale; and whether the miners of this particular field or this particular State are entitled to an increase or not, if they fail to get the increase then that result follows all over the country."

Mr. Maurer.
p. 296, l. 39–46.

(136) "Turn the Ohio operators and miners loose from this convention, say that you will not handicap them."

Mr. Maurer.
p. 298, l. 15, 16.

(137) "There are but four more working days left, and as one I do not want to go up to the ragged edge of the expiration of our contract, because if we are going to do that by preliminary, or a continuance of negotiations, then as a representative of the miners we will be required

to formulate a circular notifying our entire membership that if they do not get word to the contrary before the end of the month there will be a suspension of work."

Mr. Lewis.
p. 300, l. 11–18.

(138) "If this partnership continues there must eventually be a time when we must either adopt some fair method or we must part company."

Mr. Maurer.
p. 304, l. 2–5.

(139) "Mr. Lewis: I do not know whether I have made our position clear. I have tried to. We have reached the point now where we are going to waste no more time. I do not want to be understood as saying we have wasted any up to this time, but our people think we have. I recognize that we have been unable to reach an agreement up to this time. It seems to be absolutely hopeless for us to reach an agreement here, from the statement made by one of the gentlemen on the other side to me a moment ago. I want to make it clear now that if we can adjourn this joint conference of the three districts we still have left an opportunity to see whether or not we can negotiate a contract that will be reasonably satisfactory to all parties concerned. And when this convention adjourns—and it is going to adjourn quite soon—we are going to ask all the operators of Indiana and Western Pennsylvania to remain. We will also ask all the operators of Ohio to remain who will do so with the distinct understanding that any agreement that will be finally negotiated will carry with it an advance in wages. We may just as well talk out in the open. I have been trying to do it all the time. I would rather that the operators and the miners of the three States would agree. If there is the least hope that by the representatives of the three States going into a scale

committee, or even if there is the least hope of their agreeing here, I would favor such a procedure. There is a limit to how long we can stay here, because there are only four days left in this month, and if our men suspend work on the first day of April—and that is what they will do if there is no agreement—then the time would be passed for talking about negotiating, especially with the mines in operation, for they will then be idle. I have always been opposed to negotiating contracts or settling disputes while the mines are idle. Our friends from Ohio say, 'Let us go out of the conference.' While I am going to say it as kindly as possible—and I dislike very much to say it at all—there is nothing to prevent the operators who are unwilling to negotiate a contract with an advance in wages from retiring from the meeting. However, it is preferable to move an adjournment of this Tri-State Convention in order to see whether anybody else wants to make an effort to negotiate a contract.

"We are not going to precipitate a suspension of work or a strike without exhausting all reasonable efforts at our command. We are unwilling to go into a scale committee meeting for the purpose of prolonging discussion, and I might say that we will not do it. This thing must be settled one way or the other, and that very soon. The limitation of time itself will settle the question. Much as I would like to spend to-morrow as other people will spend it, we are going to occupy our time tonight and tomorrow in outlining our plan completely to meet any emergency that may develop in the mining industry of this country on and after April 1. We are going to be ready to negotiate a wage contract, or, if compelled to, we are going to be ready to the best we can to defend our rights as wage earners to sell our labor at the best possible price in order to get sufficient to meet our obligations and take care of

our families as American families ought to be taken care of."

p. 310, l. 8–48.
p. 311, l. 1–12.

(140) "I concede to you gentlemen, the same rights that I claim for myself. I have no right to say to you, 'You shall work at less wages than you want to,' you have a right to quit any time you desire, and we have a right to say that we will not operate our properties if we do not want to. We have a right to say further that if we find men who have heretofore been in our employ who are willing to work in our properties at the wages we can afford to pay, if they say they can make a good living at those wages and that their earnings are sufficient to support themselves and their families under the laws of this country we have a right to employ them and they have a right to work for us.

"I hope that your President, representing your body of men, not only here but in various other fields of this country that he says are depending upon whatever adjustment may be made here to fix their scale of wages, will present for our consideration a clean-cut proposition covering all the points at issue between us."

Mr. Chapman, Ohio.
p. 312, l. 48–51.
p. 313, l. 1–13.

(141) "We have been at this work now since January. We are tired, just as tired as you gentlemen are, and the only expression we have been able to get from you gentlemen is, 'agree to an advance in wages, and we are going home without strings to us to increase that advance twofold if we can.' We know what it means! We are not going to agree to an advance in the mining rate and then take the chance of going back to our respective States and have it

duplicated, or have to go into the same industrial war we would have to go into if we failed to agree here. We would just as soon fight, if fight we must, as the result of a disagreement here as to fight for a disagreement in our own respective districts. It is war all the same, and there is not any more hell in it if it is inaugurated in the districts than if it is inaugurated here."

Mr. Penna.
p. 317, l. 17–31.

(142) "This movement cannot continue if we pursue the kind of policy I think I have observed here, that of seeking to take advantage, that desire to gamble by making the rules and playing the game."

Mr. Penna.
p. 318, l. 38–40.

(143) "I fail to see where there is any necessity of prolonging the sessions after what has been said by the operators this morning. When I say a thing myself I mean what I say and am willing to support that position to the limit. I want to say now that whatever policy is outlined by the miners in separate convention, that policy will be carried into effect so far as I am concerned until victory is perched upon the banner of the United Mine Workers, or until we are completely routed from one end of this country to the other. I want to say that under like circumstances, if it shall fall to the lot of the miners to be defeated, then I shall recognize the right—because I shall be compelled to—of the operators to name the terms under which we will be permitted to labor. On the other hand, if we are successful everything within the power of human agency will be done to make this impending conflict a success.

"Then as the victors we will say to those on the other side that we will dictate the terms upon which we will be employed, or upon which our labor will be sold to those who operate and manage the mines of this country."

Mr. Lewis.
p. 356, l. 44–49.
p. 357, l. 1–13.

(144) "CHECK OFF.

"17. Operators will make collection for the miners dues of 50 cents per month, with an addition to this of one-half of 1 per cent of the gross earnings, which shall be collected when the miners so request. Special assessments for the National Body to be deducted as requested by the miners. Initiation fees to be taken off, but not to exceed one dollar per man in any one pay. This to apply to employes inside the mine only.

"Notice of such collection to be given at the mine on the first and sixteenth day of each month for the succeeding pay.

"Collections for the Union shall follow checkweighman, accident and death benefits, rent and smithing."

p. 374, l. 1–12.

| TWENTY YEARS RECORD OF HOCKING VALLEY MINING. | | |

(146) "PICK MINING.

"Screened lump, per ton.....$0.95
Run of Mine, five-sevenths, lump price, per ton.. 0.6785"

DETAILED MINING SCALE FOR HOCKING VALLEY.

[Sub-District 1 of District 6.]

Effective from April 1, 1910, to March 31, 1912.

p. 376, l. 13–15.

(147) "Fourth.—That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time."

p. 377, l. 38–45.

RULES AND CONDITIONS.

(148) "Whenever the provisions of this contract in regard to clean coal are not observed the operator has the right to close down the mine until the miners will observe the contract to produce clean coal."

p. 378, l. 37–40.

6. CLEAN COAL.

(149) "19. DAY LABOR ON IDLE DAYS.

"When necessary, day men shall work on idle days, or, in cases of emergency, overtime; but such work shall be distributed as equally as possible among employes. The operators reserve the right to work skilled labor upon days when mine is idle, or, in cases of emergency, extra shift."

p. 381, l. 22–27.

(150) "22. WAITING FOR CARS.

"Where cars are promised and are on the way between the yards and mine at starting time in the morning, the men shall wait up to and not exceeding thirty minutes; provided, however, that where satisfactory local arrangements exist for waiting for cars the same shall remain in force and be observed."

p. 381, l. 39–44.

(151) "27. MINE IDLE ON ACCOUNT OF IDLE MEN.

"If four men are out of cutting or drilling at work time in the morning and, upon investigation by mine boss and committee, it is found to be the fault of the company, the mine shall be laid idle the next day at the discretion of the committee. But this shall not prevent the company's furnishing employment to the men so idle, in preference to the mine's being rendered idle. But in no event shall a breakdown or unavoidable accident be considered the fault of the company."

p. 382, l. 20–28.

(152) "31. BOYS.

"All things being equal, sons of members of the United Mine Workers of America, when becoming of proper age, shall be allowed the preference of going into the mines."

p. 383, l. 42–45.

(153) "33. ENGINEERS AND FIREMEN.

"In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep mines in shape, shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or

supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 384, l. 12–24.

(154) "CHECK OFF.

"The system of checking off for the United Mine Workers' organization remains in force and must be observed; the same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization."

p. 384, l. 25–30.

(155) "All controversies arising under the terms of this agreement shall be taken up for adjustment as herein provided, without delay, and in case of a man being discharged or suspended, he shall have a hearing within three days from date of his discharge."

p. 386, l. 19–22.

DETAILED MINING SCALE FOR THE COALTON AND WELLSTON FIELD.

From April 1, 1910, to March 31, 1912.

GENERAL RULES.

(156) "Rule 11. The system of checking off for the United Mine Workers' organization remains in force, and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' Organization."

p. 388, l. 43–47.

(157) "Rule 15. That when the men go into the mine in the morning, they shall be entitled to two hours' pay,

whether or not the mine works the full two hours; but after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof."

p. 389, l. 20–24.

(158) "Rule 27. It is understood and agreed that when a miner receives a car from the driver in time to load before time for quitting work, that the miner is supposed to load same, provided he has coal enough mined to do so. If the car should be derailed by complying with the above the company shall take charge of it."

p. 390, l. 44–48.

(159) "Rule 33. In case of a local or general suspension of mining, either at the expiration of this contract or otherwise, the men necessary to keep the mines in shape shall not suspend work, but shall, when mining is suspended, fully protect and keep in repair all of the company's property under their care; but it is understood and agreed that the operators will not ask them to hoist any coal for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 391, l. 18–26.

(160) "Rule 7. The system of checking off for the United Mine Workers' organization remains in force and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization."

p. 394, l. 30–34.

SUB-DISTRICT NO. 2 OF DISTRICT NO. 6, OHIO.

GENERAL RULES.

Rules to govern mining in the Pomeroy District from April 1, 1910, to March 31, 1912.

(161) "Rule 10. That when the men go into the mine in the morning, they shall be entitled to two hours' pay, whether or not the mine works two full hours, but after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof."

p. 395, l. 3–7.

(162) "Rule 19. It is understood and agreed when the miner receives a car from the driver in time to load before time for quitting work, that the miner must load same, provided he has coal enough to do so. If the car should be derailed by complying with the above the company shall take charge of it."

p. 396, l. 8–12.

(163) "Rule 24. In case of local or general suspension of mining, either at the expiration of the contract or otherwise, the men necessary to keep the mine in shape shall not suspend work, but shall, when mining is suspended, fully protect and keep in repair all the company's property under their care, but it is understood and agreed that the operators will not ask them to hoist any coal for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 396, l. 34–42.

(164) "Rule 29. Two men shall have two working places. When the company fails to provide two working places for two men, they shall not employ more men until such time as each two men shall have two places."

p. 397, l. 23–26.

(165) "Where there are four men out of cutting or drilling, working after the same machine or drill, when

work is commenced in the morning, and the same is not caused by accident, the mine shall remain idle that day; but in no case shall the mine be stopped before the matter is brought to the attention of the mine boss and mine committee, and only on their order."

p. 401, l. 42–47.

Massillon Joint Agreement.

Detailed mining, day labor and dead work scale agreed to by and between the Joint Committee of Miners and Operators of Sub-District No. 3 (Massillon) of District No. 6, U. M. W. of A., at Massillon, Ohio, June 15, 1910, effective from April 1, 1910, to April 1, 1912.

PUNCHING MACHINE.

(166) "When a miner is called upon to do company work in the mines, he shall receive scale rate of wages. When called outside, he shall receive inside day wages; but in no case shall he be compelled to leave his place of work against his will."

p. 403, l. 6–9.

SUPPLIES.

(167) "That in case sufficient cars are above the tipple at starting time to last until such time as others that are promised by the company shall arrive, then in that case men shall go down at starting time. If, after above cars are loaded, by any accident promised cars have not arrived and are not in view from the mine, then the men shall go home. In case no cars are at mine at starting time, but are promised and are on the way between yards and mine, men shall wait one-half hour for cars to come."

p. 403, l. 10–17.

SUPPLIES.

(168) "In case of a disagreement on the scale or any portion thereof at any time hereafter, or of any local difficulties during the scale year, and after the expiration of the scale term until a new scale is agreed upon, the engineers, firemen, pump tenders and as many miners as may be required to keep the boilers supplied with fuel, shall be required to remain at their posts for the purpose of keeping the mines free from water, and the engineers shall hoist such coal, men, mules and material as may be necessary for the protection of the same and for supplying the boilers with fuel. But in no case shall the engineers be required to hoist coal for sale or shipment while such disagreement is pending. The rates to be paid for such work to be those in effect at the time of suspension and then subject to any subsequent settlement."

p. 404, l. 21–34.

SUPPLIES.

(169) "SECTION 3—CHECK-OFF.

"The system of check-off for the United Mine Workers' organization remains in force and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization only."

p. 408, l. 45–47.
p. 409, l. 1–3.

SCALE FOR MACHINE MINING AT NO. 3 VEIN OF COAL.

[Sub-District No. 4.]

From April 1, 1910, to March 31, 1912.

(170) "SECTION 11—LOST COAL.

"If the company insist on machine men cutting places, then the company shall pay for all coal lost by places falling in."

p. 410, l. 8–10.

(171) "Section 22. All dues to be checked off by the company and collections to be made once per month, miners' check off coming first. If the miner has coal then the dues are to be taken in coal by the checkweighman, and a list of all day men with the amount to be collected by each shall be furnished the company. Where no checkweighman is employed, the company does the checking off."

p. 412, l. 20–26.

SCALE OF PRICES, NO. 3 VEIN PICK MINING.

From April 1, 1910, to March 31, 1912.

(172) "Coal, mine run, per ton of 2,000 lbs.....$0.66⅔
Coal, screened, per ton of 2,000 lbs..... 1.00"

p. 413, l. 14, 15.

SCALE OF PRICES FOR NO. 6 VEIN.

From April 1, 1910, to March 31, 1912.

(173) "Run-of-mine 5-7 of lump price.....$0.67½"

p. 416, l. 4.

DETAILED MINING SCALE FOR BERGHOLZ DISTRICT.

Adopted at Bergholz, Ohio, May 25, 1910, Effective April 1, 1910, to March 31, 1912.

PICK MINING—Thick Vein.

(174) "SECTION 1—TURNS.

"There shall be no free turns allowed to either rooms or entries. The entries may be driven as fast as operators desire, or conditions permit. But in no case shall entry miners be allowed more cars per week than room miners, and at least once each week the turn shall be made uniform for the time previously worked. However, should the operator desire to drive entries faster than the single shift with the aforesaid uniform turn permits, the operator shall be privileged to increase the number of shifts in said

entries, but in no case shall either shift receive more cars than the uniform turn throughout the mine permits. Should miners refuse to double shift said entries, the operators are to have the right to give regular entry men free turn, or to increase the number of men in such entries. Nothing in this section to prevent fast turns."

p. 417, l. 39–47.
p. 418, l. 1–6.

(175) "SECTION III—CHECKOFF.

"The system of check off for the United Mine Workers' organization is to remain in force, but it is understood that the check off applies only to assessments and dues. In order to be honored, the check off must be furnished to the company not later than 5 p. m. on the 3d and 18th day of each month."

p. 418, l. 16–21.

(176) "SECTION VI—WORKING PLACES.

"All machine loaders shall be accorded two rooms for each two men, and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming scarce through a squeeze, striking a horseback or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine. The operators further agree to keep in reserve one room on each butt entry, so that same can be used by any loader who is unable to work in his own place on account of a fall of slate or water."

p. 419, l. 5–14.

(177) "SECTION XIII—LOST COAL.

"If the company insist upon machine men cutting places, then the company shall pay for all coal lost by places falling in or from any other cause within thirty days from time coal is cut."

p. 420, l. 14–17.

(178) "SECTION XIX—WAITING ON CARS.

"That the miners of this district will wait one hour for cars to be placed at the mine when the mine management has been informed that cars are on their way and will be placed."

p. 421 l. 40–43.

(179) "SECTION XX—CUTTING ON IDLE DAYS.

"Operators shall be permitted to require regular machine runners to cut on idle days in case of breakdown, unavoidable accidents, or four places being out of cutting in any one territory."

p. 421, l. 44–47.

(180) "SECTION XXIII.

"Engineers, firemen and pump men, in case of suspension, are to continue at work, if the company require them, until the mine resumes operation under agreement, and shall be paid the same price they were getting before mine ceased operation, after which the advance or decline shall be made right. It is understood that they are not to hoist any coal for shipment during said suspension."

p. 422, l. 16–23.

(181) "SECTION XXVIII.

"All day men shall do any class of work in or around the mine that the management may require of them, provided, however, he is paid scale price for such work. No man transferred to other work shall be paid less than his regular wages, except when there is none of his regular work to do. Man not to be transferred at any time for more than one day without his consent."

p. 422, l. 38–44.

(182) "Run of Mine 5-7 of Lump Price."

p. 424, l. 6.

DETAILED MINING SCALE FOR SALINEVILLE DISTRICT.
April 1, 1910, to March 31, 1912.

(183) "SECTION 1—TURNS.

"There shall be no free turns allowed to either rooms or entries. The entries shall be driven as fast as operators desire, or conditions permit, but in no case shall entry miners be allowed more cars per week than room miners, and at least once each week the turn shall be made uniform for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work. If, however, the room men decline to take their places in the entries when requested to do so by the operators, then the entry men shall have free turn until the entries are driven required length, nothing in the foregoing to prevent fast turn."

p. 425, l. 11–25.

(184) "SECTION 3—CHECK-OFF.

"The system of checking off for the United Mine Workers' organization remains in force and must be observed, same to be checked off by per cent of earnings. The above to include all dues and assessments for burial fund and United Mine Workers' organization only."

p. 425, l. 35–40.

(185) "SECTION 13—LOST COAL.

"If the company insists on machine men cutting places, then the company shall pay for all coal lost by places falling in."

p. 427, l. 9–11.

(186) "SECTION 15—MEMBERS' SONS.

"That all things being equal, sons of members of the United Mine Workers of America when becoming of proper age shall be allowed the preference of going into the mine."

p. 427, l. 17–20.

(187) "SECTION 19—WAITING ON CARS.

"That the miners of this district will wait one hour for cars to be placed at the mine when the mine management has been informed that cars are on their way and will be placed."

p. 427, l. 37–40.

(188) "SECTION 22.

"Engineers, firemen and pumpmen in case of suspension are to continue at work if the company require them until the mine resumes operation under agreement and shall be paid same price they are getting before the mine ceased operation, after which the advance or decline shall be made right. It is understood that they are not to hoist any coal for shipment during suspension."

p. 428, l. 13–19.

(189) "The inside day wage scale shall be increased 5.55 per cent, with the conditions of the Columbus day wage scale of 1898."

p. 429, l. 34, 35.

COLUMBUS AGREEMENT—SUB-DISTRICT NO. 5.

Columbus, Ohio, April 5, 1910.

Agreement between the Association of Pittsburg Vein Operators of Ohio for their mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America.

(190) "Mining, run of mine coal, per ton . . . . . .6785"

p. 430, l. 8.

OFFICIAL MINING SCALE.

Of Association of Pittsburg Vein Operators of Ohio, for Their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America. In effect April 1, 1910, and ending March 31, 1912.

RULES AND REGULATIONS—PICK MINING.

(191) "All present outside day labor not satisfied with the wages to be paid according to this scale, shall be given an average place in the mine."

p. 431, l. 14–16.

OUTSIDE DAY WAGE SCALE.

(192) "Rule 2—That the eight-hour day of forty-eight hours of six days per week is hereby reaffirmed."

p. 433, l. 27, 28.

(193) "Rule 4—That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operator may furnish other than the regular labor for the unexpired time."

p. 433, l. 39–46.

(194) "Rule 12—Any man called from inside to perform outside day labor shall receive inside day wages."

p. 434, l. 35, 36.

(195) "Rule 13—We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union.

However, should either the operator, the local union or the party upon whom the fine is imposed, object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. In order to be honored the check-off must be furnished to the company not later than 5 p. m. on the 2d and 17th day of each month."

p. 434, l. 37–46.

(196) "Rule 18—There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit, but in no case shall entry miners be allowed more cars than room miners, and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that, by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length."

p. 435, l. 42–49.
p. 436, l. 1–6.

(197) "Rule 21—Members of the pit committee and local officers shall remain at their working places the same as all other employes unless a miner and a mine boss fail to agree on prices to be paid for extra work, when they may be called into confer with the superintendent to decide the dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union."

p. 436, l. 18–27.

(198) "Rule 29—In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep the mines in shape shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension and then subject to any subsequent settlement."

p. 437, l. 17–28.

(199) "Rule 30—The conditions, employment, duties, hours of labor and membership of the U. M. W. of A., of the engineers, firemen, electricians and machinists existing prior to September 1, 1903, continue and remain in force during the life of this contract.

"It is further agreed that any interference on the part of any member of the U. M. W. of A., of a mine committee, or local officer, with the duties of engineer, fireman, electrician or machinist shall subject such member or members of the U. M. W. of A., of a mine committee, or local officer, to suspension or dismissal by the operator, with the understanding that the engineers, firemen, electricians or machinists who are now members shall remain members

of the U. M. W. of A., and those who are not members shall not be compelled to join."

p. 437, l. 29–41.

(200) "Run of mine, 5-7 of lump price.....6785."

p. 441, l. 17.

DETAILED MINING SCALE FOR CAMBRIDGE DISTRICT—SUB-DISTRICT NO. 6.

Beginning April 1, 1910, and ending March 31, 1912.

PICK MINING SCALE.

(201) "SECTION 2—FREE OR FAST TURNS.

"No miner shall be permitted to load double turn or free turn under any circumstances, and there shall be no fast turn except when one or two cars are needed to clean up a place for the machine, and provision regarding fast turn not to be held to apply in such case. There shall be an equal turn kept throughout the mine and all differences between entries be equalized once each week. In case of loader being idle on account of fall of slate, no cutting, breakdown of machinery, or other unavoidable circumstances, he shall receive his turn for lost time."

p. 442, l. 48, 49.
p. 443, l. 1–8.

(202) "SECTION 5—WATER.

"The company shall have the water out of working place at starting time and keep same out of working place during the working hours, unavoidable accidents excepted.

"Where loaders bail water they shall be paid 10 cents per barrel for same. The company shall furnish barrels, when needed by loader, sufficient to hold the water."

p. 443, l. 19–25.

(203) "SECTION 10—DRIVERS.
"Spike team drivers shall harness but one mule."

p. 443, l. 44, 45.

(204) "SECTION 11—ENTRIES.
"There shall be but one loader in each entry."

p. 444, l. 1, 2.

(205) "SECTION 17—CHECK OFF.
"The system of checking off for the United Mine Workers' organization remains in force and must be observed. The above to include all dues and assessments for burial fund and United Mine Workers' organization.

"No fine shall be collected except it is ordered by a majority vote of the members present at a regularly called local meeting.

"However, should either the operator, the local union or the party upon whom the fine is imposed, object to such fine, each of them shall have the right to appeal to the Sub-District President and the operator or the operators' committee for final ruling."

p. 444, l. 39–46.
p. 445, l. 1–3.

(206) "SECTION 20—SUSPENSIONS.
"In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep the mines in shape, shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union

labor, for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, subject to any subsequent settlement."

p. 445, l. 15–27.

(207) "Rule 9—There shall be no free turns allowed to either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit, but in no case shall entry miners be allowed more cars per week than room miners, and at least once each week the turn shall be made uniform for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry so that by giving to each the regular turn the entries shall be driven as fast as two miners could drive them at full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operators, then the entry men shall have free turns until the entries are driven the required length. Nothing in the foregoing to prevent fast turns."

p. 449, l. 26–39.

DETAILED MINING SCALE FOR COSHOCTON DISTRICT SUB-DISTRICT NO. 6.

(208) "Rule 10—That the checking off for the United Mine Workers' organization shall remain in force and be observed, same to be checked off by per cent of earnings. This is to include all dues and assessments for the organization."

p. 449, l. 40–43.

(209) "Rule 17—The company have the right to put two men in entries where isolated, to cut and load coal and move their own machines."

p. 450, l. 39–41.

(210) "Rule 21—In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep mines in shape shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension subject to any subsequent settlement."

p. 450, l. 48–51.
p. 451, l. 1–8.

(211) "Sec. 1. That the bituminous coal district of Indiana shall pay fifty-eight (58) cents per ton for all mine-run coal loaded and shipped as such. All other coal mined in that district shall be passed over regulation screen, and be paid for at the rate of ninety-five cents (95 cents) per ton of two thousand (2,000) pounds for screened lump."

p. 452, l. 12–17.

ARTICLE I.

TERRE HAUTE AGREEMENT.

Arranged and adopted by and between the United Mine Workers of District 11 and the Indiana Bituminous Coal Operators' Association, effective during the scale years from April 1, 1910, to April 1, 1912.

(212) "Sec. 2. The standard height of coal in Indiana shall be three feet three inches in mines open prior to April 1, 1901, and in mines opened since April 1, 1901, the standard height shall be three feet, six inches. All coal

less than three feet three inches in thickness and over two feet nine inches, the price shall be 103 cents per ton for screened lump coal, and 67 cents per ton for mine-run coal. All coal less than two feet nine inches and down to two feet six inches, the price shall be 111 cents per ton for screened lump coal and 68 cents per ton for mine-run coal."

p. 452, l. 18–26.
Article I.

(213) "Sec. 9. All day laborers working at the mines, excepting weighmasters, head flat-trimmer, dumper, fire-bosses and boss-drivers who shall be regarded strictly as company men, shall be recognized as members of the U. M. W. of A. In emergencies or in the absence of any regular employe the right of the operator to employ men not members of the U. M. W. of A. for outside day labor shall not be questioned. Any and all flat-trimmers shall dock for dirty coal."

p. 455, l. 36–43.
ARTICLE V.

(214) "Sec. 3. In case of either local or general suspension of mining, either at the expiration of this contract, or otherwise, the engineers shall not suspend work, but shall, when mining is suspended, fully protect all of the company's property under their care, and operate fans and pumps, and lower and hoist such men, mules or supplies as may be required, and any and all coal required to keep up steam at the company's coal plants, but it is understood and agreed that the operators will not ask them to hoist any coal produced for sale on the market, and there shall be no change in engineers' wages during the suspension."

p. 456, l. 25–34.
ARTICLE VI.

(215) "Section 1. When the coal is paid for mine-run it shall be mined in as good condition as when paid for on a screened lump basis, and when loaded on the miner's car, it shall as nearly as possible be free from slate, bone coal, or other impurities. Any miner loading impurities with his coal in such quantities as to show intent or gross negligence, shall for the first offense be fined fifty cents; for the second offense, seventy-five cents; for the third and each subsequent offense in the same pay, one dollar. Such penalties to start with each pay. The fine so collected to be held in the office of the operator until the local votes a donation to some member who has been injured, ill or has met with some misfortune, which will entitle him to assistance from the local. In case of dispute, the impurities will be kept until the case is settled."

p. 458, l. 9–22.
ARTICLE VIII.

(216) "Sec. 17. No more than three places for two men nor two places for one man shall be allowed. In mines where the coal averages 6 feet high or over, rooms 30 feet wide or over equipped with two tracks shall be considered double places, and two loaders may be limited to two such places."

p. 459, l. 46–48.
p. 460, l. 1, 2.
Article VIII.

(217) "Sec. 22. All local rules regarding the number of cars required above the tipple south of the Vandalia are hereby abolished, and in lieu of which it is agreed that the operators shall blow the whistle at 8 o'clock in the evening when intending to work the following day, and again at 5 o'clock in the morning if cars are there or promised by the railroad company to be there at 7 o'clock, or starting time. If the company blows the whistle at 5 o'clock a. m.

without the promise of cars and the miners report for work at 7 a. m., or starting time, and there are no cars, the company shall pay to the local union a fine of $25.00."

p. 460, l. 24–33.
Article VIII.

(218) "Sec. 28. Where any company operate more than one mine on the same line of road in the same vein of coal, the work between the respective mines shall be as nearly as business conditions will permit equally divided."

p. 461, l. 3–6.
Article VIII.

(219) "Sec. 30. Every miner shall be given an opportunity to load an equal turn with every other miner doing the same class of mining. Where pick and machine miners are working in the same mine the turn shall be in proportion to the ratio between pick mining prices and machine loading prices."

p. 461, l. 9–13.
Article VIII.

(220) "Sec. 31. The checkweighman shall furnish the boss driver or mine-boss from day to day a turn sheet, and he shall cause the turn to be regulated. Provided, further, that no run or entry in machine mines shall be permitted to get more than five cars in advance of another run or entry, and in pick mines not more than two cars, except in case of accident."

p. 461, l. 14–19.
Article VIII.

(221) "Sec. 32. It is further agreed that the operators shall offer no objection to the check-off for the check-weighman, and for dues for the U. M. W. of A., provided that no check-off shall be made against any person until he shall

have first given his consent in writing to his employer. This applies to all day work as well as miners."

p. 461, l. 20–25.
Article VIII.

(222) "Sec. 4. It is agreed that in the event of an inside employe being wrongfully discharged, and it is so discovered by methods herein provided, and by the same methods is reinstated, he shall be paid for time lost at the rate per day prevailing for inside day labor; provided, however, that the company shall have the option of permitting the accused to continue at work pending the investigation and the same shall apply to outside day laborers, except the outside day labor scale shall be paid."

p. 462, l. 17–24.
Article IX.

(223) "22. The operators agree to give each miner as near as possible an equal turn of cars for coal, and not to allow any day hands to load coal on idle days, but in no case shall a turn apply to the handling of dirt, except in entries unless otherwise specified in our agreement, but the operators agree to put in the mines a sufficient number of mules to remove all the coal and dirt therefrom. It is agreed that nothing herein shall conflict with the gobbing of dirt as hereinbefore provided. The operators will give an equal turn of work to all inside day men as near as practical, who are competent, excepting track layers and timbermen, adjustment of turns to be semi-monthly."

p. 466, l. 40–48.
p. 467, l. 1, 2.

CONTRACT—PICK MINING SCALE FROM APRIL 1, 1910, to APRIL 1, 1912.
BRAZIL BLOCK AGREEMENT.

(224) "23. No miner shall be discharged or discriminated against because of his refusal to do work by the day when called upon by the pit boss. If, by the absence or refusal to work of any day man, or men, work is likely to be interfered with, the mine committee when called upon, shall assist the mine boss to furnish competent men in case he fails to secure them at the scale rate, so that the mine shall continue work."

p. 467, l. 3–9.

(225) "25. Should the mine boss or superintendent at any time discharge a miner or mine laborer and upon investigation by the mine committee they believe there were not good and sufficient causes for so doing, they shall at once notify such boss or superintendent of their decision, and pending the matter being decided upon by the final board as provided in such cases, the management may at their option retain in their employ such person so discharged pending the final decision. If said board finds that the man was discharged without sufficient cause, he shall be reinstated, and shall be paid his regular wage, for all time lost by such discharge, but days which the mine was not in operation during this period shall not be reckoned as lost."

p. 467, l. 15–26.

(226) "26. It is understood and agreed that when any of the workmen in and about a mine stops the same for the purpose of redressing a grievance, real or supposed, thus shutting the mine down contrary to this agreement, each employe shall pay to the owner of said mine the sum of $1 per day during such shut down. The payment shall be deducted from each person through the pay roll and this agreement is authority for making such deduction. It is further agreed that no coal company, because of any

grievance with any employe, real or supposed, shall stop the mine, and any company so shutting down its mine shall pay to each workman in and about the mine $1.00 per day during such shut down."

p. 467, l. 45–49.
p. 468, l. 1–7.

(227) "32. In case of emergency work the mine boss shall consult with the mine committee, and if they approve of the work being done on overtime, the men engaged thereon shall not be required to lay off until their time is equalized with the others working in such mine."

p. 468, l. 44–48.

(228) "42. It is fully understood and agreed upon the part of the United Mine Workers of America that the engineers will not under any circumstances allow affiliation with any labor organization to interfere with or prevent their being on duty at any and all times required by the operators, and that they will not suspend work in sympathy with any organization, and further, that they will, during the continuance of this contract, at all times fully protect all the company's property under their care, and that they will operate fans and pumps, and lower and hoist such men or supplies as may be required to protect the company's property, and any and all coal that may be required to keep up the steam at the company's plant. But it is understood that the operators will not ask them during this period to hoist any coal produced by non-union labor for sale on the market."

p. 470, l. 19–32.

(229) "46. It is also agreed upon the part of the operators that they will enforce a rule forbidding the entering of the engine room by loafers and disinterested parties,

and that they will have cards printed and placed in conspicuous places to this effect."

p. 470, l. 44–47.

(230) "There shall be no discrimination against any employe.

"That the system of loading coal in machine mines be on the following basis, to-wit:

"1. That one man shall have the right to two places where he can take care of the same.

"2. That two men shall have the right to three places where they can take care of the same.

"3. All others one place.

"When a man is off work for more than one day the mine boss shall have a right to put a man in the places if it is necessary providing the man leaves the places in the same condition as near as possible as he found them."

p. 472, l. 3–14.

MACHINE MINING SCALE.

Contract between the machine operators of the Block Coal District and the Executive Board of District No. 8, United Mine Workers of America, governing prices and conditions of mining in machine mines, Block Coal District.

(231) "CHICAGO AGREEMENT, 1898.

"Chicago, January 28.—Contract between the operators of the central competitive coal field and the United Mine Workers of America.

'The following agreement, made and entered into in Joint Inter-state Convention in this city (Chicago, Ill.) January 26, 1898, by and between the operators and miners of Illinois, Indiana, Ohio and Western Pennsylvania, known as the Pittsburg thin vein district, witnesseth:

'1. That an equal price for mining screened lump coal shall hereafter form a base scale in all the districts above

named, excepting the State of Illinois, the block coal district of Indiana to pay 10 cents per ton over that of Hocking Valley, Western Pennsylvania and Indiana bituminous district; and that the price of pick run-of-mine coal in Hocking Valley and Western Pennsylvania shall be determined by the actual percentage of screenings passing through such screens as is hereinafter provided, it being understood and agreed that screened or run-of-mine coal may be mined and paid for on the above basis at the option of the operators, according to market requirements, and the operators of Indiana bituminous shall also have like option of mining and paying for run-of-mine or screen coal.

'2. That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the bituminous district of Indiana shall be uniform in size, six feet wide by twelve feet long, built of flat or akron-shaped bar of not less than five-eighths of an inch surface, with one and one-fourth inches between bars, free from obstructions, and that such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

'3. That the block coal district of Indiana may continue the use of the diamond screen of present size and pattern with the privilege of run-of-mine coal, the mining price of which shall be determined by the actual screenings; and that the State of Illinois shall be absolutely upon a run-of-mine system, and shall be paid for on that basis.

'4. That an advance of 10 cents per ton of 2,000 pounds for pick-mined screened coal shall take effect in Western Pennsylvania, Hocking Valley and Indiana bituminous districts on April 1, 1898, and that Grape Creek, Ill., and the bituminous district of Indiana shall pay 40 cents per ton run-of-mine coal from and after same date, based upon 66 cents per ton screened coal in Ohio, Western Pennsylvania and the Indiana bituminous district, same to continue in force until the expiration of this contract.

'5. That on and after April 1, 1898, the eight-hour work day with eight hours' pay, consisting of six days per week, shall be in effect in all of the districts represented, and that uniform wages for day labor shall be paid the different classes of labor in the fields named, and that internal differences in any of the states or districts, both as to prices or conditions, shall be referred to the states or districts affected for adjustment.

'6. That the same relative prices and conditions between machine and pick mining that have existed in the different states shall be continued during the life of this contract.

'7. That present prices for pick and machine mining and all classes of day labor shall be maintained in the competitive states and districts until April 1, 1898.

'8. That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from a failure to maintain scale rates.

'That this contract shall remain in full force and effect from April 1, 1898 to April 1, 1899, and that our next annual inter-state convention shall convene in the city of Pittsburg on the third Tuesday in January, 1899. Adopted.

In Behalf of the Operators:	In Behalf of the Miners:
Illinois.	
J. H. GARAGHTY	J. M. HUNTER
E. T. BENT	W. D. RYAN
Indiana Bituminous.	
WALTER S. BOGLE	W. G. KNIGHT
	J. H. KENNEDY
Indiana Block.	
C. B. NIBLOCK	J. E. EVANS

Ohio.

W. E. FARMS
T. L. LEWIS

Pennsylvania.

J. C. DYSART PATRICK DOLAN
F. M. OSBORNE EDWARD McKAY

For West Virginia Miners—Henry Stephenson.

Members National Executive Board, U. M. W. of A.—Fred Dilcher, John Fahy, Henry Stephenson, Edward McKay, J. H. Kennedy and W. D. Ryan.

M. D. Ratchford, President U. M. W. of A.

John Mitchell, Vice President U. M. W. of A.

W. C. Pearce, Secretary-Treasurer U. M. W. of A."

p. 472, l. 33–47.

p. 473, l. 1–47.

p. 474, l. 1–24.

(232) "COLUMBUS DAY WAGE SCALE.

INSIDE DAY WAGE SCALE FOR AN EIGHT-HOUR DAY.

Columbus, Ohio, March 10, 1898.

"The following resolution was adopted at a meeting of the scale committee of the Interstate Convention at Chicago January 22, 1898:

Resolved, That two operators and two miners from each state meet at Columbus, Ohio, on the second Tuesday in March (or March 8), 1898, at the Chittenden Hotel to formulate a uniform day work scale based upon the district upon which the mining prices are based.

In accordance therewith, the representatives of the various competitive districts met at the Chittenden Hotel, Columbus, Ohio, March 8, and agreed upon the following scale of wages and conditions to govern all inside day labor for the year begining April 1, next, and ending April 1, 1899.

INSIDE DAY WAGE SCALE.

Tracklayers	$1.90
Tracklayers' Helpers	1.75
Trappers	.75
Bottom Cagers	1.75
Drivers	1.75
Trip Riders	1.75
Water Haulers	1.75
Timbermen, where such are employed	1.90
Pipemen, for compressed air plants	1.85
Company men in Long Wall Mines of Third Vein District, Northern Illinois	1.75
All Other Inside Day Labor	1.75

The above scale was arrived at by taking the average of the wages paid in all of the competitive districts and reducing said average to an eight-hour day, then adding the advance to said average to correspond with the advance in price of mining to be paid April 1 next.

RESOLUTION I.

The above schedule of day wages applies only to men employed in the performance of their labor, and does not apply to boys unless they can do and are employed to do a man's work.

RESOLUTION II.

Whereas, We have failed to agree upon a uniform rate of wages for the different classes of outside labor for the entire competitive field, owing to the variations of conditions over which we have no control;

Resolved, That the employing of outside day laborers around the mine, and wages to be paid the same, shall be left entirely to the employers and such employes in all the competitive districts, and the question of uniform wages for outside labor be referred to our next Interstate Joint Convention.

Resolved, That where any members of the present force of outside day labor in the competitive field prefer to work in the mine in preference to accepting the wages offered for their services as outside day laborers, they shall be given places in the mine to mine coal.

RESOLUTION III.

Resolved, That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

RESOLUTION IV.

Resolved, That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than regular labor for the unexpired time.

The above was agreed to after the most careful discussion of each item, and we believe it to be the best and most equitable solution of the questons involved, taking into consideration the various interests to be harmonized in order to reach a uniform scale.

It is expected that all the prices and conditions shall be strictly adhered to by both operators and miners.

S. N. DALZELL, Chairman Committee.
T. L. LEWIS, Secretary.

In Behalf of the Operators:	In Behalf of the Miners:
Illinois.	
S. M. DALZELL	JOHN M. HUNTER
A. J. MOORSHEAD	W. D. RYAN
Indiana.	
J. H. McCLELLAND	J. H. KENNEDY
P. H. PENNA	W. G. KNIGHT
W. W. RISHER	BARNEY NAVIN
Ohio.	
J. S. MORTON	W. E. FARMS
W. J. MULLINS	T. L. LEWIS
Pennsylvania.	
G. W. SCHLUEDERBERG	P. DOLAN
JOHN A. O'NEIL	WM. WARNER.

On Behalf of the U. M. W. of A.—
M. D. RATCHFORD, President.
W. C. PEARCE, Secretary.

p. 474, l. 25–45.
p. 475, l. 1–47.
p. 476, l. 1–32.

Excerpts from book entitled "INTERSTATE CONVENTION OF 1908—JOINT CONFERENCE OF COAL MINERS AND OPERATORS OF WESTERN PENNSYLVANIA, OHIO AND INDIANA HELD AT TOLEDO, OHIO, APRIL 14-17, 1908."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 3. [Record pp. 706, 291.]

(233) "Francis Feehan. There is no one more pleased than I that the interstate joint convention has been re-established, and that we are assembled to at least make an effort to negotiate a wage scale. This has been brought about after months of effort on the part of the mine workers' organization."

p. 21, l. 41-45.

(234) "H. L. Chapman, of Ohio: Mr. Chairman and Gentlemen—In making this motion on behalf of the operators for this length of time for this contract, I do not know that I can emphasize our reasons for making it more than I have done in the past. But the operators of the three states feel that they would not be justified in the present conditions that prevail in the coal trade throughout this competitive field, and with the outlook for the present year of the business, they do not feel that they could be justified in making an agreement for one year, but they are hopeful that the conditions of the country will change from what they now are and have been for the last four or five months, during the year following this year. Presidential election coming on this year, and whatever may take place as a result of that, it matters not whether one side is successful or not, we hope that such a condition

will prevail in the business affairs of the country that it will be settled, and that there will be a revival of the conditions of business that the operators of the competitive field would have a fairly remunerative business for the last year of the contract if it was made until the date that I have named. I do not believe that there is an operator today in this competitive field that is producing coal that believes that there is a show for the year 1908 and a part of 1909, the time that this contract, if only made for one year, would run, and they cannot hope to more than break even in their business for this year on the present prices. And you gentlemen know just as well as the operators know that in the non-union fields that in the place of paying the present wages, or the wages that have been paid in this field in the past two years, reductions have taken place already, and more reductions will probably take place. And the operators of this competitive field who are acting with you want to continue and act with you people, and you cannot expect but what they have got to meet this competition that comes from that source during the year, because with the restricted trade that is necessarily going to exist the efforts that are being made by those in the non-competitive fields are marvelous to secure the trade that the organized sections have heretofore had, and they are being successful already in many instances.

"Now in brief, gentlemen, these are the reasons why the operators of the competitive field of Western Pennsylvania and Ohio and Indiana feel that they cannot do otherwise than make that contract to extend for the period that I have named. In all justice to you people and to ourselves we believe from our standpoint that it is to the interest of both of us that it should be maintained. You are now receiving the highest price that has ever been paid for any considerable time in the bituminous coal field, and

you people ought to be more than satisfied if you can get a renewal of that agreement with the operators of this field of a contract of this character for two years."

p. 52, l. 10–47.
p. 53, l. 1–11.

(235) John H. Jones, of Pennsylvania: "You want to point your guns at your enemies. You want to point your guns at the operators who in the past have not proved by their actions that they are friends of yours or of organized labor. This is the thing you should do in the next two years. Do not point them at your friends; turn them on the men who are not your friends.

"At the present time there is coal being mined in non-union districts, and it is encroaching upon our markets; even in places where they have differences between them they are dropping them and taking away the contracts from the union fields. The question has been asked, why haven't we had this state of affairs during the past two years? The reason is, we have had very prosperous times, and there was plenty of trade for all. This is not the case at the present time; and if the operators mining in non-union fields in this district can maintain their present position, *i. e.*, have their coal mined at ten cents to twenty cents per ton less than operators employing union labor, and are enabled to market their coal at the prices at which they are marketing it, it is going to place both operators and miners in a very embarrassing position in the very near future.

"In the Pittsburg district, which is the greatest industrial center in the world, the largest number of operators who are mining coal with non-union miners have already forced a reduction of from ten to twelve per cent. Now you should make a settlement for two years and turn your guns where they belong."

p. 58, l. 18–43.

(236) Francis Feehan, of Pennsylvania: "Now I have very little to say in reply to Mr. Jones of the Pittsburg district. I am very desirous of lending all of my efforts to prevent, if possible, the production of non-union coal. I know that it has been my policy as an officer of the organization to try if possible and agree along with the operators who have entered into a contract with us and are dealing as business men should do, and if I had any fighting to do I would want to fight the fellow that was unfair and who was taking advantage. We feel that this should be done. However, it is well for me to remind some of the Pittsburg operators at this time that our guns were kept very warm in the Pittsburg district trying to force some of them to live up to their contract, which they had entered into without devoting any of our time and attention to the non-union business."

p. 59, l. 45–50.
p. 60, l. 1–8.

(237) "President Lewis: All of the membership of the organization of miners of this country gave these instructions. If it were only a question of the three states we could settle it right here in this convention, but not being a question of the three states it will go to the entire membership with these recommendations."

p. 63, l. 15–20.

(238) "H. L. Chapman, of Ohio: Mr. Chairman and Gentlemen: Speaking for myself and the Ohio interests, this question of stopping the mines upon a little local difficulty and causing them to become idle, whether it is the fault of the miners, or the fault of the operators, or rather the mine bosses, or some one else, there ought to be some way in the interest of both sides that could prevent this. I agree with Mr. Lewis in his statement that at times there

are men at fault who have charge of the mines, as well as the miners sometimes. I have no case of that kind myself; but the company I represent in the Hocking Valley, that the time we were not at work on June 23, 1906, to December 3, 1907, taking all of the stoppages at our mines, and counting them as if they were at one mine, and counting the hours and the days and everything of that kind over these trivial differences that in my judgment no man or mine ought to have stopped at all, the difficulty ought to have been adjusted in a businesslike, sensible way between the operators and the representatives of the miners, according to the statement that I have, all of mines put together which would be for one hundred and seventy-six days.

"G. W. Savage, of Ohio: Enumerate the causes.

"H. L. Chapman, of Ohio: There were scores of causes; and I could not give them without having the paper on which I have it. They were questions of local character pertaining to the mines; but I know that it foots up to one hundred and seventy-six days. It seems that the fault in some of the cases was with the company, and in other cases the fault was with the miners; but it don't make any difference whose fault it was, the fact remains that the miners were stopped. In these mines taking them all together, I figured at them a little while today, and I found that these mines stopped over two hundred men, and maybe more than that, and they were probably getting about $2.55 per day, as the average earning power of the men during that time, and this would amount to $80,000.00 that the miners of the Sunday Creek Company lost during that period over what they would have had if they would have continued at work.

"Mr. Sullivan: Did you lose any contracts, Mr. Chapman?

"H. L. Chapman, of Ohio: I am not talking about that. On the other hand, the mines lost, for it undoubtedly lost to the company whatever profit they might have made on the coal that they would have produced during that period of time if it had been put into the market; this in addition to all of the men who were employed to take care of the property, and the monthly salaries of other men. Putting the profit on the coal that would have been dug from the mines in that period at fifteen cents a ton lump coal, then it undoubtedly cost the company thirty thousand dollars during that period."

p. 68, l. 25–47.
p. 69, l. 1–25.

(239) P. H. Penna, of Indiana: "And then I want to add that there are unorganized fields in this country today that could be named that have cost you people hundreds of thousands of dollars, and lots of work, and pretty near cost the hide of some of my friends; there are cases in that shape."

p. 73, l. 44–48.

(240) "President Lewis: Before this report is voted on I have a resolution which ought to be read, and I will read it with your permission.

"Whereas, We, the representatives, of the operators and miners of Western Pennsylvania, Ohio and Indiana, believe that the Illinois operators and miners should be a part of the Central Competitive Field Joint Movement:

"Resolved, That we, the operators and miners in this joint convention, extend to the operators and miners of Illinois an urgent and cordial invitation to join with us in the next interstate joint movement in the next joint convention in February, 1910.

"I move its adoption.

"Chairman Zerbe: It has been moved that we adopt the resolution just read by President Lewis.

"P. H. Penna: The Illinois operators and miners are in joint convention in Springfield at this time, attempting to make a scale, and I think it would be a graceful thing to do if Mr. Lewis would endorse it; that in addition to the resolution he has prepared that our President and Secretary be instructed to forward that resolution to their meeting in Springfield, together with the congratulations of this joint convention and the expressed hope that they may be able to reach an amicable settlement.

"President Lewis: If Mr. Penna will make that as an amendment to my motion, I will accept it.

"P. H. Penna, of Indiana: I offer it as an amendment to be added to the motion of Mr. Lewis.

"Mr. Kelly, of Illinois: I believe we have a right to be heard in this matter yet. We from Illinois are not here today asking for anything except that which we believe we are entitled to, and I want to say to you that we have a few things that we are entitled to at this time. The President of the National organization has expressed the absolute views of the Illinois miners, and we have no desire to contradict any report that he has made. I do want to say for the Illinois miners one thing, and I would be doing myself an injustice if I failed to do this. This man has come here and made this same speech in every convention that we have had for the past ten years, and—

"Chairman Zerbe: The gentleman is out of order.

"Mr. Kelly of Illinois. I believe we have as much right to the floor as Mr. Chapman, and with all due respects to his views we have a right to come here nevertheless, and we are asking you now if you are going to leave us here to fight our battles through in making local agreements? I have this to say to you gentlemen, and that is all I have

to say—I appeal to you now because of the fact that there are more of you than there are from Illinois. I do appeal to you now and ask you to hold up your hands in this attempt to re-establish and bring about what Tom Lewis calls the Interstate Joint Movement. If it is not possible for him to bring the Illinois operators and miners into this joint conference, when in God's name can you bring them in?

"I want to go further and call attention to the statement made not over sixteen days ago, when he said that the Ohio operators had something like three million tons of coal they wanted to sell, and then they would make an agreement with us and not until then. I said the other day on the floor of this convention that there was a collusion between the operators of the three states, and I want to repeat it now, notwithstanding my friend Penna wants to deny it."

p. 107, l. 15–45.
p. 108, l. 1–30.

(241) "Chairman Zerbe: Now the question before the house is on the motion of Mr. Lewis, amended by Mr. Penna, in regard to the message to be sent to Illinois. That is not debatable. All in favor of this resolution will signify it by saying 'Aye.'

(The motion was voted on and carried.)"

p. 110, l. 20–24.

(242) "President Lewis: Several delegates have asked me, and I want to explain the discussion on this question of the referendum vote. It will not be just the districts represented here, but will be a vote of the entire membership."

p. 114, l. 26–29.

(243) "Tenth: That the renewal of the mining rates, day wage scale and general prices existing in 1907 is on condition of the approval of a two years' contract by referendum vote of the United Mine Workers of America."

p. 120, l. 21–24.

INTER-STATE AGREEMENT OF 1908–10 between the Operators' and Miners' representatives of Western Pennsylvania, Ohio and Indiana.

Excerpts from book entitled "INTERSTATE CONVENTIONS 1906—JOINT CONFERENCES COAL MINERS and OPERATORS of WESTERN PENNSYLVANIA, OHIO, INDIANA AND ILLINOIS—INDIANAPOLIS, INDIANA, January 25 to February 2, and March 20 to 29, 1906."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 1. [Record pp. 706, 291.]

(244) "Fifth. That no vote be declared carried unless upon the affirmative vote of the miners and operators of each State. That upon all questions of mere procedure the ordinary rules of parliamentary procedure, as stated in any standard manual, shall be the rules of this convention, and that in no event shall the rule requiring unanimous vote on all main and principal questions be suspended. Main and principal questions mean all questions affecting the proposed scale and agreement."

p. 4, l. 21–27.
Readopted to govern Joint Interstate Convention of 1908.
McKinley's Exhibit No. 3.
p. 16, l. 36–39.

(245) "Mr. John Mitchell: I move to amend the report of the Committee on Credentials by inserting the following: That the miners and operators of the states of Kansas, Missouri, Arkansas, Texas and Indian Territory be admitted to the joint conference and granted the same privileges accorded to operators and miners from the States composing the Central Competitive Coal Field. (Seconded.)

"Mr. Robbins: Until the report of Committee on Credentials is adopted there can be no convention. The call for the convention was for the representatives of the operators and miners from the four states of Illinois, Indiana, Ohio and Pennsylvania. The report brought in establishes this convention members of those four states on the part of the operators and miners. I submit that until that is acted upon anything else is out of order.

"Mr. Mitchell: I think that the point of order should not be sustained, for the reason that the Joint Convention of miners and operators is a continuous body. There is no final dissolution of our sessions at the end of our conventions each year. We adjourn to meet a year from the date of the convention then closing. Consequently the organization of this convention does not mean the organization of a new convention. This is a continuation of a convention held two years ago, and it seems to me it is perfectly in order to extend the scope of our work to invite to participate with us in this convention the representatives of the operators and miners of other districts. I therefore believe the motion is not out of order.

"Mr. W. S. Bogle: Mr. Mitchell has made the strongest argument possible in favor of the report of the Credentials Committee. The original call that inaugurated this movement included these four states, and the call since that time has not been changed. Therefore no credentials committee can consider the credentials of any states or districts outside of the call. It is perfectly outside of the province of a credentials committee to take cognizance of credentials from a body of men who were not included in the call. I will admit that it is a part and parcel of the convention to take up and consider whether or not it will enlarge its scope and take in additional territory. That is a matter that may properly come before

this convention at any time; but to attempt to put it into the report of the Credentials Committee is absurd. Mr. Mitchell himself has given the best argument against it. I will ask the secretary to read the original call for the convention in Chicago and at the same time the call for this convention. No Credentials Committee can go outside of the call. I have been informed that the original call included West Virginia. The operators at all times have been willing to welcome West Virginia.

"Mr. Mitchell: Why don't you bring the operators from West Virginia here?

"Mr. Bogle: Why don't you bring them? If it was not for the check-off system granted you by the operators of these four states your organization would not last two years. We are giving your organization its strength here today. It is not you; it is not these delegates; it is the gentlemen seated on this side of the hall that are making your organization what it is.

"Chairman Traer: Mr. Bogle, the motion is in regard to the admission of other States.

"Mr. Chris Evans: Mr. Bogle made the statement that he understood the original call included West Virginia. For the information of this convention I wish to state that the original call included all the States and territories. At the convention that adopted the first scale of prices, Pennsylvania, Ohio, Indiana, Illinois and West Virginia were all represented. The original call, however, included all the states and territories. I make this statement because I sent out the first circular for such a convention.

"Mr. Bogle: I would like to have the secretary read the original call for the Chicago convention of 1898. Mr. Evans is confusing the record; he is going back to some ancient history, to some other movement that died a natural death and was revived in 1897, followed by a convention

that met in 1898. If there is any question about that I would like to have read the call for this convention.

"Chairman Traer: Mr. Lewis has asked for the floor. The chair will recognize Mr. Lewis if he will postpone his argument until the secretary has read the call for this convention.

"Secretary W. B. Wilson read the following:

" 'Further, in pursuance of the authority vested in us, we hereby call a Joint Convention of the coal operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois to meet at Indianapolis, Indiana, at 10 o'clock a. m., January 25, 1906.'

"Mr. Bogle: I renew my point of order. The Committee on Credentials, in making its report, can take cognizance of no other credentials than from the operators and miners included in the call. I will ask the ruling of the chair on that point.

"Chairman Traer: A point of order has been raised upon which it will be necessary for the chair to rule before discussion is in order. The Interstate Agreement for the two years beginning April 1, 1904, and ending March 31, 1906, provides, in addition to the various numbered articles which it contains, the clause which has just been read by the secretary.

"Gentlemen, the agreement upon which this meeting was called leaves the chair no option as to the decision as to who the preliminary members and as to who the members entitled to participation in the organization of this convention shall be. Plainly, from the agreement which has just been read, the original organization of this convention contemplates the admission only of the members from the operators and miners of the States mentioned in this agreement. If it is desired by either the operators or the miners of either or all of the states to introduce into

this organization additional members, that is a matter which should be brought up and passed upon the same as any other matter, submitted to this convention. The chair has no option but to rule that upon the report of the Credentials Committee the point of order is well taken. The organization of this convention must be based upon the agreement under which it was called.

"The motion is upon the adoption of the report of the Credentials Committee.

"Mr. T. L. Lewis, Ohio: I would like to ask a question of the chair.

"Chairman Traer: Proceed, Mr. Lewis.

"Mr. Lewis: According to the ruling of the chair this convention must first pass upon the report of the Committee on Credentials with reference to the four States.

"Chairman Traer: That is correct, Mr. Lewis.

"Mr. Lewis: And the admission of any other state is to be an after consideration? Is that correct?

"Chairman Traer: That is correct. The motion is upon the adoption of the report of the Credentials Committee. The secretary will call the roll.

"(Secretary Wilson called the roll of the States. All the operators voted in the affirmative; all the miners voted in the affirmative.)

"Chairman Traer: The vote is unanimous, and the report of the Credentials Committee is adopted.

"Mr. Mitchell: I now renew my motion not as an amendment, but as a motion. I move that the miners and operators of the States of Kansas, Missouri, Arkansas, Texas and Indian Territory be admitted to the joint conference and granted the same privileges accorded to the operators and miners from the States comprising the Central Competitive Coal Field. (Seconded by Secretary Wilson.)

"Mr. Mitchell: In support of this motion I wish to make a few remarks. This is not the first time that the operators and miners of the Central Competitive Coal Field have departed from the rule which limits participation in this conference to the four districts which have been accorded representation here. A few years ago the operators and miners of Central Pennsylvania came to Indianapolis, made application for a seat in our joint conference, and were accorded that right. Mr. Robinson, of the Buffalo, Rochester & Pittsburg Coal Company, of Central Pennsylvania, was not only admitted to the conference, but served for a short time on the Scale Committee. So that in asking that the scope of our work be extended so as to include the miners and operators of the Southwestern States we are establishing no new precedent. But, aside from that it seems to me that it would be to our mutual advantage if we can bring into this conference the representative operators and miners of not only the Southwestern states, but the operators and miners of every coal-producing State in the Union.

"These States west of the Mississippi River—and I want to speak particularly of Iowa—are competitive with coal produced in the States east of the Mississippi River. Coal mined in Pennsylvania, in Ohio, in Indiana and in Illinois is sold in the same market as the coal produced in all of these states seeking admission here. There can be no doubt in the minds of either operators or miners that it is desirable to establish a wage scale that will be practically the same in every State and in every territory where coal is mined and sold in a common market. And it seems to me that incalculable benefit will accrue to the coal industry if we can bring into closer affiliation and harmonius co-operation at least the men who own the mines of these various States, to say nothing of the benefits

that will come from bringing into co-operation the men who work in the mines. The trouble too often has been that you gentlemen have not worked in harmony one with the other, and too often we have had to suffer because of friction among the men who employ us. I trust, Mr. Chairman, that the proposition to include these Southwestern States, whose operators and miners are here, will be adopted, and that we shall hereafter invite to meet us the miners and operators of every State where the men are organized and where coal is mined and meets your product in competition."

p. 5, l. 7–66.
p. 6, l. 1–66.
p. 7, l. 1–18.

(246) "Mr. H. L. Chapman: It has been now twenty years since I started out with John McBryde and Chris Evans, both of whom are here, I believe, although many of the others have passed over the river, to attempt to organize, carry on and perpetuate the Interstate Agreement for the benefit of the operators and miners of the four competitive States. We have met here this year, after a two years' recess, for the purpose of again seeing if we can, in this competitive field, establish and retain the present relations that have existed between us for so many years. Each of you operators and each of you miners who have participated in these conventions know full well the difficulties that have attended this movement. On several occasions it has well nigh gone. It has required the patience, the conservatism and the arguments of the level-headed operators and miners to perpetuate it. It will require the same in the future to perpetuate it. As you all know, it has been demonstrated in the past that whenever you add another State to the movement it makes it that much more difficult for the four States to get an

agreement. While I have been connected with the movement for a great many years, I am today not familiar with all the conditions even in my own state, nor am I familiar with all the conditions in Pennsylvania, Illinois or Indiana; much less do I know the conditions that exist in any of these outlying districts. What does an Ohio operator or an Ohio miner, except those who have been in those outlying districts, know concerning the matters there? What business have we to attempt to fix a scale of wages for men a thousand miles away from us, and for operators a thousand miles away from us? The conditions are entirely different; the markets are entirely different. We in Ohio do not come into competition to any extent with any of the districts named. If the miners would bring in our sister States of Virginia and West Virginia, we would admit them. We have tried to bring in the operators, but have failed. Let us look at the conditions there. In 1903 the State of West Virginia produced 26,882,000 tons of coal; in 1904, 30,222,000 tons, and the estimated production for 1905 is 35,000,000 tons. In Ohio in 1903 we produced 24,573,000 tons; in 1904, we produced 24,583,000 tons, an increase of 10,000 tons in one year. Although the statistics for 1905 are not yet out, I do not think Ohio will show an increase of anything in 1905. What does this argue? That this State of West Virginia is taking away steadily the trade of the miners and operators in Ohio. Our people undoubtedly would be in better condition today, so far as the operators are concerned, if they had a free rein against West Virginia, with the cheap labor they have over there, but we do not want it. We want the conditions of our people in our State to be just as good as we can make them, and we are willing to stand by the movement, and trust in the future that something may occur to bring those people in, or to prevent their taking away any more of our trade.

"You miners want to consider this proposition carefully and seriously. Consider whether or not you are not, by increasing this territory, bringing about a condition of things that will eventually ruin the movement that has done so much for all in the competitive field. These people in the Southwest that you are seeking to take in have an organization with which you meet and fix a scale. You have your organization there. We have no objection to it. We say God-speed in your movement in the Southwest, but do not make this thing so big and difficult to handle that you destroy it. That is what the operators fear, to say nothing about the business proposition connected with it. These gentlemen have no right to come in here, and we have no right to let them in. We are a close corporation so far as these four States are concerned, between the miners and operators. Unless you can demonstrate by different arguments from those you have presented on this and on former occasions, that there is something in it, we will continue to object to the admission of those States. As Mr. Robbins has said, our convention has voted against the proposition today as a solid wall. In the interest of the men that are laboring for us in the competitive field, we refuse to let these districts in. It seems strange to me that this question should be brought in year after year. It was threshed out years ago. The same arguments have been used year after year by the miners and the operators. We have not changed in any respect. I do not question your sincerity in the least; you cannot question the sincerity of the operators from their side. I think that is all I desire to say at the present on this proposition."

p. 10, l. 44–67.
p. 11, l. 1–40.

(247) "I may be an idealist or a dreamer, but I hope to see the day when every coal-producing field in the United States will participate in this joint conference."

Mr. Green.
p. 12, l. 40–42.

(248) "The gentleman on the other side spoke of what we are doing in West Virginia. I desire to answer that question by stating that we have men in that State trying to organize the miners. While doing so we meet with opposition from people who claim they are law-abiding citizens, who claim that they respect the law, and they respect it to the extent that they hire thugs to assault the men we put in there to organize that field."

Mr. Lewis.
p. 19, l. 14–19.

(249) "Mr. Mitchell and Mr. Lewis make the great mistake of always talking as though the organization controlled all the coal mined in this country, when, as a matter of fact, you do not control it, and there is where the increase and the low prices are coming from, and that is what we are meeting."

Mr. Robbins.
p. 25, l. 57–60.

(250) "I might say, while I am on my feet, in reply to one statement made here, that the miners' representatives discussed these questions on the assumption that we control all of the coal mines in the country, that I have never attempted to discuss these questions from that standpoint. I know we do not control all of the mines in the country, or at least we have not in the past; but we are in better

position now in case we fail to agree, to control the mining industry of this country than we have ever been before."

Mr. Lewis.
p. 27, l. 50–56.

(251) "Mr. Dolan: Haven't you the power to discharge a man over in Ohio if he does what is wrong, or if he does that which is not for the best interests of the company?

"Mr. Chapman: I question that proposition.

"Mr. Dolan: Then it is up to the officials of that district to see whether or not a man who loads dirty coal cannot be discharged. I know they discharge them in the Pittsburgh District if they do wrong.

"Mr. Haskins: Whenever men do anything wrong, of course they are discharged. A superintendent, while he is angry, of course, does not decide the question. Any man who does wrong in Ohio is discharged, but it isn't all one-sided. The man has a hearing."

p. 38, l. 32–42.

(252) "Mr. Dolan: I don't agree with the way Mr. Haskins answered my question when I asked if the operators of Ohio had the power to discharge a man if he did wrong. He said the men there had a hearing. The men in the Pittsburgh District get a hearing, but we have sense enough in Pittsburgh to let a man go when we know he has done wrong.

"Mr. Haskins: I will say for Ohio that we have as much discretion as they have in Pittsburgh. I answered the question as well as I knew how. I meant that in Ohio when the operators desired to discharge a man the matter is taken up with our people. We will not, as a general proposition, permit operators to indiscriminately dis-

charge our men, and if they do so, we will strike for that as quickly as we will for 10 cents a ton."

p. 39, l. 40–50.

(253) "Mr. Mitchell: I never, either officially or personally, said to Mr. Schleuderberg or anyone else that I was not in favor of a uniform scale for outside labor. If I have been one thing I have been consistent in a demand for a uniform scale for outside day labor; so much so, so much concerned have I been about the outside day men, that I went to Pittsburgh to attend two different meetings, and served notice on the Pittsburgh operators that I would stop every mine in the Pittsburgh District if I had to fill the mines with organizers, in order to get a 20 per cent advance for outside day labor."

p. 58, l. 49–56.

(254) "Mr. Penna: I don't see why the miners should inject such a proposition into this meeting. The eight-hour day was conceded in the Chicago convention, and it has never been enforced by you people. You have never kept your contract in that particular. The keeping of your contract has been the exception; the violating of it the rule. A minority of the miners work the eight-hour day, and you have not done anything to enforce the eight-hour day at all. Your treatment of the eight-hour day has been such as to endanger it and make it repulsive to men who opposed it at that time and predicted just what would come of it. The advocates of the eight-hour day in Chicago were confronted with prophecies as to how it would be enforced. It has been demonstrated that those prophecies were true. We are surrounded by men working nine and ten hours a day, and the coal they produce competes with ours. Before you have made that proposition of the eight-hour day an established fact you want to

shorten the hours. If conditions are not bettered it will only be a question of opportunity before you lose the eight-hour day. You are not making converts to the eight-hour day proposition, and to come in here and try to enforce a seven-hour day I think is very poor policy, and comes with poor grace from you gentlemen. Every attempt has been made to destroy the eight-hour day in a local way. The first thing the Indiana miners did, after coming from the Chicago convention, was to declare that under no circumstances would a miner go into a coal mine on an idle day. They had no right to do it; the contract did not prohibit them doing so. The contract had been made on the same basis that other contracts had, and such a change would embarrass the operators. In a subsequent year we were able to get a clause making it compulsory upon them to go in and timber their places if it was made necessary by shooting at the quitting time the night before. This same restrictive policy, the same meddlesome interference is what brings the eight-hour day into disrepute. A machine man is allowed to work in the mine eight hours a day, and if for any reason he stays out and the loaders after a machine have to go home, the next day that man is not allowed to go in and do cutting so his loaders will have work on the following day. The whole tendency of our people has been to restrict and restrict, cut down and establish themselves as watchmen to see how little could be done and how many restrictions could be made to prevent work. If we have a scale made in this convention we ought to have something to say about that eight-hour day. We want it arranged so that there will be no dispute about it between operators and miners anywhere when we leave here. We believe the consent of this side of the house to require the miners to work eight hours per day or forty-eight hours per week does carry with it an

obligation on the part of the miner to work that forty-eight hours when the work is provided. If that is not the case, then the operators have not taken advantage of their rights to work more than forty-eight hours without any consideration. When we agree not to ask the miners to work more than forty-eight hours in a week they ought to be willing to work that many hours, and if for any reason they do not work one day they ought not to be prevented from working the following day, even though the mine is idle, when their absence is going to decrease the output of the mine."

p. 63, l. 20–65.

(255) "Mr. J. H. Walker: I offered a substitute, providing for six hours a day and five days a week. I am satisfied if this movement is going to continue it will come to that some time. I want it understood that I agree with Mr. Robbins that I don't want to enter into any agreement with the operators to defraud the public. There is one question that is a bone of contention, and we can trace every argument of the operators to it. I refer to the competition from the unorganized fields. I don't care whether it is the eight-hour work day, the mine-run system, the day wage scale or the tonnage rates, we find in every argument made by the operators this competition from the unorganized fields as the main factor. Now, that question has got to be met. In my opinion the amount of coal that is produced, and the method by which it is produced in the organized fields, is the one thing that we are going to have to handle in order to be able to meet competition from unorganized fields. We have two methods of meeting it. One is to agree with the operators in their contentions along these lines, taking as a basis for the present contract, prices, rates and conditions, which will allow them to compete with the coal coming from the fields where the

men are unorganized. You know what that means. You know if there was a reduction in wages here now, as there was two years ago, that would not insure you from competition from those fields. Just as soon as they could do so they would rearrange their prices in order to be in the same relative position they were before. No matter how much you would increase the hours of labor in the organized fields, thereby indirectly lowering the cost of your coal, it would only be a short time until their conditions would be rearranged and they would be ready to meet you on the same old basis. There is another way. Recognize the amount of coal you have got to meet in competition and handle the output in the organized fields in such a way that the best results will follow. Then we must try the best methods for getting those fields into the organization. The miners and operators must go in partnership to the extent of entering into a mutual arrangement—you may call it a conspiracy, but I don't believe it is, and I don't believe the people of this country would consider it as much an injury for the operators and miners of the bituminous fields to get together and agree on what would be a fair living wage for every man dependent upon that industry, at the same time allow the operators a fair return on their investment, as they would if you gave us the conditions now in force in the unorganized fields. I think we should simply restrict, or by some method control, the entire output from the organized fields in such a way that you will be able to pay us a living wage, allow us to work under decent conditions and get a fair return on their investment. The only way to do that is to have control of the output and put it in such a condition that you can get the prices necessary to enable you to do this.

"I think if you were to enter into a contract for a six-hour work day, and work five days a week, and use that

as a basis for your present contract, if you work together, instead of going into cut-throat competition, you will get the best results for everybody concerned. I think in this way you can get the results you are now seeking for, and they would be secured at a less cost to you and less labor for us. I think it will also bring about an organization in the unorganized fields. I am satisfied this can be done, and whether you do it now or not, later on in this movement it will have to be done in order to get what we should get out of this industry.

"Mr. Taylor: Mr. Chairman and Gentlemen: The remedy Dr. Walker has prescribed for the coal trade might have some worth if all the coal that it was possible to develop was at present developed, and all the capital that could be invested in the coal industry was invested. If we were to follow his suggestion and restrict our business to the hours and days mentioned, if we were to curtail the output of our mines in that way, inviting the competition of this vast territory of undeveloped coal and the large supply of uninvested capital we would have an oversupply that would wipe us out of existence.

"Now, gentlemen, let us go back to the eight-hour day. We have suffered under the eight-hour day as much as any other State. We haven't the eight-hour day in Illinois. I am not saying that a large number of men do not live up to their contract in regard to the eight-hour day to the best of their ability; but the operators in the State of Illinois, when they want coal, cannot get eight hours' labor from their men, and especially since the shot firers' law has been in force. This morning in our own conference one of our large operators showed from carefully kept records that out of 285 men who went down in the mines in the morning, an average of only 160 were hoisted out, showing that 125 men came out during the working hours.

Give us a fair competitive wage scale and work eight hours a day and we will look after competition.

"Mr. Mitchell: I would suggest that Mr. Walker's remarks on competitive prices be eliminated from the record.

"Mr. Robbins: I object. I want those remarks to go into the record.

"Mr. Mitchell: Mr. Walker, in offering the suggestions he did, did not reflect the desires of the United Mine Workers of America. The United Mine Workers of America have no intention or desire to enter into an arrangement with the operators that will control the selling prices of the coal to the detriment of the general public, for whom we are very solicitous.

"Mr. Lewis: If there are any objections to eliminating that part of the record, I want to say, as one representative of the mine workers' organization, we won't agree at any time to enter into a partnership with the operators to raise the price of coal in this country.

"Mr. Robbins: I want to say, Mr. Chairman, on behalf of the operators, that they have never asked the miners to join with them to make any agreement to put up the price of coal, or to put any unfair conditions on the public in any manner."

p. 67, l. 12–66.
p. 68, l. 1–29.

(256) "Mr. J. H. Walker: I should like to have a correction to go in following my statement. I want to disabuse the minds of the gentlemen present of the impression they appear to have received, that I want to enter into an agreement with the operators to raise the prices of coal to the public. I did not intend to convey any such impression. The impression I did want to convey was that you should enter into an arrangement that would enable

you to pay us living wages, that would permit us to live under decent conditions, and at the same time to give you a fair return on the money invested in your property."

p. 69, l. 61–66.
p. 70, l. 1, 2.

(257) "Lately we had the mine idle because the local established a rule that the cars were to be above the tipple the night before at 8 o'clock. This is the sort of thing that is in vogue throughout the Linton District, and has been for a long time. The officials of the organization will come there and have the locals strike those things off the books. I believe the officials do the very best they can in this respect, but there is no penalty attached for doing such things, and no one suffers except the man who is running the mine. We lost three straight days in the last instance, and I don't suppose it will be two months before we will have to do it all over again. The local passes some rule, the men come out in the morning and the mine stops. After two or three days' fussing we get the mine started, but that does not help the interference with our trade."

Mr. Siefert.
p. 70, l. 15–26.

(258) "The question of the cars not being above the tipple at starting time has been up in Ohio at different times, but we did not care to bring it in here."

p. 70, l. 59–61.

(259) "Mr. Moorshead: In many locals in the State of Illinois they have an arrangement by which if there is less than a half-day's run of cars when they reach the mine they go home. In many cases where a train has just pulled by and has gone to push the empties in from the sidetrack, because the cars were not actually there on the track ready

for loading, the men have gone home. Should we pay for the two hours in a case of that kind?

"Mr. Perry: Not if the men go home. If men draw the line so close as that they are not living up to the spirit of our agreement and I don't believe the officials of the State of Illinois would back them up in any such thing.

"Mr. Moorshead: I am glad to hear that.

"Mr. Ogle: I am glad to hear that said. They go a good deal farther than that in Indiana.

"Chairman Ryan: Indiana must be an awful place.

"Mr. Ogle: It is a good place. We are not only required to have the flats there in the morning, but we are required to have them there the night before. Even when they are on the part of the switch below the tipple, though they may have been there for hours, the men will not work. In case the whistle blows for work they go so far as to punish the operator by refusing to work the next day, or any other day, until there is a full day's run of cars above the tipple the preceding night. I am glad to hear Mr. Perry say what he does.

"Mr. Mitchell: Is not that a local arrangement? Is it not made by agreement with the operators?

"Mr. Ogle: No, sir.

"Mr. Mitchell: It is by agreement with the operators that the companies have not a right to blow the whistle the night before for the men to go to work in the morning unless there is a certain number of cars at the mine at 8 o'clock at night.

"Mr. Ogle: Several years ago at one mine such an arrangement was made, and the miners have systematically tried to force it on every other mine in the State. They have had a great deal of success. This solicitude for the day men is really quite unnecessary. In our district when the machine man comes to work and wants to work, or

if it is absolutely necessary for him to cut his coal so the men may work next day, he is forbidden to do so."

p. 77, l. 30–62.

(260) "Mr. Taylor: Before the Illinois coal operators will vote on an advance in the present price, or on any other price for the coming year, they desire to have incorporated in any agreement that could be made or is made by this convention the following:

" 'That the mining rate shall include the mining, shooting and loading of the coal, and timbering of the working; place; and, that where shot firers are employed, the miners shall reimburse the operator for the entire expense occasioned thereby. That in machine mines it shall include the proper snubbing of the coal.

" 'That this scale is based upon existing mining laws, and in case new laws are enacted, increasing or decreasing the operating cost of producing coal, the contract scale rates affected thereby shall be increased or decreased to compensate therefor.

" 'That the scale shall embody specific provisions for suspending the check-off in case of suspension of work in violation of contracts, and providing for adequate compensation to the operator for loss occasioned thereby, the same to be paid by the miners' local offending and to be insured by the retention of a suitable portion of the union dues collected."

p. 82, l. 32–49.

(261) "Mr. Taylor: In making this demand the Illinois operators do so from the fact that when we made our contract two years ago we thought we knew what our coal was going to cost us. We had a clause in our contract which provided that no demand should be made locally which should increase the cost of our coal. After our miners had

made an effort in our convention to have a shot-firers' clause inserted in our contract, and having failed to do so, they appointed a legislative committee to lobby a shot-firers' bill through the Illinois legislature. That committee went before our legislative body, affiliated themselves, as I understand, with a lobby appointed by the Federation of Illinois, and by trading votes in cities for votes in mining districts they carried such weight in the legislature that they carried the law through. It was against all fairness and against the contract they had with us, and imposed upon us a condition which absolutely changed the provisions of our contract. In fact, it changed our contract to such an extent that it was entirely abrogated. We had meetings with the legislature and with different committees of the legislature; we had meetings with committees of our miners; we argued, pleaded and threatened, and finally the law was enacted and we were forced to suspend work in the State. We had no contract to work under, the action of our men having abrogated it. Then the men began to see light, and we got together and eliminated by agreement part of the iniquities they had imposed upon us. The matter of shot firers was left to arbitration. Two miners and two operators were selected, and they selected Judge Gray. He decided that the miners, having contracted to mine, load and shoot coal and take care of the working places were bound to do it. He further ruled that the inspection of the shots was not part of the contract, and therefore the operators must bear that additional expense under the police laws of the State. He took the stand that he found that law on the statute books of Illinois. The miners have not denied that they had that law passed. They were proud of it then, but I don't think they are now. Judge Gray's decision will carry until the first of April,

but it expires with the present contract. He simply ruled under the contract.

"Now, the operators of Illinois do not intend to agree upon anything in this Interstate Agreement that will send us back to our own State with a condition confronting us which will absolutely change every condition of mining in our State and throw us out of line anywhere from 5 to 10 cents a ton with the other States."

p. 82, l. 52–67.
p. 83, l. 1–20.

(262) "We will not agree to a settlement on the basis of the prices we now receive for our labor. We expect to receive an advance in wages, and we will not vote in this committee for a settlement except on a basis of an advance in wages. We did not require from 9 o'clock this morning to 4 o'clock this afternoon to make up our minds. Our minds and our policy is irrevocably made up. There will be no settlement by agreement except upon a basis of an advance in wages."

Mr. Mitchell.
p. 91, l. 50–56.

(263) "Mr. Mitchell: I want to approach this subject with an entire realization of what it means to me personally; because after all, every man in this world feels personally how things will affect him. I believe there is not one man in this meeting, either miner or operator, whom a disagreement will affect more personally than it will affect me. I trust you will pardon me for discussing this from a personal standpoint, but I think I have done as much to build up a relationship between the miners and the operators that has been mutually advantageous as any man in America. But I want to emphasize this one point: If this is the end, if this is Utopia for the coal miners, then

this movement means nothing for us. Is there no hope for us? Is the present wage scale the best we can have? Is there no condition of industry that means more for the miners than they now have? I am not willing to agree that the coal miners of this country shall have no more wages, no more favorable conditions of employment than now prevail under our present contract.

"What is the condition of industry? Our entire country is prosperous. The iron trade, railroads, stocks, commerce, everything is at its maximum—and what have we got? A proposition to live under a reduction of wages while every other class of industry is getting an advance in wages. The iron men have been advanced 25 cents a day. Stocks have advanced 100 per cent. I say, gentlemen, it is not fair and it is not equitable to ask us to do it. And, so far as I may by my influence determine the policy of the miners' convention, there will not be a renewal of the present agreement.

"Mr. Robbins: I do not believe that Mr. Mitchell personally or that the United Mine Workers of America can afford to take an arbitrary position in this matter. Through this movement their wages have been increased practically 100 per cent. What under Heaven does Mr. Mitchell mean when he asks if this is all there is in the movement? If you will hold what you have got you will be mighty lucky. What other industry can show such an increase in wages? Your conditions have been improved just as much as your price has been improved. And yet you come in here, when you can show no argument to show that the selling price of coal has been advanced, and ask for an increase in your wages. The selling prices of coal are away below the prices of two years ago. This decline in prices has been borne by the operators. The fields that are in this interstate movement have

reached their maximum of tonnage as compared with last year, while the fields that are unorganized are constantly increasing their output. Your day labor is higher today than in any other field. The day labor in the anthracite field is anywhere from 40 to 60 cents a day less, and yet you belittle the movement. As I said in the operators' meeting today, the operators had stood for the movement for humanity's sake, rather than for any personal or financial advantage. Has this been wasted? Has what we have been doing been thrown away? Is it not appreciated by the other side? If it is not, it is time to terminate the movement. And I know of no better position on which the operators can stand before the public, with a depression in their business, with the small, very small, return of profit on their investments, when they offer to continue a rate of wages that is within 5 cents a ton of the highest that has ever been reached. I know of no better position we can take to go before the country than that, and I want, if this movement is broken up, to have it broken up by the miners, on such an unfair proposition as that made by Mr. Mitchell."

p. 93, l. 10–58.

(264) "You miners in Illinois agreed to do a certain amount of work for a certain amount of money and, as I understand it, it has not been denied that you have, after making this agreement, gone to your representatives in the legislature and got them to place a law on the statute books which practically abrogated your agreement and compelled the operators to pay more than you agreed with them to pay."

Mr. Jones.
p. 96, l. 57–63.

(265) "Mr. Chapman: In the remarks I shall make I do not intend to undertake to interfere in any way with the

right of any legislature in this country to pass all the police regulations and laws necessary to protect the lives of the miners or the property of the operators. It seems to me, however, that in States where laws are passed that require the operators to pay for something that is provided in the contract the miners shall do, in all future contracts that provision should be eliminated and prices that may be paid the miner for shooting and blowing down the coal should be eliminated entirely from the scale and not become a part of it, if by law the operators are required to perform that duty."

Mr. Chapman.
p. 98, l. 18–27.

(266) "When it comes to a question of competition between Ohio and other fields, we can show by actual figures that the increase in the State of Ohio for the past three years has not kept pace with the increase in other States; in fact, the production has not increased at all. From 1903 to 1904 it increased 10,000 tons, according to the report of the mine inspector. 1905 is not yet tabulated but my information is that the production for the year 1905 will be about a stand-off with the two previous years. Some sections of the State have lost tonnage; other sections have increased some. What has our sister State of West Virginia done in that period? She has gone up at the rate of five to six million tons a year. She is continuing to increase her production and it is only a question of the ability of the operators in that State to get transportation that determines the amount of coal they can get into the market. Two new railroads are now going into that State, one from the seaboard and the other from the North, connecting with all the distributing points in the Northwest. Those roads will scatter that coal, and what State, judging by the figures that are made up in

the various Bureaus of Labor statistics, will be most seriously affected? Our State of Ohio is the one; it will be affected in its every field. This coal can be found at almost every station upon every line of railroad that traverses the State of Ohio. It can be found in Indiana, in Chicago, and everywhere. It can be found in Michigan, in Cleveland, and we cannot meet the competition with our present prices. They can and do undersell us, and when I say to you that mine-run coal is produced in the Pocahontas field and put upon the cars at less than 40 cents per ton, including royalties, you will see what chance we have to compete with them. That is probably the best soft coal that goes into the market anywhere. Other mine run coals in West Virginia are put on the cars at 60 cents and 80 cents for lump coal, including royalties and everything, and I ask the miners of Ohio what in the name of conscience we are to do to give you work if the price of our coal is advanced? These are no idle statements, my friends. They go down to the bottom. If the operators are to continue in this line and give you work, how are we to do it if you put such an obligation upon us? If we try to do it we will be required to pay you out of the small savings of the past. We cannot do that; we simply close our properties down and hope for better things in the future. We are willing to continue in this movement, but we are not willing to take our past savings to keep up the pay rolls in Ohio. We are willing, as the limit we feel it possible for us to go, to continue a scale for 1906 upon the very terms and conditions of the past two years, without a single cent added to our cost of production and we will do the best we can to give you work and go along together."

Mr. Chapman.
p. 99, l. 64–67.
p. 100, l. 1–35.

(267) "The operators have not asked the miners to concede any right or to restrict themselves in any privilege before the respective legislative bodies. They can ask for any legislation they desire. Nor do we wish to curtail their rights to do so. We have not asked nor suggested, either directly or indirectly, a reduction in wages as a basis of settlement. The only contention we make is this: You have no right to come here and contract to shoot the coal for a cent a ton, or 2 cents a ton, or 3 cents, and then go and secure an act of the legislature to relieve you of the shooting, but continue to draw money for doing it. You have a right, if you want to, to ask the legislature, after you have made a contract for so much per ton for loading coal, to be relieved of that, but if the operators load it they should be paid for it. We don't attempt to restrict your rights, but we do say if you attempt to do that you ought not to draw the money for it. If it is worth 52 cents in Grape Creek for mine-run coal on the car, which carries with it the digging, loading, securing of the place and the shooting of the coal, then it is worth less than 52 cents a ton when the shooting is eliminated. It would be worth less if the timbering was eliminated, and still less if the loading was eliminated.

"We do not say you have not the right as American citizens to go to the legislature to seek for legislation you believe is for the common good; but we contend when you do that and disturb the competitive relationship established in this convention you have a right to come here and to correct it."

Mr. Penna.
p. 103, l. 4–25.

(268) "The only thing we ask is, when you contract with the operators to do a given piece of work for a stated price, that you will do that work as long as you can, and if at any

time the state prohibits you from doing it, that you will refuse to draw the pay. That is honorable."

Mr. Penna.
p. 103, l. 39–42.

(269) "There is no use attempting to draw parallels or to get out of this one fact, you are not doing the work you contracted to do and you are demanding the pay. It does not matter how you construe it, when you come down to the last analysis, that is the fact. You have no more right to draw the proportionate amount of the 52 cents that applies to the shooting of coal, unless you do the shooting, than you have to draw the entire 52 cents if the coal company should do the entire work. I am not saying it is 1 cent, I am not saying it is 5 cents; I don't know to what extent that law in Illinois disturbs the relative basis, but I do know that to whatever extent it does disturb them this institution ought to be big enough to correct it and do Illinois justice."

Mr. Penna.
p. 103, l. 59–66.
p. 104, l. 1, 2.

(270) "If there was ever an unlawful combination in this country it was formed in your convention yesterday. Talk about trusts! What trust can compare to the resolution adopted in your convention yesterday? It is simply a threat, a menace to the business interests of this whole country! You have threatened that you will compel an advance by reason of a combination of all the miners of this country, and British Columbia, anthracite and bituminous miners, and compel the people at large to suffer from that combination."

Mr. Robbins.
p. 114, l. 48–54.

(271) "I want to protest further against your methods here yesterday. When this interstate movement was formed the operators and miners of four states met together and in joint conference discussed and settled their difficulties. I object to your change. It is unfair and unbusinesslike, to bring in all the miners of this country and British Columbia, anthracite and bituminous, and ask them to vote upon the propositions of the operators of the States of Indiana, Illinois, Ohio and Pennsylvania. It is a thoroughly unbusinesslike proposition, and it is one we will not submit to. We propose to deal with our miners evenhanded, the same representation on each side. We don't propose to submit our questions to be settled by miners of other States that are competitive and that have absolutely different conditions and different purposes."

Mr. Robbins.
p. 115, l. 4–14.

(272) "You have tied your hands by your resolution which provides that there shall be a settlement in all the districts or in none. One little bit of a dinky mining interest up in Michigan can interfere with the mining interest of the whole country."

Mr. Robbins.
p. 115, l. 20–23.

(273) "So far as our unlawful association is concerned, my reply to that statement is this: We control our own labor and we have a right to sell that labor collectively at the highest price the conditions of this country will warrant us in demanding."

Mr. Lewis.
p. 119, l. 6–9.

(274) "Lorain Coal & Dock Co., Cleveland—Edward Johnson."

DELEGATES TO THE JOINT INTERSTATE CONVENTION, 1906.

Ohio Operators.
p. 132, l. 31.
Same in 1908.
McKinley's Exhibit No. 3.
p. 235, l. 14.
Same in 1910.
McKinley's Exhibit No. 4.
p. 358, l. 7.

(275) "INTERSTATE CONVENTION 1906.
(Second Conference)

"Coal Miners and Operators.
Western Pennsylvania, Ohio,
Indiana and Illinois.

Held in Indianapolis, Ind.
March 20th to 29th, 1906.

EXPLANATORY.

"The second joint conference was held pursuant to the suggestion of President Roosevelt, in the following letter addressed to Mr. Francis L. Robbins, of the Pittsburg Coal Company, a similar letter having been addressed to Mr. John Mitchell, President of the United Mine Workers of America:

"'The White House, Washington,
February 24, 1906.

"'Sir:—

"'I note with very great concern the failure in your late convention on joint interstate agreement, to come to a basis of settlement of the bituminous mining scale of wages. You, in your business, have enjoyed great industrial peace for many years, thanks to the joint trade agreement that has resulted from the action of your successive conventions.

A strike such as is threatened on April 1st, is a menace to the peace, the business interests and the general welfare of the country. I urge you to make a further effort to avert such a calamity. You and Mr. Mitchell are joint chairmen of the trade agreement committee of the National Civic Federation. It seems to me that this imposes an additional duty upon you both, and gives an additional reason why each of you should join in making this further effort.

Very respectfully yours,

Theodore Roosevelt.'"

p. 141, l. 1–29.

(276) "The shot firers' bill in Illinois was not passed jointly, as Mr. Mitchell quotes in the other States; it was passed at a time when our miners were under contract to do certain work. It was passed by the strongest labor lobby ever sent to the State capital, a combination of the State Federation of Labor, the United Mine Workers and other labor organizations. The miners have not denied this. It was an outrageous thing to do. As much as we have suffered under that bill it is not to be compared to what we would suffer if it was in full force. The bill, if in full force, would practically shut the mines of Illinois. It would absolutely destroy the competitive relations between Illinois and other States, and it would destroy competitive relations between mines in our own State."

Mr. H. N. Taylor.
p. 147, l. 66.
p. 148, l. 1–10.

(277) "Mr. Bent: The point you make overlooks the point that our scale is not made on the earning power of the men. It is a competitive scale."

p. 152, l. 26, 27.

(278) "Some operators in that State did not care to enter the movement, and we made rates that placed them at a disadvantage."

Mr. J. H. Walker.
p. 165, l. 44, 45.

Note.—Walker referred to Illinois.

(279) "The insterstate scale of wages, which was first framed in 1898 included a provision for the price to be paid for pick mining, so called in the contract, at Danville, Illinois. It included prices to be paid for the same general class of work in Indiana, in the Hocking Valley of Ohio, and in the Pittsburg vein of Western Pennsylvania. Those wages were conceded at the end of long argument, combined with the arbitrament of force in the field. Those relative scale of wages were fixed, and they were not only supposed and believed, but they were intended to place these various districts on a relatively equitable competitive basis. That was always understood. It was understood at the beginning of the formation of this scale, and it has been understood ever since, in theory, as the foundation for this movement."

Mr. Traer.
p. 166, l. 55–66.

(280) "As I understand it, this Ryan Resolution is so worded that if the anthracite people do not agree, or if the Southwestern people are unable to come to an agreement, or, in fact, if any class in connection with this interstate movement cannot come to an agreement, none of us can go to work."

Mr. Moorshead.
p. 179, l. 5–9.

(281) "Mr. Winder: We understand that when the original call was made for a joint conference some eight

years ago, it included only the operators and miners of these four States. It was the understanding of the operators at that time, and it is their understanding of the matter now, that no persons not engaged in the business in the four States have any right to participate in any way in the settlement of our scales. We feel that it is difficult enough, large as this meeting is, to reach an agreement, without being subjected to the interference of either operators or miners outside of the four competitive States. We seriously object to any propositions which we make being considered by other miners than those employed by the representatives of the operators here. The larger the scope given to this movement the more difficult it is going to be each year to reach a settlement. If you want to find an easy way of destroying the movement, I know of no better way than to permit any interference whatever from any operator or miner outside the Central Competitive Field."

p. 182, l. 37–50.

(282) "Mr. Winder: In a movement as great as this there must be periods when it is impossible for one district to be able to pay more for mining on account of local conditions that exist, than it is possible to be paid by other districts a part of the joint movement. We are confronted today with this kind of a proposition. The Pittsburg District announces the fact that they are willing to effect a settlement on the basis of a 5.55 per cent advance. It is to be presumed that if they are willing to make a settlement on that basis they are able and can afford to do so. Upon the other hand, the States of Ohio, Indiana and Illinois, with equal sincerity, have attempted to show to you the absolute inability on their part, on account of the conditions existing in their fields, to grant such an advance. I do not believe it can be argued with any justice that, because the Pittsburg District is in a position to pay this

advance, the other States must be made to suffer on that account. There are only two ways, it seems to me, this matter can be adjusted with fairness. We all recognize the principle that there are times in a great movement when some sacrifices have to be made in order to continue together. It is therefore only possible to reach an agreement under those circumstances, by a sacrifice being made by the minority in this movement, or else that a differential be agreed to that will enable that part of the field that is unable to pay the advanced scale to work.

"We have no desire in the world to prevent the miners in the Pittsburg District from obtaining an advance, and we regret exceedingly that we are not in a position to offer to our people a similar advance. I trust that this body will consider the propriety of permitting that part of the field that is unable to pay this advance to sign up a scale based upon a proper differential. I can find no other solution for our difficulties at this time, and nobody will regret more than I do the necessity for the suspension or a rupture of our joint relations, which have been of so much value to us in the past."

p. 183, l. 14–41.

(283) "Mr. T. L. Lewis: This discussion this morning is bringing out something of interest. It is of interest to both the operators and miners of this competitive field. It has brought out the fact that there are operators in this convention representing very large interests in the unorganized fields, and these unorganized fields have been mentioned as being a keen competitor of men who are represented in the interstate movement. It seems to me now that one obstacle in the way of arriving at an agreement can be removed by the gentlemen who are interested in the Irwin District agreeing that they will use their influence to bring the properties they represent into this joint

movement and pay scale rates at their mines. There can be no argument against it, because it is not the Pittsburg District alone, but there are other interests represented here on the one hand to make contracts with us, and they refer to the fact that we are not able to organize the men in these fields.

"The other day Mr. Cantwell asked Mr. Penna why he had not organized them when he was president of the United Mine Workers. Mr. Penna very properly answered because he was not able to organize them. We might add to that the reason the United Mine Workers have not organized them up to this time is because we cannot. Our failure is due to the opposition of the operators in the Irwin District, and some of those operators are represented in this convention. Now, if we want to be placed on a proper basis, let us all join hands and make those mines union mines, and I think the United Mine Workers can go into the Irwin field and lick the other fellows in very short order."

p. 200, l. 4–26.

(284) "We don't want an industrial fight, but we are not going to pay an increase in wages over those now prevailing until you have shown additional reason why an advance should be paid. The only reason you have shown is simply that you want an advance because you want it, and you are going to have it or paralyze industry in America. You say you want an advance because you believe you are strong enough to get an advance, and the operators have a choice between that and an industrial calamity. If there has been any other reason assigned in any of these meetings, we have not heard it. There have been other excuses, but not any other reason why the advance should be paid. There never was a time in the history of coal production in this country, and there is no

likely to be for a long time, when a request for an increased wage could be made with less propriety than at this particular time."

Mr. Penna.
p. 214, l. 43–55.

(285) "I don't know what can be done or how a strike can be avoided, unless perhaps when we cannot agree the people may interfere. It may be that we shall ask them to interfere. The anthracite strike was settled by a commission appointed by a representative of the American people, the President of the United States. I know of no reason why we cannot avert a calamity by the same means, either at this time or in the future. One thing is sure, the American people will not suffer any very great inconvenience because of a disagreement amounting to a paltry $5\frac{1}{2}$ per cent in wages. The difference is too small, it is too trifling to warrant a strike of such magnitude as that contemplated by you and feared more or less by ourselves."

Mr. Penna.
p. 215, l. 51–61.

(286) "It is my desire at this time in talking to you to state as plainly and in as few words as possible the contention and the things that led up to the contention between the operators of the State of Illinois and the United Mine Workers of America.

"The trade agreement which has been in existence between the operators and miners since 1898 has been at its inception considered the means of settling all future difficulties, and we believed that wisdom and common sense had finally found a way to outweigh force and strife. Being a voluntary contract, as this agreement is, it is worth only the endorsement on its back, namely, the integrity of the parties who are the makers of the contract. When we signed the scale two years ago and had worked

under it for several months the miners of the State of Illinois, through a legislative committee, sent a lobby to the State Capitol at Springfield. That lobby became affiliated with the lobby of the Illinois State Federation of Labor, and they were able to pass any bill they put before that legislature, right or wrong. It is not a nice thing to say that our law makers can be influenced by a body possessing a great many voters, but it is so. That bill disrupted the competitive relations between the States of Ohio, Pennsylvania and Indiana and the State of Illinois, in as much as it destroyed the differential at the basing point of Danville. It also disrupted the competitive relations between the different districts in the State of Illinois, and even disrupted competitive relations between mines in the same district. It created chaos. It took away from the miner part of the work he had contracted to do, and put the expense upon the operators, while the miners still continue to receive their pay for the work they did not perform."

Mr. Taylor.
p. 217, l. 21–44.

(287) "If you gentlemen upon that side of the house will provide means by which you can stop the competition from West Virginia, from Kentucky and from Tennessee coming into the City of Indianapolis and into Ohio cities and taking the trade of the Indiana and Ohio miners, then there would be some consistency in this thing. But there is no remedy proposed. This competition is going on, and it will continue to go on. And if the operators have to pay higher prices for the production of their coal in these states it means the closing, the shutting up, the destroying of the value of many of the properties."

Mr. Chapman.
p. 226, l. 17–24.

(288) "Mr. Moorshead: We are denied by law the artificial prices—if you are pleased to call them that—that could be gained by combining our business affairs as you gentlemen do yours. You can combine with impunity—I suppose you have a great number of votes—but if we combine we see the penitentiary pretty well staring us in the face for defying the law. I am very sorry you do not take that seriously, but I want to assure you that it is a very serious matter to the gentlemen on this side. There might be means by which we could control the coal industry if we had money enough to do it in the right way, by buying it all up, but we are unable to accomplish that. It is only a very short time ago, within the memory of our national President, that a number of coal operators in Northern Illinois, wno saw fit to send out a schedule of price of coal which had been agreed upon in a meeting among them, were taken into court and fined $500 each for doing it. Is not that right, Mr. Mitchell?

"Mr. Mitchell: They didn't go to the penitentiary, did they?

"Mr. Moorshead: No; they did not go to the penitentiary, but it is a penitentiary offense if the court sees fit to exercise its authority properly. But whether it is or not, we are not going to be law-breakers in that sense; we are going to conduct our business in a reasonably honorable way."

p. 228, l. 43–61.

(289) "The gentlemen from Illinois have suffered so long from the powers of the pit committee, from the dictation of the locals and from conditions that have been placed upon them in one way and another, that it matters not to them whether they operate their properties or not."

Mr. Moorshead.

p. 230, l. 46–50.

(290) "It is a common thing in the State of Illinois to have our operations suspended, sometimes because the president of the local takes the stand to quit at 12 o'clock because they have had trouble among themselves; sometimes because the cars for the mines are on the main track and going by the mine ready to be put on the tracks; but a local has passed a resolution that half of the tonnage in cars must be on the track at starting time or they won't go to work. They say they are not on the side-track and they will not work. How would you like a dose of that kind if you were the owner of a coal mine? And yet those are common indulgences on the part of the miners in Illinois."

Mr. Moorshead.
p. 230, l. 66, 67.
p. 231, l. 1–8.

(291) "Gentlemen, I am not and never have been an apologist for conditions in the Pittsburg District. I have fought and antagonized—I believe justly—the policy of the Pittsburg Coal Company, and went so far some years ago as to threaten to fill that district with organizers and close their mines after we had signed a scale in this city."

Mr. Mitchell.
p. 257, l. 56–60.

Excerpts from book entitled "JOINT CONVENTION OF THE IILLNOIS COAL OPERATORS' ASSOCIATION and the UNITED MINE WORKERS OF AMERICA.....DISTRICT 12 HELD AT SPRINGFIELD, ILL., May 17 to June 1, 1906.

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 2. [Record pp. 706, 291.]

(292) "No doubt some of you think I am leading up to the proposition of asking you to agree with us that no one in the State of Illinois who is not a member of the Illinois Coal Operators' Association shall be given a scale. I am not going to do that because I don't believe it would be either legal or right. But we do ask you, in all fairness, to impose upon these scabs that you are doing business with an additional cost on their wage scale, which is equivalent to putting us on a basis to do business with you."

Mr. B. F. Bush.
p. 7, c. 2, l. 2–16.

(293) "Now, gentlemen, are you going to put us on a competitive basis with the scabs that are now producing coal in Illinois? That is the first thing we want to know. When that is settled we will know where we are at in the building of a scale. We don't want anything impossible from you, nor do we want anything from you that can be construed by the finest legal mind to be illegal, but we do want justice from you. If you look on us as being friends, or if you look on us as being of any benefit to your organization, we ask you to accord us fair treatment and put us

on a level with the people that are now making a little temporary gain on account of our failure to reach an agreement with you. When the time comes those people will throw you up in the air as far as they tried to throw us. Those gentlemen who are working their mines now and shirking their part of the expense of these trade agreements are welcome to the money they are making. I want no relations with them, but I want an assurance from you people that you are going to treat us right in this matter."

Mr. B. F. Bush.
p. 13, c. 1, l. 55–56.
p. 13, c. 2, l. 1–18.

(294) "Mr. Mitchell: This discussion is very much foreign to what I expected when I came here. I don't know whether my conception of right and wrong is as keenly developed as that of the other gentlemen present; but certainly my mind is not in accord with what has been said concerning the policy of this organization. The policy of making separate settlements was favored by me; I believed it then and I believe it now to be a wise policy. We gave no advantages to those men of whom you speak that we did not offer to you. We offered to give you a contract carrying with it the same advance in wages as was given to them. If we were giving them a contract more advantageous than the one we are offering to you, then you would have just cause for complaint. As for giving assurance of what we will do in the future, that cannot be done. Some of you gentlemen here, and Mr. Bush in particular, will remember that in the Southwest we did compel operators to join your association, and you in turn compelled miners to come into our organization. In one case there was an entire sub-district where the miners were receiving 5 cents above the scale made for them, and we were compelled to

force some thousands of our members to accept a reduction because you would not permit the operators in your association if they paid a higher scale than was made for them."

p. 13, c. 2, l. 19–57.

(295) "Mr. Newsam: I am one who believes in trade agreements. I have always believed in them. I joined this association in 1898, and I have been on the executive board and the scale committee ever since. I have always believed that these associations joined together would do good if carried on on right lines. I am sorry to say that the miners in the last convention in Indianapolis departed from a principle they had always upheld before. Since 1898 this scale has always been made and signed by the two organizations, not by outside parties who never paid a cent to the joint movement. I know of no organization that has ever done what has been done since we left Indianapolis. I believe that what was done was entirely wrong to both miners and operators. I have been helping to keep up the association, paying my dues to it, going to meetings and trying to make scales, while these other gentlemen have been staying at home and reaping the benefit of my money and my labor. Before this we have always let the majority rule. I believe the majority should rule. I don't believe the minority should rule, especially when the minority runs down to one man. I don't like the Czar, I don't like Witte; and I believe we ought to get together and stop this Czar and this Witte. He may have more money than I have, but I don't think he is a better man. He is a traitor to the cause of unionism from the top of his head to the soles of his feet. And I am not speaking of him alone; there are others in the State of Illinois. They are coming to your organization and offering to sign up, and the people who have been keeping your organization up, the people who have been spending their

money and doing the work that benefits both sides, are the ones who have their mines tied up, while these scabs, these miserable scabs, are allowed to go to work and gain an advantage over those who have been the mainstay of your organization. I think this thing ought to be ironed out; I think it ought to be explained. I think what has been done is wrong."

p. 14, c. 1, l. 27–66.
p. 14, c. 2, l. 1–16.

(296) "For myself personally I want to say this: I would rather do business with an association of employers than with individual employers, and as far as I am concerned I am willing to contract with you that no union miner will work for an operator who is not a member of your association if you will hire no one who is not a member of our organization. I am only speaking for myself, now, remember."

Mr. Perry.
p. 15, c. 1, l. 18–29.

(297) "I want the operators that made individual settlements with your people to pay 3 cents a ton more than we do, or 2 cents a ton, or whatever the cost of maintaining this organization is, and 3 cents does not pay for the cost of maintaining this association in the cash donations and the time the members give to it. I will put it on another basis. Make them pay what it costs you to maintain your organization. We don't ask you to give us this money; keep it yourselves if you want it. The competition in this business in Illinois is down to so fine a point that 1 cent a ton will mean our ability to give you work."

Mr. Bush.
p. 15, c. 2, l. 29–46.

(298) "Mr. Perry: I said I would agree, so far as I am personally concerned—and I think the miners will agree with me—that we will refuse to work for any operator in the State of Illinois who is not a member of the Operators Association, if you on your part will agree that none but union men will be hired by members of the Illinois Operators Association.

"Mr. Bush: I will agree to that."

p. 15, c. 2, l. 56–65.
p. 16, c. 1, l. 1.

(299) "I know we cannot get a legal agreement out of you to not work for operators who are not members of the association, and I know you can get no legal agreement from us binding us not to hire men who are not members of your organization. The open shop, although it has not been an open shop, has been a recognized part of our contracts. I trust in the new contract I hope will be drawn it will not only be a recognized fact, but a fact carried out."

Mr. Peabody.
p. 16, c. 1, l. 62–66.
p. 16, c. 2, l. 1–8.

(300) "Now a word as to the production in Illinois as compared with other states. You should take into account, gentlemen, that Illinois is located the best of any State, practically, in the United States to market its coal. It is right on the threshold of the great Northwest with its unlimited market, and the population there is increasing right along. The manufactories in Illinois are increasing rapidly. It is the center of distribution, and the natural one, for the different manufactured products, and that part of our industrial system is increasing very rapidly. The railroad interests in Illinois have grown and they are doing a tremendous business. The fact of the increase I have spoken of in manufacturing and railroad business is

the only reason why we have been able to maintain anywhere near the percentage of increase we should."

Mr. Lukins.
p. 47, c. 2, l. 30–52.

(301) "West Virginia is in the wilderness, with no local markets whatever, and the only reason on earth why they can sell their coal at all is on account of their low mining rates. It is a non-union state and is not hampered by the union restrictions as Illinois is. Of course they have a good grade of coal. The mining rate is not all of it. The restrictions thrown around the operations of the mines in Illinois mean a great deal more than a higher mining rate in many instances. After we went into the union we increased the wages of our day men in many instances substantially 50 per cent, but we found our cost had increased 300 per cent. That shows to some extent what the union did for Illinois."

Mr. Lukins.
p. 47, c. 2, l. 57–66.
p. 48, c. 1, l. 1–9.

(302) "Ohio is centrally located between the eastern markets and the western markets. For most of the coal they have to go out of the State to get a market. It can take care of its own home markets, but they do not keep up with its production, and its only other legitimate market is to the west, because east of it is the monster coal fields of West Virginia and Pennsylvania."

Mr. Perry.
p. 55, c. 2, l. 8–18.

(303) "All coal is going west after you leave the Pittsburg District, and one coal shoves the other along."

Mr. Mitchell.
p. 56, c. 2, l. 48–51.

(304) "Mr. Hammond: If it is admitted that the non-union mines increased their output 12,000,000 tons that must have been at the sacrifice of the union mines.

"Mr. Mitchell: That would be true if all this non-union coal went into the markets that were formerly supplied by union coal. I don't know where it went.

"Mr. Hammond: A large proportion of it went into the markets formerly supplied by union coal. Another thing struck me as an odd situation, to say the least, and that is the position we are in, practically as a result of dealing absolutely with union miners, as compared with Kentucky where part of the mines are operated by non-union labor and part by union labor. That is a situation that must be remedied in some way, either by the miners or by the operators, or by both in conjunction. That brings about an unfair competition and there should be some means of correcting it. My idea is that both miners and operators should do everything within their power to correct those matters and to get all the States on a fair competitive basis. I believe that both sides should make reasonable concessions in that direction. There are many of us who know we are out of line so far as competition is concerned with much of our coal with other States, and the indications are that Kentucky can continue, even after we have made an agreement here, to continue to send an ever-increasing amount of tonnage into a territory that rightfully belongs to Illinois. We certainly have a right, as a matter of fairness, to have Kentucky unionized and controlled the same as we are, or that we have a reasonable number of non-union mines in the State of Illinois as a menace against your organization to help us get some of the benefits they enjoy. I simply submit that as a reasonable proposition."

p. 59, c. 2, l. 5–55.

(305) "The fact that 12,000,000 tons more of non-union coal was produced last year than the year before—if it is true—is something that interests us as well as it does you. There is no question about that. I am thoroughly satisfied that if every operator in the joint movement had spent the same amount of money in proportion to his earnings in the coal industry, and the operators as a whole had spent the same amount of time and energy the United Mine Workers have since this movement started, it would have been an utter impossibility for that 12,000,000 in excess of the previous year's tonnage to have been produced. I don't care how we may deal with the details of the situation as we find it in Illinois, we are going to have that question to take up finally and we must solve it if this movement is to last. There is no way of getting around this. When a man we know is a member of our organization, goes into those fields to mine coal he is put out of the organization. I don't believe you can say that much for the members of your organization. I don't know that you have spent a dollar to get these fields in line. And not only that, you have men in your association who are not only not doing anything to help the situation there, but are using what power they have to make it as much worse for us as possible. You retain such men in your association, to say nothing of failing to spend time and money to help control the situation. You even refuse as an association to meet with us and help us get what we know would be a competitive agreement for all those fields, every one of them, non-union and union included, so we would know just what basis those men should be working on. You even refused to lend us your assitance to that extent, let alone coming together with us to make such a contract and have it enforced."

Mr. Walker.
p. 60, c. 1, l. 47–65.
p. 60, c. 2, l. 1–30.

(306) "I believe we ought to have a conference of the coal miners and the operators of the entire country and make a scale for every mother's son of them."

Mr. Walker.
p. 61, c. 2, l. 38–41.

(307) "Of course we cannot enter into an agreement to restrict the output, because that is illegal."

Mr. Hammond.
p. 65, c. 1, l. 45–47.

(308) "Now if you cannot go to the miners in West Virginia and the other non-union fields and convince them that affiliation with your organization will better their condition, not only in the hours of work but in the amount of work they render to the coal operators, when you show them it is without doubt a financial inducement to them to join with you, how in the world can you expect the operators if they have any allied interests in those fields, to go to their friends or anyone else and try to induce them to place themselves in the same position we are in? What inducement is there for us to try to strengthen your organization when we cannot make any money operating with your miners?"

Mr. Hammond.
p. 66, c. 2, l. 11–29.

(309) "Certainly if men in the non-union districts cannot be reached and shown the advantage of belonging to your organization when they are the ones to be benefited, you cannot expect us to do any missionary work among the non-union operators. You can rest assured those gentlemen have not marketed that 12,000,000 tons of coal at

a loss. A business does not grow and expand when it is worked at a loss. They are marketing that coal at a satisfactory price, and they have taken the market away from operators who are working with union labor."

Mr. Hammond.
p. 67, c. 1, l. 15–30.

(310) "Mr. Perry said, and I believe he meant what he said, that he had no more use for those people than we had. He said if we would make an argeement to hire no one except members of your organization, you on your part would make an agreement that your men would not work for operators not members of the association. I don't believe we could maintain that position before the public, and I fear you would have more or less trouble in delivering the goods. In the mines that are working non-union here today you will find a great many of your men. If they will go to work in non-union mines, your members working for operators outside of the association would not stay out as long as the independent operators were willing to pay the scale we pay. I don't think, however, there would be anything unfair or out of line in insisting that those operators pay a scale of wages that would bring their cost up to the cost of the association operators. I think you gentlemen ought to give that proposition consideration and give us some assurance that you will help us along those lines."

Mr. Hammond.
p. 67, c. 2, l. 11–40.

(311) "Mr. Peabody:—I proposed in the Indianapolis joint convention what I thought the proper solution. I will read from the records what I said:

'I move that the solution of this whole proposition be reached by adopting the lowest scale of wages we can find

for all classes of labor in the mines that are not union mines; the operators to adopt as their selling price the lowest selling prices they can find in the competitive fields that have not been unionized. In that way, gentlemen, we would carry the war into the enemy's camp and get results. If that was carried through, in less than six months there would not be a non-union miner in the United States and not an operator that would not be driven into our association. It is the only logical way of settling the question.'

"Do you want me to read your reply, Mr. Walker?

"Mr. Walker: That is not necessary. I know what I said.

"Mr. Peabody: Why is it not a good proposition?

"Mr. Walker: I cannot agree with Mr. Peabody that he is right. He says that in six months there would not be a non-union miner in the country. I am satisfied that in six months there would not be a union miner, because they could not pay dues. Mr. Peabody is always willing to settle matters at the other fellow's cost.

"In his statement Mr. Bush said that one reason why he could not go before the operators of non-union mines is because the companies we are doing business with have been working for the last two years at a loss, or at least without any profits. I expected he would go on and finish the statement and go on and say, as all the other operators who have taken the floor have said, that the reason they could not go into competition with operators of non-union mines was because of the cheap labor the non-union operators employed. It is reasonable to suppose that temporarily, while getting the first ones to come in, they could not hold out very strong inducements, but if they would all come in they would be able to decide what profits they were entitled to on their investments, and then sell coal

in such a way they could get that profit, they might be able to induce them to come in.

"Mr. Bush: You cannot very well go to a man and say to him, 'I am not making any money in my business, but I want you to come in and conduct your business in the same way I do because you are making a little money.' That will not appeal to him very strongly.

"Mr. Walker: The miners have spent millions of dollars trying to get those men to come into the organization.

"Mr. Bush: I know you have, and that is one of the things I cannot understand. I cannot understand why you would have any difficulty in converting your people to come into the organization when you can show it is for their advance and when you have a record of what you have done for those that are in.

"Mr. Mitchell: They would come in if the operators would let them.

"Mr. Walker: I don't want to suggest anything that is illegal, but there is no reason on earth why the bituminous operators cannot make just as good profits as the anthracite operators do except their refusal to conduct business as the anthracite operators do.

"Mr. Bush: You can get six men to agree on something better than you can six thousand.

"Mr. Walker: If the principle is the same there is no reason why they should not agree. I cannot see why you should abuse us for not getting those men in line and compelling their operators to pay prices that will allow you to compete and make a profit, when we are spending millions of dollars, working hard, getting our heads busted and living in the penitentiary in an effort to do that, while you refuse to even mention the matter to the men on the other side. It hardly looks reasonable.

"Mr. Bush: We are not abusing you for that.

"Mr. Walker: There is no doubt that if you could get them in you would be in as good position to increase your profits as we would be to increase our wages if we get the miners in. The only reason why we are in trouble all the time and why you are in trouble all the time is that they are not in."

p. 68, c. 1, l. 52–66.
p. 68, c. 2, l. 1–65.
p. 69, c. 1, l. 1–39.

(312) "We have all had more or less to say about the competitive position of Illi[illegible] lately, and I think you will all agree that a state situated as Illinois is, right at the threshhold of the big markets of this country, ought to have a bigger proportion of the tonnage than it has been receiving. If Illinois had as favorable conditions of mining as the eastern states, for instance Ohio and western Pennsylvania, the tonnage would unquestionably be from sixty to seventy-five millions instead of less than forty million tons a year. It occupies the best position, so far as the markets are concerned, of any State that has the coal to fill these markets. Iowa is favorably situated in this respect, but it has not the coal. Illinois, of course, has an unlimited amount of coal. You all know that last year Illinois decreased its tonnage into its Chicago markets very materially, while every other State shipping in there increased its shipments very materially. Chicago is a natural market for a large part of the Illinois coal, and it is being driven out of that market very largely because we cannot compete with other States. The greatest market for our company used to be in Chicago. We used to ship thousands of tons of coal into that market daily, you might say. For the past few years we have been gradually

forced out of it on account of our inability to compete with other coal."

Mr. Lukins.

p. 70, c. 2, l. 14–51.

(313) "9th. As rapidly as the requisite corps of competent engineers is provided at the different mines, the engineers shall become members of the United Mine Workers of America, and thereafter only members thereof shall be employed as hoisting engineers when such members, competent to fill the positions, can be obtained."

p. 107, c. 2, l. 24–32.

AGREEMENT.

Wages and Conditions to Govern Coal Hoisting Engineers in Illinois from June 1, 1906, to March 31, 1908.

Excerpts from book entitled "PROCEEDINGS OF THE EIGHTEENTH ANNUAL CONVENTION OF THE UNITED MINE WORKERS OF AMERICA: Held in the city of Indianapolis, Ind.: January Fifteenth to Twenty-second inclusive: Nineteen seven.

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 4. [Record pp. 706, 290.]

(314) "In any event, the conferences in the bituminous fields adjourned again without an agreement and the interstate movement, which had been the hope and protection of both miners and operators for many years was dissolved. Thereupon, the miners in separate convention declared that on and after April 1st all men should cease work except those employed by operators who by contract agreed to restore the scale of 1903, plus an advance of three cents a ton in the southwestern states. It was also declared that the miners of outlying districts in the bituminous fields not represented in either of the interstate conferences, whose scale of wages expired on April 1st, should cease work and remain in idleness until the scale of 1903 was restored."

President Mitchell.
p. 36, l. 35–46.

(315) "From 1897 to 1906, the operators and the miners of the central competitive field representing a production of over one hundred million tons of coal annually, or about one-third of all the bituminous coal produced in the United States, have met in annual or biennial joint conference and have, by mutual agreement, fixed the wages and conditions

of employment in a manner that was reasonably satisfactory to all concerned. It is true that in arriving at conclusions neither side secured all it desired or all it believed itself entitled to, but on the whole the policy of joint agreements was so far preferable to the old system of annual or biennial strikes and lockouts that the compensating advantages to each so greatly outweighed the losses and vexations occasioned by strikes as to make this method of adjusting wage differences vastly superior to the one it succeeded.

"Now that the smoke of battle has cleared away and the passions and prejudices naturally engendered by contest and conflict have been allayed, it seems to me that in the light of our past experience it would be not only good business policy, but also our duty to each other and to society, to take steps to renew our former relations and re-establish the joint interstate conference; and with that end in view I recommend that the International Executive Board, with the co-operation of the district officers in interest, negotiate with the operators of the central competitive field, during the present year, for an interstate meeting to be held at some suitable time prior to the first of April, 1908. Happily, the interstate movement in the southwest has been preserved, the miners and operators of that field having agreed to meet in Kansas City in the spring of 1908."

President Mitchell.
p. 38, l. 40–45.
p. 39, l. 1–23.

(316) "In West Virginia we have had almost continuous litigation. To such an extent has this been the case that the International Executive Board has retained at an annual salary a strong firm of lawyers, who not only defend our interests against the aggression of our opponents, but

who have also vigorously and successfully prosecuted innumerable violators of the law."

President Mitchell.
p. 40, l. 7–12.

(317) "Owing to the depletion of our treasury in the middle of the year (due to the payment of strike benefits), and to a change in the organizing policy in the Irwin and Connellsville fields of Pennsylvania and in West Virginia, our force of organizers was largely reduced; as a consequence, the expense incident to field work was not as great as heretofore."

President Mitchell.
p. 42, l. 2–7.

(318) "In preparing this report I have confined myself as closely as possible to those matters which I deemed to be of greatest moment and of most importance to our trade, but in closing I shall ask your indulgence to make some observations upon a matter which, while somewhat extraneous, is nevertheless so inseparably related to our movement that it comes properly within the purview of this address.

"I refer to the attitude of the American labor movement and to my own position in regard to the political situation as it presented itself during the recent campaign.

"You, no doubt, recall that a manifesto was issued by the Executive Council of the American Federation of Labor, calling upon the organized workers and their friends to support those candidates for legislative positions who held a paid up card in the organization of their craft, and to defeat all candidates, regardless of party affiliations, whose hostility to the measures favored by organized labor was well known. The action of our own convention one year ago in amending the constitution so as to enable salaried international, district and sub-district officers to

hold legislative positions seemed to harmonize entirely with the non-partisan political policy of the American Federation of Labor.

"Acting upon this hypothesis, I encouraged members and officers of our organization to seek nomination for legislative positions and advised our members to support such candidates without regard to party affiliation. Whether my advice in this respect was potential or not, I am not prepared to say. I do know, however, that a large number of miners and other trade unionists in mining districts became candidates and secured nominations for membership in the state legislatures and in the Congress of the United States. I have not learned the number of miners elected to the various state legislatures, but I do know that in Pennsylvania alone more miners were elected to the General Assembly in the last campaign than even the most enthusiastic had predicted. And I am sure that every member of our organization and every trade unionist in the United States feels proud of the fact that your International Secretary-Treasurer and the President of District No. 1, Brothers Wilson and Nichols, were elected triumphantly to Congress. Of course, it is not necessary to say that the first duty of these representatives is to their constituents in the congressional districts from which they were elected, and to the people in general of the United States; but the fact remains that this is the first time in the history of our country when men have been elected to Congress who by experience, training and sympathy will be in a position to voice our demands and to advocate the measures especially required for the protection of the underground toilers of the nation.

"I am firmly convinced that the time is not far distant when the organized workmen of America will have repre-

sentation in the national and state legislatures in proportion to their numbers and to their industrial importance.

"It must not be assumed, however, that a large representation in our legislative bodies will render less necessary the organizations of labor. On the contrary, the power and influence of our representatives will depend in no small degree upon the strength and solidarity of the organized labor movement; but we must exercise great care that the movement to place labor men in legislative positions is not permitted to degenerate into a mad scramble for office. Partisanship and self-interest or personal aggrandizement must be discouraged and frowned upon. Only those who have proved by good work that they have the real interests of labor at heart should receive countenance and endorsement."

President Mitchell.
p. 50, l. 5–44.
p. 51, l. 1–21.

(319) "The calling of a Special National Convention, the modified proposition submitted by the miners' representatives and accepted by certain Operators, and the final action of our own convention to sign local or district agreements is known to you."

Vice President T. L. Lewis.
p. 52, l. 25–28.

(320) "While there has been a large loss in membership during the past year, there has been a steady increase in the membership the past several months, and yet there is a tremendous loss in our membership compared to what it was a year ago."

Vice President T. L. Lewis.
p. 56, l. 45.
p. 57, l. 1–3.

(321) "Until last year I have supported the views of others and endorsed policies recommended to our members, even though I did not believe those policies were for the best interests of the mine workers of the country. Even last year, after the Special National Convention had agreed upon a policy of signing local or district agreements. I worked as earnestly as any member or officer of the Organization for the success of that policy and I challenge a successful contradiction of this statement."

Vice President T. L. Lewis.
p. 57, l. 22–30.

(322) "I have been an active member of, and assisted in the work of building up, three National Organizations of mine workers. I had also the honor of being one of the delegates that attended the Convention which laid the foundation of the United Mine Workers of America."

Vice President T. L. Lewis.
p. 58, l. 1–6.

(323) "I believe when the United Mine Workers was instituted that it was to be a National Organization. For years the mine workers of this country have struggled against tremendous opposition to establish a National Organization, National in name, National in purpose and to adopt National methods to deal with National questions affecting the interests of the miners.

"Is the United Mine Workers of America a National Organization in more than name? Does it deal properly with National questions affecting the miners' interests? Can we hope to establish a National eight hour day and our right to organize in certain districts except by a National movement? These are questions the miners of the country must seriously consider.

"Two years ago, or when a reduction was accepted in 1904, the members of our Union were led to believe that

all contracts would be made to terminate on the same date, so that we would be prepared to meet and dispose of any issue that confronted us in 1906. At the date of the expiration of the agreement in the Southwest, I made a special effort to have changed to conform with other contracts which expired April 1, 1906, and as a result, this contract was made for a period of nineteen months.

"It was on that date that the miners expected to establish recognition of the United Mine Workers in the Anthracite region. It was on that date that we hoped to establish a uniform eight hour day in Central Pennsylvania. It was on that date that the miners of the Irwin and Connellsville Districts would have joined in a National movement to free themselves from the conditions that have existed so many years in those districts. It was on that date that the opportunity presented itself to establish Hocking Valley prices and conditions in the Pittsburg District, according to promises made in Chicago in 1898. It was on that date that the mine workers of West Virginia would have swung into line and asserted their right to be members of the United Mine Workers."

Vice President T. L. Lewis.

p. 59, l. 12–44.

(324) "If the United Mine Workers is a National Organization, it should establish National reforms and make them apply to all alike.

"If national reforms, to be established in the mining industry, require a national movement, then those reforms cannot be established by a sectional effort. This has been proven by the millions of dollars we have spent in that kind of an effort in Pennsylvania, West Virginia, Tennessee, Alabama and Colorado.

"If States or districts are allowed and directed to legislate for themselves on questions of a National character,

then there is no need for a National Organization of miners.

"Regardless of what may have been said by some members of the United Mine Workers, even some who hold official position, I am a firm believer in an International organization of our craft. In fact, the American continent is not large enough to maintain two Organizations of miners.

"These things are mentioned for the benefit of the United Mine Workers of the country. With this information you will understand that there is work to do, if we desire to maintain what we now have and to bring the unorganized mine workers up to our standard.

"To clear the minds of all the mine workers of the country and to strangle many falsehoods that are being circulated in regard to my position on the policy of the United Mine Workers of America, I desire to make clear at this time, that"

Vice President T. L. Lewis.
p. 61, l. 13–37.

(325) "I favor:

"1. One Organization of the mine workers of the American Continent.

"2. I favor the establishment of a National eight hour day for every person employed in and around the mines.

"3. I favor a complete recognition of our right to organize in every mining district in the country.

"4. I recognize that there are certain local markets that naturally belong to certain coal producing districts.

"5. I favor giving every operator an equal opportunity to secure his share of the general markets."

Vice President T. L. Lewis.
p. 61, l. 37–45.
p. 62, l. 1, 2.

(326) "Secretary-Treasurer W. B. Wilson read the following report:

"Mr. President and Gentlemen of the Convention:

"I herewith submit for your consideration my financial report for the year ending November 30, 1906:

"Beginning with the first of April we had for a prolonged period over 400,000 men on strike. We had on hand in the International treasury at the close of business March 31, 1906, $361,951.87. It must be apparent to everyone, as it was to the International Executive Board, that this amount of money was insufficient to take care of all the men who were idle as a result of our failure to reach an agreement with the operators. Consequently it was decided to hold the money in the International treasury until the various locals, sub-districts and districts had exhausted their funds, and if they had not secured a settlement by that time, to use the funds in the International treasury at those points where assistance was most needed and where it would best protect the interests of all. Fortunately, many settlements were arrived at before it was necessary to draw much on the International treasury.

"District No. 2, Central Pennsylvania, and District No. 6, Ohio, were the last ones to secure a settlement and all of the International funds were expended in those two districts in the last few weeks of the conflict. This policy was absolutely necessary because it cannot be gainsaid that if the miners of either of those districts had been defeated it would ultimately have been disastrous to all of the miners of the United States.

"As a matter of fact, at the close of business July 11, we had expended $37,707.59 more money than we had in the treasury. The International Executive Board at its meeting in June, realizing the necessity for more funds with which to conduct the strike, levied an asseeement of 50

cents per week upon those who were at work, beginning with the 15th of June. Only $195.80 was realized from this assessment during the month of June, and very little until after the middle of July, when the payments for work performed in June were being made. In this crisis your International Officers began negotiations with districts that were known to have money in their treasuries to induce them to pay their assessments in bulk for all of their Locals. On the 12th of July the first payment in this manner was made by District No. 12 of Illinois, amounting to $100,000.00. District 13, Iowa, followed soon after with $35,000.00, and as settlements had been secured for a majority of the men in Ohio and Central Pennsylvania by that time, our financial crisis had passed.

"With the large number of men we had on strike and the comparatively small amount we had in the treasury we were unable to contribute sufficient money to the various districts to enable them to pay very large strike benefits. This created dissatisfaction and the question was frequently asked, 'What has become of our money?'"

p. 62, l. 22–44.
p. 63, l. 1–23.

(327) "INCOME.

Tax	$692,002.20
Supplies	10,470.34
Journal	5,001.55
Assessment	362,182.43
Miscellaneous	11,751.80
Total	$1,081,408.32

EXPENDITURES.

Salaries and expenses	$179,279.35
Supplies	16,435.78
Office expenses	3,123.55
Journal	6,894.58
Telephone, postage and express	6,458.16
Aid	813,945.92
Miscellaneous	106,856.67
Total	$1,132,994.01

RECAPITULATION.

Balance on hand December 1, 1905	$389,546.40
Income, December 1, 1905, to November 30, inc., 1906	1,081,408.32
	$1,470,954.72
Expenditures, December 1, 1905, to November 30, inc., 1906	1,132,994.01
Balance on hand December 1, 1906	337,960.71
Total amount on deposit	339,614.44
Cash on hand	4,582.71
	344,197.15
Outstanding checks	6,236.44
Balnce on hand December 1, 1906	$337,960.71

Secretary-Treasurer W. B. Wilson.
p. 184, l. 1–29.

(328) "President Mitchell: The chair does not want to consume the time of the convention, but there is one feature of the question you should understand. It was upon a recommendation made by myself, which was incorporated in one of my annual reports, that the separate organizations of mechanical trades were broken up and the men compelled to become members of the United Mine Workers of America. It was through Mr. Duncan and myself, in the American Federation of Labor, that the autonomy resolution which gives us jurisdiction over these trades was written. It was by my advice that the officials of Indiana told the engineers they would have to leave their separate union and join ours."

p. 214, l. 9–19.

(329) "Delegate Walker: If a member of our organization in good standing leaves a mine and goes to work in a non-union mine, can we add to the initiation fee a fine when he wants to come back?

"President Mitchell: The local unions have a right to place fines on members for violation of their rules."

p. 242, l. 39–43.

(330) "Delegate John T. Dempsey, for the Committee on Officers' Reports, presented the following report:

Indianapolis, Ind., Jan. 18, 1907.

To the Officers and Delegates of the Eighteenth Annual Convention. Greeting:

We, your Committee on Officers' Reports, beg leave to report that we have carefully examined the reports of our President, Vice President and Secretary-Treasurer."

p. 269, l. 38–45.

(331) "POLICY OF THE FUTURE.

"Your committee approves of our President's recommendation on this vital question, and would also recom-

mend that our International officers be empowered to negotiate with the operators of the central competitive field for an interstate meeting, to be held some time prior to the expiration of our present contracts. We further recommend that this convention instruct our officers to make a reasonable effort to secure the admission of all soft coal producing States desiring admission to the joint interstate movement."

Delegate John T. Dempsey.
p. 270, l. 17–25.

(332) "BOARD MEETINGS AND ORGANIZERS.

"Your committee recommend that this convention heartily approve of the Board's action in withdrawing a part of our organizing force from active service, as a result of a depleted treasury, but we further recommend that the force be increased whenever, in the discretion of the Board, our funds would warrant.

Delegate John T. Dempsey.
p. 270, l. 38–40.
p. 271, l. 1–3.

(333) "The motion to adopt the report of the Committee on Officers' Reports was carried by a unanimous vote.

"Delegate Dempsey, for the Committee, read the following report on the report of Vice-President Lewis:

VICE-PRESIDENT.

"We, your committee, after careful deliberation on Vice-President Lewis' report, would say that the same shows that our Vice-President was actively engaged during the year, and rendered valuable service to the organization in negotiating settlements of wage and other questions.

"Vice-President Lewis' report not being classified, your committee can only deal with the same in a general way.

"The Vice-President's review of the events that took place subsequent to our convention last spring, as mentioned in his report, are his own personal opinions. However, your committee reserves the same right to their opinions, and we disagree with our Vice-President in his report as to the wisdom of pursuing certain lines of action, and particularly the attitude of our Vice-President on the signing of sectional agreements in the several states. That results might have been more advantageous to our organization had a different policy been adopted is merely problematical and conjecture. The policy pursued was in harmony with the deliberate judgment of our last special convention. Taking into consideration the many complications confronting us at that time, together with the demoralized condition of our joint forces and a chaotic state of affairs on every hand existing as a result of the strained relations between the two divergent forces—operators and miners—we believe that the very best possible results have been attained under the circumstances, and congratulate our organization upon the fact that it has emerged from the conflict with honor and our organization has been preserved intact.

"Hence your committee recommends a continuation in the future of the same wise, conservative, business-like policies."

"Delegate J. H. Walker—I move the adoption of the report of the Committee on Officers' Report. (Seconded.)"

p. 272, l. 19–45.
p. 273, l. 1–8.

(334) "Had I believed that a national strike would have involved the miners of West Virginia, of Virginia, of

Meyersdale, Pa., of the Georges Creek District of Maryland, of the Connellsville, the West Penn Road and the Irwin Field in Western Pennsylvania, had I believed it would have involved the men of Alabama, of Colorado, of Utah, of Wyoming, of Washington—had I believed you could have stopped those non-union mines there would no one have favored a national strike more than I. But I did not believe it then, and I do not believe it now. I do not believe a national strike would have stopped any considerable number of men in any of the non-union fields of this country."

President Mitchell.
p. 275, l. 31–42.

(335) "In the middle of April the International Executive Board held a meeting in this city. The question of our policy was under consideration. An application has been received from Ohio asking what we should do in the Crooksville District, if I remember right. A sub-committee consisting of the Vice-President, the Secretary-Treasurer and myself were appointed to define a policy for the government of our various district organizations, so far as settlements were concerned, and this is what we unanimously reported to the Board, and it was unanimously adopted by them:

"'We are of the opinion that the representatives of our organization should demand a full restoration of prices and conditions of employment which prevailed in 1903, and, in addition thereto, should retain any advantages secured in 1904 and 1905. If, however, it becomes apparent to the responsible officer in charge of the miners' interests in any conference with the operators, that an agreement on this basis cannot be reached the Board believe and advise that where operators are willing to pay the advance provided for in the Perry resolution, to-wit: five cents per ton

on screened coal, three cents per ton on run-of-mine, four cents per ton for machine mining in Ohio, the restoration of the machine mining rate in Indiana and Illinois, an advance of 5 9-10 per cent. on dead work and yardage prices, rather than engage in a strike, settlements should be effected even though we are forced to accept the conditions of 1904 and 1905, plus the advance referred to herein.

"'This information is not to be communicated to our membership, but is intended solely for the guidance of the officers having general supervision over the making of agreements.'"

President Mitchell.
p. 278, l. 13–41.

(336) "I desire to say with reference to the strikes of 1894 and 1897, that the strike of 1894 took place at a time in the history of this country when there was a great depression in industry. That strike took place on a falling market. That strike ended in a compromise. In the strike of 1897, or during the period of which it is said the production of West Virginia coal increased to such a large extent, it is a well known fact that there were approximately nineteen thousand men working in the mines of West Virginia. It is also a well known fact that there were twelve thousand of those men on strike during the strike period. It is also a well known fact that when we met in Columbus, Ohio, to consider a compromise proposition with the operators that the West Virginia delegation was in that convention, and that for two days and a part of another the delegates from Illinois and the delegates from Ohio stood side by side in demanding that there be no settlement unless the men in West Virginia were included. It is also a well known fact that a compromise resolution was offered. As a result of that resolution, which read that we would accept the compromise offered by the

operators, the miners of Western Pennsylvania, Ohio, Indiana and Illinois would not return to work for ten days in order to give the West Virginia men an opportunity to make a contract. It is a well known fact that because of the wording of that resolution the West Virginia men believed their interests were being protected and voted it and carried it in the convention by a bare majority, and when some one, realizing what was at stake, asked for a reconsideration of that motion, Mr. Ratchford said it was too late, it had gone to the press of the country. What was the result? There could be but one result. The West Virginia men went home without a settlement. Some of the men in the other States went to work before the end of the ten days. Our brothers in Illinois continued to strike. Following that period this organization put men in the field to boycott the coal coming from West Virginia. And this is another opinion of mine, that the boycott was placed on West Virginia coal, and our men going into the markets of different sections of the country saying to the public 'Don't buy West Virginia coal because it is produced by non-union men; don't buy it because it is produced cheaper than union coal,' did more to advertise West Virginia coal than any strike that ever took place in this country.

"So far West Virginia has continued to increase its production by leaps and bounds, so much so that there are probably more than fifty thousand men working in that State. Their product crosses ours in the market, and, while I respect the opinion of every man, while I respect President Mitchell's opinion, that does not necessarily mean I should be deprived of expressing mine. And my judgment is based upon past experience. When we organize West Virginia, when we organize the unorganized sections of Pennsylvania, we will organize them by a strike movement.

Some man will say this is a matter to be determined by the future. That is true; but while it is true, coal from those States is crossing the union States and going into the markets that we ought to supply. If evidence is needed, we have only to refer to the coal reports of the union States to see that there is not the increase in their production they ought to have, notwithstanding the fact they have home markets."

Vice President Lewis.
p. 281, l. 10–45.
p. 282, l. 1–20.

(337) "At the last special convention held in the city of Indianapolis, we were confronted with a serious situation. The convention decided by a majority vote the policy that would be pursued, although many delegates did not believe that was the best policy that could be pursued. I was one of them. I believe that better and more speedy results could have been secured by reaffirming and reiterating the famous Ryan resolution that was adopted at the convention in January."

Delegate Green.
p. 284, l. 46.
p. 285, l. 1–7.

(338) "In referring to the National suspension of 1897 I desire to refresh your memories by saying to you that the result of the National suspension of that year, in addition to what President Mitchell has said, and in addition to what Vice-President Lewis has said, was the cause of the revival of the joint agreement, which has been of so much benefit to all of us. For some years previous to 1897 that agreement had been dissolved. That strike, in addition to securing for us an advance in wages and the re-establishment of the joint movement, provided for a convention a few months later to be held in Chicago. That convention

secured to the United Mine Workers of this country an eight-hour day. This result, secured in Chicago in 1898, can be traced to and identified with the results of the National suspension of 1897. In addition to that it gave an impetus to the organization. It created in some of the unorganized fields a sentiment in favor of organization, and in others crystallized a sentiment already existing there. After the suspension of 1897 the organization went forward in leaps and bounds.

"One reason why I believe a National suspension would have brought the best and most speedy result is because, as you know and as I know, and as subsequent events have proved, it would have prevented the dissolution of the interstate movement. I am exceedingly desirous of seeing the joint movement re-established, and will do all that is in my power to bring about that most desirable result. I recommended to our convention in Columbus last week that they instruct the officers to co-operate with the National and do all in their power to bring about the re-establishment of the interstate joint movement."

Delegate Green.
p. 285, l. 12–39.

(339) "If I do not understand the report of the committee, I want to understand it. I believe their recommendation is, after summing up the report of Vice-President Lewis, that the same wise, conservative policy be pursued in the future that has been pursued in the past. I would like to know whether or not that means to commit this organization to the same policy, no matter what the circumstances or conditions are, that are pursued in the last general settlement. I would like to know whether or not the adoption of the report of the committee would mean that we commit ourselves to at all times in the future adopt a policy of settling by sections? If that is

the intention of the committee, I don't believe the organization can afford to commit itself to such a policy. Conditions may change and circumstances arise which may cause some subsequent convention to deem it wise to declare in favor of a National settlement. If that is true, will this convention commit itself absolutely and unreservedly to a policy of sectional settlements? We cannot afford to do that, because the operators of the country would take advantage of such a declaration and say to us when we seek to again establish the joint interstate movement, 'You have gone on record as favoring the same policy that was pursued last year, and we claim the same right to make our settlements sectionally and locally and follow out the policy you have already laid down.'

"I say to you, gentlemen, one reason why I oppose the policy that was pursued last year was because over in Ohio we were peculiarly situated. We had West Virginia on the south and Pennsylvania on the east, and after four months of a strike in Eastern Ohio we had reached the danger line. We felt keenly the competition from West Virginia, and during the suspension our miners in Ohio chafed under the object lesson they had. They saw West Virginia coal go by, trainload after trainload passing their doors, when they were on strike. This coal supplied the markets that they should have had. There is no disguising the fact, something must be done to remedy this condition. Year after year Ohio has had to go home and strike in some portion of the district to enforce the interstate agreement that was signed up here. Ohio, because of her peculiar location, has been an impregnable defense for the States west, and has met successfully and resisted to a man the going westward of the conditions in Pennsylvania and West Virginia. If West Virginia increased her tonnage one million tons in 1897, reports show that last

year she increased it five million tons, and has taken from Ohio many local markets she has claimed, and has had a right to claim. Reports show that Pennsylvania increased her production about two-thirds the tonnage of Ohio. While this increase in production has been going on in their districts, Ohio has been practically standing still. Do you then wonder that in Ohio some means for bringing about better results is uppermost in the minds of our people? I confess here and now that the overwhelming sentiment in Ohio was that a settlement by sections would not correct the conditions we complained of.

"Now, something must be done; it is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us. I believe a National movement would have induced West Virginia to become organized and that, like other districts in 1897, it would have meant the organizing of that field. That would have brought us the protection we so richly deserve, and that is so absolutely necessary for us to have. Even during the suspension there developed a pronounced sentiment among our people in Ohio in some localities where they were on strike in favor of stopping even those who had signed the 1903 scale."

Delegate Green.
p. 286, l. 43–46.
p. 287, l. 1–45.
p. 288, l. 1–12.

(340) "As to the main issue that is being discussed, I disagree with Vice-President Lewis and President Green of Ohio. Since the time of the National convention all the information I have been able to secure has convinced me that the policy advocated by them would have been disastrous to the organization, and that the policy we adopted was the very best that could have been adopted

at that time and under the conditions then existing. From the knowledge I have gained in the past year, added to what little I knew prior to that time, if the same question came up in this meeting, not only would I do what I did then, but if there was anything I could conceive of, no matter what would have been the result to me as an individual, to prevent the policy advocated by those two brothers being adopted, I would do that in addition to what I did before.

"I have been coming to these conventions for a long time, and on some matters, I have been set down, particularly by some of the men interested in this question, as an impractical dreamer. I want to say that I have been fully prepared to meet these people, and I say now if ever there was an impractical dream advocated, if ever there was an absolute absurdity advocated, if ever there was an idea advocated that meant, if we were to adopt it, the annihilation of this organization, it was the one they stood for, the putting into force at any cost of the Ryan resolution. The Ryan resolution provided that we would all sign up or we would all refuse to sign up. I don't believe there is a man in our organization, or outside of it, I don't believe there is even a socialist in the country, who is foolish enough to attempt to get up before any body of men who have had experience in this movement and say that resolution could have been put into effect. The proposition itself as advocated by these people is almost as foolish as the position they are taking that the adoption of the report of the Committee on Officers' Reports would commit this organization to a set policy when acting on such questions in the future. I think it is clearly the intent of the committee to endorse the position taken by the organization in the past in dealing with such questions. In dealing with some of these questions in the past a National suspension has been

ordered, and, so far as the organization could control things, settlements were made nationally. Last year sectional settlements were made, but in both cases the men who considered the matter carefully did the best that could be done under the circumstances. That is the policy the report of the committee endorses, and that is what the report of the committee provides for a continuance of."

Delegate J. H. Walker.
p. 289, l. 21–46.
p. 290, l. 1–17.

(341) "The original scale that was drafted as a National proposition put the Western Pennsylvania, the Ohio, the two Indiana districts and the Illinois operators on a competitive basis. It was understood that if one of them got an advantage it would disturb that equitable basis."

Delegate J. H. Walker.
p. 290, l. 31–35.

(342) "I want to say to you frankly that, notwithstanding their statements, if you will leave the report of Vice President Lewis in the hands of an impartial judge, a man with a knowledge of the facts in the case as they affect our organization, and ask him if it is an honest personal opinion or an attack on President Mitchell and the men who believe in the policy adopted at the last convention, I am satisfied he would decide it was about the ablest attack of that character that could be made under the circumstances. I believe that ninety-nine out of every one hundred such impartial men would so decide.

"Now, Mr. Chairman, I want to give some consideration to the question of a National suspension. The National suspension in 1897 and the suspension in 1906 were two entirely different propositions. The markets were against us in 1906, which was not the condition in 1897. So much for that portion of the report.

"Now I want to ask any man, even the most idle dreamer on earth, who knows anything about the situation in Western Pennsylvania, the situation in the Connellsville coke region, the situation in West Virginia and Virginia, would any action taken by this convention be the means of getting those men out on strike? I put in two years in that region myself, and while I do not claim to know everything in connection with it, I do know something of that field. In 1897 Fred Dilcher started in at one end of the Kanawha and went right through the region. He was allowed to talk in the camps and every man was allowed to form his own opinion. I would like to see the man who would start in at the top of Kanawha and go to New River and talk to those men now. About the time you leave Cincinnati going up there you would get a pretty able body guard to attend you. There would not be a minute of your time after leaving Cincinnati until you got into Virginia when you would not be watched. They have complete control of the surface of the land in that state where we are interested. They have complete control of the judges, of the juries, the police force, the militia and all the thugs they want up there. They have plenty of deputy sheriffs, each one with a commission, a big forty-five, and a big club, but if you take a club and a gun along you will get fifty dollars and sixty days, and if you don't take them along you will get your brains beaten out. If a coal miner says, 'Hello, Jack, how are you?' from across the street he gets his time next morning. The mines are distant from the towns and the majority of them are not even reached by a public road. The only stores there are company stores, and the minute the men come out on strike they are prevented from getting anything, except what is brought to them. I don't care how good a man is, or how strong his union principles, or how willing he is to

strike, unless you can furnish means for him to keep his family alive it is impossible to keep him out. I agree with President Green and Vice President Lewis that you never can get those men organized except at the end of a general strike, but I warn you not to go into it until you are thoroughly prepared. If you are not prepared to take care of those men when you call them out, you will only victimize the poor fellows who have the courage to join you and have them driven out of there. I ask any man who has any knowledge of the situation if, even during the two months suspension last year, he believes there was enough money in the organization to have carried on that sort of fight in West Virginia, old Virginia and Maryland? There was not enough money, even if we took every cent in the national treasury and every cent in the district treasuries, and did not give a cent to our own members.

"When I see people who will adopt questionable tactics to push themselves to the front, I confess I have not much respect for them. I do not say that we had such people in the case we are discussing, I merely make the general statement, but I do not want to say to you frankly and freely that I believe the policy outlined by our last special convention on the proposition that was up for settlement was the very best that could be adopted. I believe a majority of the men who were conducting negotiations lost sight of their own interests entirely and tried to do only what was best for the organization. I believe if the other policy had been adopted the same men would have gone into the fight and would have done the very best they could to win. I don't believe there is a man who voted for that settlement on the other side who would have attempted to criticise those actions until the final result had been brought about, and I believe there would have been no harsh criticism of any individual, even if the result proved disas-

trous. I don't believe the practice of throwing cold water on the efforts of the men who have to carry out the policies we adopt is the proper thing to do."

Delegate J. H. Walker.
p. 293, l. 2–46.
p. 294, l. 1–34.

(343) "If we are able at a colliery to force all the men to become members of the union we do so. If we are too weak, we do not attempt it, but keep gradually working among the men until we are able to accomplish our end."

Delegate Patrick Gilday.
p. 295, l. 24–27.

(344) "I am one of those who believe that the policy adopted last year, that of settling where we could make settlements on the 1903 scale, was the proper thing to do."

Delegate Patrick Gilday.
p. 296, l. 6–8.

(345) "Now, Mr. President, I have no fault to find with Vice-President Lewis. Our relationship is friendly, but I do not believe he has a right to embody in his annual report such statements as he has without questioning the district or sub-district officers in Central Pennsylvania in regard to conditions there. If he had done that he would have discovered that he had been misinformed. I object to the statements that we have just now established the open shop, and that we have only a limited check-off. I hope Vice-President Lewis will correct his statements in regard to these matters."

Delegate Patrick Gilday.
p. 296, l. 23–32.

(346) "The future alone will determine whether or not the position of last year was correct. It is not a question of President Mitchell's policy, it is not a question of Vice-

President Lewis' policy; the future will determine what policy we will be required to adopt in order to best preserve and safeguard the interests of the mine workers of this country. In doing this it will be necessary for the mine workers of this country to know all the facts in regard to all the conditions in the mining industry from one end of the land to the other. No one has made the statement that we can organize West Virginia without a strike. If we can I will be one of the best pleased men in this organization, whether I am an official or whether I am working in the interests of the men while serving them in the ranks. That has been my position in the past and it will be my position in the future. In whatever position I am serving the miners of this country there won't be any differences of opinion between my colleagues and myself when the miners have determined on a policy; but in order that all the men may know what conditions prevail in the country, I believe as one of their representatives, I would be lax in my duty, that I would not be doing justice to the men who are struggling for improved conditions, if I did not point out to them the obstacles in the way of success, and what, in my opinion, would bring that success."

Vice President Lewis.
p. 310, l. 5–27.

(347) "President Mitchell: It was not my intention to speak again upon the subject under consideration; but in making my short address yesterday in defense of the policy adopted by your convention one year ago, and executed by your district and international officers, I failed to call attention to some features I believe would be of interest to you.

"Let me say, prefatory to presenting them to you, that I have repeatedly stated that, in my opinion, West Virginia, the Irwin field, the Connellsville coke region,

Southern Colorado and the Georges Creek district would not be thoroughly organized except as the result of a successful strike. I repeat that opinion now; but I want to add to it that they will not be organized at all, strike or no strike, unless we are able to support the men in those fields from the first day they lay down their tools. One year ago that was a consideration with me. I didn't believe they would have struck then. I don't believe it now, and if they had struck you would have had no money to support them and no resources from which to draw revenue, because when the union men were on strike you had cut off the only source of revenue."

p. 310, l. 28–46.

(348) "Now I believe it is possible, indeed I believe it is probable, that in the not distant future we will be able to inaugurate a movement in West Virginia and the other unorganized fields that will involve them in a strike, and then we will expect you to furnish the sinews of war, as you have done in the past, to keep these men in idleness."

President Mitchell.
p. 311, l. 1–6.

(349) "If one year hence it is my judgment that a suspension of mining throughout the United States would be best, I will favor that policy. If, on the other hand, I am of the opinion that partial settlements are best, I will favor partial settlements."

President Mitchell.
p. 313, l. 7–11.

(350) "This morning Delegate Walker spoke of the Ryan resolution. While that was a very drastic measure it was carried by very nearly a unanimous vote of the convention. One man opposed it but he has since been relegated to the rear for opposing that resolution and voting

in another manner when he went into the joint convention. We knew when we were voting for that resolution we were doing the right thing. We believed it still when we met here in special convention in March. The miners of Ohio believe it now."

Delegate G. W. Savage.
p. 323, l. 45, 46.
p. 324, l. 1–7.

(351) "When we founded the United Mine Workers we intended that we should, if one State had to be called out, call out all the others with it. We want all the States to come out together, and we want every man to stand by his brother, shoulder to shoulder, to show the operators what we can do. If we don't continue that policy, if we go on settling by sections, we might as well give up the organization. If we don't go together to ask for a settlement we had better abandon the organization and let every one settle for himself."

Delegate William Kinkade.
p. 337, l. 38–46.

(352) "I realize that the unorganized districts of this country not only are a menace to themselves, but they are a menace to the organized workers who wish for better things. How to secure better conditions in those fields is something that is better known to our executive officers than to me. Speaking of the joint movement and its dissolution, I want to refer briefly to the fact that when we were parting after our regular convention last year our demand for recognition was pending. The Ryan resolution of which we have heard so much, had been introduced, but I claim it had served its purpose when we reconvened again in the special convention, although great stress is laid upon the fact that it was in force at that time, and that it was in force even at the end of the joint convention.

However, I want to call the attention of the delegates to the fact that when we came to the special convention and our scale committee renewed its demands, they carried with them a demand that Iowa be admitted to the joint movement. You all know how the interstate conference proceeded to make a scale on the line of the joint movement alone. Now, I speak for my own district when I say that some day we propose to right our own wrongs, and if ever the course of this organization is so shaped that we go on the field of conflict, we want to make that struggle so interesting to every portion of our membership that they will have a healthy interest in working for its final success. We are not without troubles in our own state; we have many difficulties such as I have heard discussed in this meeting, but we do not think this is the proper place to air them. I think such things can better be taken care of in the respective districts than they can after being discussed here. I think our organization has emerged from the crisis of last year with considerable credit, and I believe we will be able to demonstrate that in a practical manner in the future."

Delegate White.
p. 343, l. 18–46.
p. 344, l. 1, 2.

(353) "The motion to adopt the report of the Committee on Officers' Reports on the annual report of Vice-President Lewis was carried by a viva voce vote.

Chairman Nicholls.
p. 344, l. 22–24.

(354) "The time has come when the laborers must control the country or the capitalists are going to control the laborers even more than they do today."

Delegate Crane.
p. 379, l. 41–43.

(355) "RESOLUTION NO. 39.
"GENERAL PLAN FOR GOVERNMENTAL REFORMS.

"Resolved, That the United Mine Workers of America in convention assembled declare for the immediate establishment in nation, state and municipality, of a modern system whereby the voters can instruct their representatives—the advisory initiative and advisory referendum or initiative and referendum principle—to be followed by further reforms in the governmental system, so that the representatives shall become the electors' agents, namely, that there be established the initiative and referendum, direct nominations, direct elections, proportional representation and the right of recall; and,

"Resolved, That this convention hereby approves the questioning of all legislative candidates as to whether, if elected, they will vote for the immediate restoration of the direct-vote system—the People's rule. JOHN MITCHELL, Delegate L. U. 8617.

"The committee concurred in the resolution."

p. 381, l. 38–43.
p. 382, l. 1–11.

(356) "The motion to concur in the report of the committee was carried."

p. 382, l. 21.

Excerpts from book entitled "PROCEEDINGS OF THE NINTH ANNUAL CONVENTION OF SUB-DISTRICT 5 OF DISTRICT 6, UNITED MINE WORKERS OF AMERICA, Held at WHEELING, W. VA., MARCH 14, 15, 16, 18 and 19, 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 5. [Record pp. 706, 290.]

(357) "PRESIDENT WATKINS' REPORT.

"To the Officers and Delegates of Sub-District No. 5 of District No. 6, U. M. W. of A.

"Brother Delegates: We have assembled in the ninth annual convention of our sub-district. Before submitting to you my report permit me to heartily congratulate you and our members on the large and splendid representation in this convention.

"One year ago you honored me by electing me president of our sub-district. At that time we were in hopes that we would be able to arrange a wage scale without very much trouble. In this we were disappointed, and succeeded in getting a wage contract signed after a prolonged and bitter strike lasting four months.

"That the greatest strike of the year was not finally settled until after we had held six joint conventions in this sub-district. The first convention was held April 12, 13, and 14, in Wheeling, W. Va. After being in session three days we adjourned without reaching an agreement. The next joint convention was held at Canton, O., April 16, 17 and 18, for the north end of Sub-District. We also failed to reach an agreement for that part of the Sub-District. The next joint convention was held at Wheeling, W. Va.,

April 23 and 24 at which time there was a scale formulated on the basis of the 1903 contract and this scale was signed by a few operators.

"The next joint convention was held at Wheeling, W. Va., June 27, 28, 29 and 30. After four days' session was adjourned without reaching an agreement. We then held another joint convention at Canton, O., July 11, 12 and 13, 19 and 20, at which we succeeded in effecting a settlement for the north end of the sub-district. The last joint convention was held at Wheeling, W. Va., July 24, 25, 26 and 27, at which time a settlement was reached on a basis of the present scale under which our men are now working."

p. 4, l. 26–37.
p. 5, l. 1–24.

(358) "At our last annual convention it was unanimously decided that the Eastern Ohio scale should apply to the West Virginia Pan Handle counties. The operators of those counties refused to meet us in joint convention to sign a general scale. Some of the operators even refused to sign a contract and this resulted in several local strikes, all of which were settled except the one now on at Elm Grove where the men are on strike and are standing firm. It is with regret that some of the locals in the Pan Handle broke away and the members went to work without any union or without getting a scale signed.

"I am of the opinion that there are many good active union men in the Pan Handle counties, and that if we all work together we can organize every mine worker in that section and establish scale rates."

President Watkins' Report.
p. 6, l. 11–25.

(359) "In past conventions there have been many resolutions passed, condemning the practice of working on idle days. It is reported to me that in some mines, this

resolution is being violated by our members, who are working on idle days. I would advise that our members adhere strictly to the resolution, and that local unions use every effort to enforce the rule prohibiting men from working on idle days."

President Watkins' Report.
p. 7, l. 10–16.

(360) "REPORT OF SECY.-TREAS. LEE RANKIN.

"To the Delegates of the 9th Annual Convention of Sub-District 5 of District 6, U. M. W. of A.

"As your Secretary-Treasurer I have the honor and pleasure of submitting to you and the members of sub-district 5, a report of my work with a report of the membership and the finances of this sub-district for the year beginning March 1, 1906, and ending February 28, 1907.

"It is a matter of history that last year was no exception to the rule in Eastern Ohio—that the miners had to strike before a wage contract could be secured.

"We were hopeful, that when partial settlements were made with a few large corporations in Pennsylvania by the United Mine Workers, that there would be an early settlement of our differences in Eastern Ohio. Subsequent developments proved that our hope was without foundation.

"After several attempts to reach an agreement with the Operators of sub-district 5, our members were compelled to strike and that strike developed into the most bitter struggle that has taken place since the formation of our sub-district.

"The failure of the district organizations to provide each striking member with benefits to the amount of $3.00 per week caused considerable friction and this was taken advantage of by the enemies of the organization. What for a time seemed to be division in our ranks encouraged

certain operators with the hope that they could crush our organization. In this hope they were doomed to disappointment, as later developments fully demonstrated.

"When the district organization found that they could not comply with the constitution in the payment of strike benefits, a system of paying relief in orders was established. This policy was condemned and denounced by a few men, who did not stop to consider why the system was established.

"After a great deal of work on the part of your representatives, the reason for adopting such a policy was made clear to the members, who then took renewed courage and showed a determination to win in the struggle that then existed.

"With all the obstacles that we had to overcome last year, we have reason to feel proud that sub-district 5 came out of the strike with such credit to itself and the principles of unionism that it represents.

"To the fidelity, unity and activity of the mine workers of this sub-district is due the credit for winning in the struggle of last year. If any mistakes were made in that contest, let us profit by the experience of the past and be that much better prepared for the future."

p. 8, l. 28–39.
p. 9, l. 1–37.

(361) "On March 1, 1907, we had 108 local unions in good standing and a paid up membership of 12,500, an increase of 12 local unions and 2,050 members."

Report of Secy-Treas. Lee Rankin.
p. 10, l. 31–33.

(362) "We have one mine at Bellaire, O., and five mines in the Pan Handle district which I believe should be organized. I believe those mines can be organized and in

my opinion this convention should adopt some plan organize those mines."

Report of Secy.-Treas. Lee Rankin.
p. 10, l. 34–38.

(363) "RESOLUTION NO. 8.

"Whereas, There are mines in the Pan Handle District and Ohio that are not organized, and believing every mine should be organized, be it

"Resolved, By this Ninth Annual Convention that the Sub-District officers together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done.

"Presented by L. D. Devore, Delegate Local Union No. 778.

"Concurred in by Resolution Committee.

"Convention concurs in Committee's Report."

p. 28, l. 34–41.
p. 29, l. 1–3.

(364) "RESOLUTION NO. 10.

"Whereas, There is a growing tendency among some operators in Eastern Ohio to violate contract provisions, and having more than one mine, leave the mine idle rather than comply with agreement or settle disputes.

"Whereas, We believe 'an injury to one is the concern of all,' and believing that disputes should be settled promptly,

"Resolved, That we, the delegates to this Ninth Annual Convention, authorize the officers to close all mines of one company when such company fails or refuses to comply with contracts or settle disputes.

ALEX. BOYLE, Local Union No. 1430.
JOHN ZELENKA, Local Union No. 1245.
CHARLES BRIGGS, Local Union No. 2527.

"Concurred in by Resolution Committee.

"Convention concurs in Committee's report."

p. 29, l. 24–39.

Excerpts from book entitled "CONSTITUTION OF INTERNATIONAL UNION UNITED MINE WORKERS OF AMERICA, REVISION 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 1. [Record pp. 705, 290.]

(365) "Section 1. This organization shall be known as the United Mine Workers of America."

Article I.
p. 6, l. 4–6.

(366) "Section 2. The objects of this Union are to unite mine employes that produce or handle coal or coke in or around the mines, and ameliorate their condition by methods of conciliation, arbitration or strikes."

Article I.
p. 6, l. 7–11.

(367) "Section 3. This organization shall be composed of International, District, Sub-District and Local Unions."

Article I.
p. 6, l. 12–14.

(368) "Section 4. The International Union shall have jurisdiction over all Districts, Sub-Districts and Local Unions, which shall be governed by this Constitution."

Article I.
p. 6, l. 15–18.

(369) "Section 1. The officers of the Union shall be one President, one Vice President, one Secretary-Treasurer, and an Executive Board to be composed of one member from each district under the jurisdiction of the United Mine Workers, each district to elect its member of the

International Executive Board, the President, Vice President and Secretary-Treasurer to be members of the Board by reason of their position."

Article II.
p. 6, l. 21–26.
p. 7, l. 1–4.

(370) "Section 11. The funds of the organization shall be used for the purpose of assisting those who are in need from idleness or distress, when the payment of the same has been approved by the International Executive Board."

Article IV.
p. 16, l. 7–12.

(371) "ARTICLE VII.
Cards.

"Section 1. Local Unions shall provide each member with a Due Card, upon which the dues and assessments paid by the member shall be entered, which shall be his receipt for the same.

"Sec. 2. Due Cards shall not admit any person to membership from one local to another, and to protect the membership of individuals who are unable to pay their dues because of no Local existing where they reside, the International, District and Sub-District Secretaries shall, upon the payment of dues and assessments by said member, issue the usual cards for the same; provided that this shall not apply to a member living in a locality where a Local Union is in existence.

"Sec. 3. No person a member of the organization, who holds a Due or Transfer Card showing him to be a member in good standing, shall be debarred or hindered from obtaining work on account of race, creed or nationality. Cards properly filled out and signed by the officers of miners' unions in foreign countries shall be accepted in lieu of initiation fees.

"Sec. 4. Any member desiring to leave the mine where his Local is located and work elsewhere shall immediately make application to the Secretary of the Local for a Transfer Card, and if he has paid all dues and assessments, the President and Recording Secretary shall issue a Transfer Card to him, which shall be attested by the Financial Secretary, providing the Local Union is in good standing with the International, District and Sub-District Unions, which shall be accepted in any District, and in case such person cannot produce a Transfer Card he shall pay the regular initiation fee. All Transfer Cards shall be deposited as the laws of the District where work is secured may direct.

"Sec. 5. When a person who has not been a member of the organization three months or more secures a Transfer Card from a Local Union in a District where a dispensation has been granted said Transfer Card shall not be accepted by any Local in a different District from the one in which the Local issuing the same is located, unless said Transfer Card is accompanied by an amount equal to the difference between the initiation fee paid by said member and the initiation fee provided for in the District where the card is deposited.

"Sec. 6. No card shall be issued to any member when the Local is three or more months in arrears to the International, District or Sub-District for dues or assessments. Officers of any Local Union issuing cards in violation of any Section of Article VII shall be fined $10.00 for each card issued, the fine to be collected in the same manner as dues and assessments.

"Sec. 7. The Transfer Card must show that the member receiving it has paid all dues and assessments for the month in which it was issued, and must also show at what class of labor he was employed.

"Sec. 8. When a Transfer Card is issued to any member it must be deposited by him with some Local Union or with the International Secretary-Treasurer, within three months after the last day of the month in which it was issued to him, else the card will become void and he can only become a member again by initiation as a new member.

"Sec. 9. When a member presents a Transfer Card to a Local Union at any mine where he works or desires to work, the Local Union must accept the same and admit him to membership in that Local, unless the Local issuing the same is not in good standing, as shown by the monthly report of the Secretary-Treasurer, or the person to whom the card is issued has not been a member of the organization for three months as provided for in Section 5 of this Article, and shall collect from him all dues and assessments from the time between the last day of the month in which the card was issued and the date of depositing the same.

"Sec. 10. The Sub-District, District or International Secretary-Treasurer shall not accept a Transfer Card if the member is where he can deposit it with a Local Union.

"Sec. 11. The International Secretary-Treasurer shall prepare and send out monthly a statement of all Locals three months or more in arrears for dues and assessments, and no Local Union shall refuse to accept a Transfer Card from any Local unless it appears on said list as being in bad standing. Local Unions on strike shall be exempt from the provisions of this section.

"Sec. 12. All Transfer Cards shall be made in book form, with two stubs attached. The books to be numbered, and each card in the book to be numbered and bear the number of the book. The stubs to be printed in conformity with the card itself. The card and one stub to be filled out by the Recording Secretary and certified to by the President and Financial Secretary of the Local Union

granting the same; one stub to be retained by the Local issuing the card for future reference, the other stub to accompany the card and must be immediately filled out by the Secretary of the Local where the card is deposited and returned by him to the Secretary of the Local that issued the card.

"Sec. 13. The President, Financial and Recording Secretary of the Local Union shall keep a record of all Transfer Cards bought by, issued by and deposited in their respective Local Unions. The Auditing Committee shall compare their records every three months, and in the presence of the Local Union destroy all Transfer Cards that have been deposited that there is no dispute about."

p. 23, l. 17–31.
p. 24, l. 1–33.
p. 25, l. 1–33.
p. 26, l. 1–33.
p. 27, l. 1–23.

(372) "Section 1. When trouble of a local character arises between members of a Local Union and their employers, the officers of said Local shall endeavor to effect an amicable adjustment, and failing in this they shall immediately notify the officers of the District to which the affected Locals are attached, and said District officers shall immediately investigate the cause of complaint; and failing to effect a peaceable settlement on a basis that would be fair and just to aggrieved members, finding that a strike would best serve the interests of the locality affected, they may order the inauguration of a strike, but no local strike shall be legalized or supported by a District unless its inauguration was approved by the officers of the District or by the International Executive Board, upon an appeal taken by the aggrieved members from the decision of the District officers; any Local Union striking in viola-

tion of the above provisions shall not be sustained or recognized by the International officers."

Article X.
p. 28, l. 29–30.
p. 29, l. 1–22.

(373) "Sec. 3. When any member of the United Mine Workers is suspended or discharged, it shall be the duty of the Mine Committee to immediately investigate the case, and if the member discharged is not guilty of an offense justifying the same, the grievance shall immediately be reported to the Sub-District and District President in writing, under the seal of the Local and if, upon investigation, the report of the Local Committee is found correct the Sub-District and District President shall immediately insist upon the reinstatement of the suspended or discharged member."

Article X.
p. 30, l. 24–33.
p. 31, l. 1–4.

(374) "Sec. 4. The International officers shall, at any time they deem it to the best interests of mine workers in a District that is idle, for just and sufficient reasons, order a suspension in any other District or Districts that would in any way impede the settlement of the District affected; provided, that such action would conserve to the best interests of the United Mine Workers of America."

Article X.
p. 31, l. 5–13.

(375) "Sec. 2. Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with the International Union."

Article XII.
p. 34, l. 3–6.

(376) "Sec. 2. Sub-Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with International and District Constitutions or agreements entered into."

Article XIII.
p. 34, l. 15–19.

(377) "Sec. 3. All Local Unions within the territory of Sub-Districts already organized in any District shall contribute and become a part of the same and comply with its laws, before they are entitled to pass-word or representation in either International or District organization."

Article XIII.
p. 34, l. 20–26.

(378) "Section 1. Local Unions shall be composed of miners, mine laborers and other workmen, skilled and unskilled, working in and about the mines, except mine manager, top boss and persons engaged in the sale of intoxicating liquors, and shall be given such numbers as the International Secretary-Treasurer may assign them."

Article XIV.
p. 34, l. 29, 30.
p. 35, l. 1–6.

(379) "Sec. 2. All locals shall be under the jurisdiction of the International, District and Sub-District Unions, and may make such laws for their government as they deem necessary, provided they do not conflict with the International, District and Sub-District Constitutions or agreements entered into. Any local Union or members thereof violating this section shall be subject to a fine of not less than $5.00.

Article XIV.
p. 35, l. 7–16.

(380) "Section 1. The United Mine Workers' Journal, official organ of the organization, shall be issued on Thursday of each week from headquarters. It shall be a medium for circulating the news of interest to the craft; shall publish from time to time the important transactions of the organization, general mining and trade news, together with copies of official circulars and financial reports, and other matters of general interest. It shall be neutral in politics, non-sectarian in religion, dignified in tone, and a consistent advocate of the principles of modern trades organizations."

Article XV.
p. 36, l. 22–31.
p. 37, l. 1–4.

(381) "Sec. 4. All Local Unions shall subscribe for one copy of the Journal, paying for it in advance, and Secretaries are hereby instructed to examine every issue and read all official circulars to the members that are published therein."

Article XV.
p. 37, l. 20–25.

Excerpts from book entitled "CONSTITUTION OF DISTRICT NO. 6, UNITED MINE WORKERS OF AMERICA. Established April 15, 1890. Containing all Amendments to Date, January 12, 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 2. [Record pp. 706, 290.]

(382) "MANUAL.

OPENING.

"The hour of the meeting having arrived, the President shall take the chair and give one rap with the gavel, upon which all officers and members shall be seated. If no regular doorkeeper has been appointed, the President shall appoint one of the brothers to see that none but members of the Union are admitted.

"President: The time for opening this meeting having arrived, I declare this meeting duly convened and qualified to consider measures tending to conserve the best interests of this Union, and the United Mine Workers of America.

ORDER OF BUSINESS.

1. Roll call of officers.
2. Reading of minutes.
3. Correspondence.
4. Finance.
5. Propositions for membership and initiation.
6. Labor: The interest of the Union—of the United Mine Workers of America.
7. Report of committees.
8. Unfinished business.
9. New business.

10. Election of officers and installation.

"President: The business of this meeting having been duly transacted, I declare it adjourned until our next regular session, unless you are specially called together, when I hope to see all members present.

NEW MEMBERS.

"Any member of a Local Union can propose any one who works in or around the mine for membership in the organization. Propositions to be made to the Secretary, who shall announce the same to the Union, under the head of Order of Business No. 5.

"President: Brothers, you have heard the name (or names) of the candidate (or candidates) who desire to become members of this Union. Are there any obejctions?

"Note.—Local Unions, having complete control over their own affairs, shall decide by what vote they will admit members to their body; if objections are raised the President shall call for a vote in accordance with rules of the Union. If no objections are raised a vote is unnecessary, and the President shall say: No objections having been raised, I declare the candidates enlisted to take the obligation and become members of the Local Union.

"President: Mr. Doorkeeper, are there any candidates in waiting who have been accepted by this Union?

"Doorkeeper: Mr. President, I find Brothers . . . . . , mine workers, who were elected to become members of this body.

"President: Admit the brothers.

"The doorkeeper will admit the candidates and place them in a line opposite the President.

"President: Fellow Workmen: The United Mine Workers of America require perfect freedom of inclination in every candidate for membership to its body. An obliga-

tion of fidelity is required; let me assure you that in this obligation there is nothing contrary to your civil or religious duties; with this understanding, are you willing to take an obligation which binds you upon your honor as a man to keep the same as long as life remains?

"Each candidate answers—I am.

"President: Raise your right hand.

"'I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow-worker on account of creed, color or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"'That I will not reveal to any employer or boss the name of any one a member of our Union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it.

"'To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.'

"Answer—I promise.

"President: You are now members of Local Union No. ..... and entitled to all rights and privileges of members of the United Mine Workers of America."

p. 6, l. 1–35.
p. 7, l. 1–42.
p. 8, l. 1–24.

(383) "Section 1. This organization shall be known as District No. 6, of the United Mine Workers of America."

Article I.
p. 9, l. 4–6.

(384) "Sec. 2. One of the objects of this organization is to unite all employes in and around the coal mines of Ohio and the Pan Handle District of West Virginia."

Article I.
p. 9, l. 7–10.

(385) "Sec. 3. To create a fund for the relief of members in distress caused through being on strike, and provide for those who may be in need after a thorough investigation has been made by the officers of District 6 that such members have complied with our laws."

Article I.
p. 9, l. 11–16.

(386) "Section 1. District No. 6 shall be divided into six sub-districts, as follows:

"No. 1—Athens, Hocking and that part of Perry County not hereinafter designated as being part of sub-district 6.

"No. 2—Jackson, Vinton and Gallia Counties and southern Ohio.

"No. 3—Stark, Wayne, Summit, Medina and Portage Counties.

"No. 4—Trumbull, Mahoning and Columbiana Counties and that part of West Virginia known as New Cumber-

land and Cannelton, Pa., and that part of Jefferson County other than the No. 8 or Pittsburg Seam.

"No. 5—Tuscarawas, Belmont, the No. 8 or Pittsburg seam of Jefferson, Harrison and Carroll, and that part of Stark county south of Canton, other than the Massillon seam, and the Pan Handle of West Virginia.

"No. 6—Guernsey, Noble, Coshocton, Muskingum, Morgan and Holmes counties, and that part of Perry county known as the Crooksville District, and the low coal fields of the Baltimore & Ohio, and north of Shawnee."

Article II.
p. 9, l. 18–36.
p. 10, l. 1–4.

(387) "Section 1. The officers of this organization shall consist of one President, one Vice President, one Secretary-Treasurer and an Executive Board of nine members, three of whom shall be the President, Vice President and Secretary-Treasurer. The President and Secretary-Treasurer shall act as Chairman and Secretary of the Executive Board."

Article III.
p. 10, l. 7–13.

(388) "Section 4. The Secretary-Treasurer shall have charge of and preserve all books, documents and effects of the district office; shall record proceedings of all conventions and of the meetings of the Executive Board, and shall keep copies of important letters sent out by him; he shall receive and receipt for all moneys, pay all current expenses; he shall prepare and submit to the locals a monthly report of all moneys received and disbursed; he shall give bond in the sum of $20,000, or in such amount as the funds warrant, at the discretion of the Executive Board, for the safe keeping of all moneys entrusted to him, and also have copies of Journal bound annually and filed for reference, and have

minutes of Joint, National District and Sub-District conventions bound and filed in office."

Article III.
p. 10, l. 40–44.
p. 11, l. 1–11.

(389) "Section 1. In case of trouble arising in any local with the employer it shall be the duty of the local officers to try to effect a settlement; failing in this the grievance shall be presented to the sub-district President in writing, who shall investigate the grievance or dispute and settle, if possible. Should he fail, he shall consult the District President, who shall settle the dispute either by suspending work or such other methods as they may deem best. In case of a direct violation of agreements the sub-district President or Local Union affected are authorized to order a suspension of work."

Article VIII.
p. 16, l. 5–16.

(390) "Sec. 2. When it becomes necessary for the District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated."

Article VIII.
p. 16, l. 17–24.

(391) "Section 1. The initiation fee in District 6 shall be $10.00, and all persons applying for and securing work in the mines who are not practical workers shall pay $10.00 initiation fee. Any person applying for work at any organized mine shall present a United Mine Workers' card. In

case said person cannot present such a union card he shall pay the regular initiation fee."

Article IX.
p. 16, l. 27–34.

(392) "Sec. 4. When a member allows himself to be three months in arrears he shall be considered no longer a member of the United Mine Workers of America, and in order to become a member again he must pay uniform initiation fee. In case of a member being sick or thrown out of employment for one month or more by the mine being idle or other causes, he shall be exonerated from dues."

Article IX.
p. 17, l. 1–8.

(393) "Sec. 6. All persons employed as check-weighmen shall be members of the United Mine Workers for a period of six months before they are elected to such position. Notice shall be posted near the weigh sheet at least three days before the election of a check-weighman, and no persons are entitled to vote except those who are assessed to pay him his wages."

Article IX.
p. 17, l. 13–19.

(394) "Sec. 12. When a miner's son becomes old enough to work in mine he shall be given the preference over other applicants for work."

Article IX.
p. 18, l. 3–5.

(395) "Sec. 15. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.

Article IX.
p. 18, l. 23–26.

(396) "Sec. 17. That a fine of $10.00 in each individual case where it can be proven that a member of the Union leaves his district for West Virginia, or any other unfair mines, and remains there one month or more without having deposited his transfer card and returns without giving a satisfactory account of why he has not deposited his transfer card; and the fine to be collected by the Local Union where he works."

Article IX.
p. 18, l. 31–39.

(397) "Sec. 5. When a local or Sub-District strike, upon investigation by the officers of District 6, it is found that the members of our Union who were actually employed and working at a mine when a strike was declared, and those members are entitled to relief, they shall receive the sum of $3.00 per week. Each member receiving relief as herein provided must have his initiation fee paid in full and in good standing in the Local Union as provided for in the Constitution, and no Local Union which has not paid all dues, per capita and assessments will be entitled to receive any money from the fund; and in no instance shall benefits be paid any Local or Locals who may have gone on strike without complying with the Constitution or consulting the district official, who shall, or may, have endorsed said strike, or cause for relief. In no instance shall the members of the Locals receive relief for the first four weeks of said strike."

Article X.
p. 19, l. 21–38.

(398) "Sec. 6. When a suspension or strike is endorsed by the officers of District, and strike benefits are ordered paid to the idle members, the secretary of the local union shall furnish a list of the names of those entitled to relief each pay. If a member misrepresents the number of days

he was idle in order to secure benefits, said member shall be fined $5.00, and also refund the amount of benefits paid to him. Members on strike shall report at least once each week the number of days they have worked.

"When a strike has been endorsed by the officers of District No. 6, a member will be entitled to benefits when he has worked one or two days, for wages, per week, but members working more than two days per week shall not be entitled to strike benefits for the week the member has worked more than two days."

Article X.
p. 19, l. 39–45.
p. 20, l. 1–8.

(399) "Sec. 7. The Secretary-Treasurer of District 6 shall prepare and send to the officers who have charge of relief funds such blanks as are necessary for them to submit an itemized statement of the disbursement of said funds.

"Strike benefits shall be forwarded to the Local officers, for distribution, when proof is furnished to the District Secretary that the local officers are bonded in a sufficient amount for the proper safety and accounting of the funds."

Article X.
p. 20, l. 9–17.

Excerpts from book entitled "PREAMBLE AND MANUAL CONSTITUTION UNITED MINE WORKERS OF AMERICA, SUB-DISTRICT 5 OF DISTRICT 6. Revision 1907."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Plaintiff's Documentary Exhibit No. 3. [Record pp. 706, 290.]

(400) "MANUAL.

"OPENING.

"The hour of the meeting having arrived, the President shall take the Chair and give one rap with the gavel, upon which all officers and members shall be seated. If no regular doorkeeper has been appointed, the President shall appoint one of the brothers to see that none but members of the Union are admitted.

"President: The time for opening this meeting having arrived, I declare this meeting duly convened and qualified to consider measures tending to conserve the best interests of this Union and the United Mine Workers of America.

"ORDER OF BUSINESS.

1. Roll call of officers.
2. Reading of minutes.
3. Correspondence.
4. Finance.
5. Propositions for membership and initiations.
6. Labor: The interests of the union of the United Mine Workers of America.
7. Report of committees.
8. Unfinished business.
9. New business.
10. Election of officers and installation.

"President: The business of this meeting having been duly transacted, I declare it adjourned until our next regular session, unless you are specially called together, when I hope to see all members present.

"NEW MEMBERS.

"Any member of a Local Union can propose any one who works in or around the mine for membership in the organization. Propositions to be made to the Secretary, who shall announce the same to the Union, under the head of Order of Business No. 5.

"President: Brothers, have you heard the name (or names) of the candidate (or candidates) who desire to become members of this Union? Are there any objections?

"Note.—Local Unions, having complete control over their own affairs, shall decide by what vote they will admit members to their body; if objections are raised the President shall call for a vote in accordance with rules of the Union. If no objections are raised a vote is unnecessary, and the President shall say: No objections having been raised, I declare the candidates enlisted to take the obligation and become members of the Local Union.

"President: Mr. Doorkeeper, are there any candidates in waiting who have been accepted by this Union?

"Doorkeeper: Mr. President, I find Brothers.....
....., mine workers, who were elected to become members of this body.

"President: Admit the brothers.

"The doorkeeper will admit the candidates and place them in line opposite the President.

"President—Fellow Workmen: The United Mine Workers of America require perfect freedom of inclination in every candidate for membership to its body. An obligation of fidelity is required; let me assure you that in this obligation there is nothing contrary to your civil or

religious duties; with this understanding, are you willing to take an obligation which binds you upon your honor as a man to keep the same as long as life remains?

"President: Raise your right hand.

"'I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow-worker on account of creed, or color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"'That I will not reveal to any employee or boss the name of any one a member of our Union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it.

"'To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.'

"Answer—I promise.

"President: You are now members of Local Union No. ....., and are entitled to all rights and privileges of members of the United Mine Workers of America."

p. 7, l. 1–32.
p. 8, l. 1–43.
p. 9, l. 1–30.

(401) "Section 1. This organization shall be known as Sub-District 5 of District 6, United Mine Workers of America."

Article I.
p. 10, l. 6–8.

(402) "Sec. 2. The object of this organization is to unite the mine employees of Belmont, Jefferson, Tuscarawas, Harrison and Carroll Counties in Ohio, and that part of Stark County south of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio and Marshall counties of West Virginia, to ameliorate their conditions by methods of conciliation, arbitration or strike."

Article I.
p. 10, l. 9–16.

(403) "Sec. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines."

Article I.
p. 10, l. 17–19.

(404) "Sec. 4. This organization shall have jurisdiction over all local unions of Sub-District 5 of 6, U. M. W. of A.

Article I.
p. 10, l. 20–22.

(405) "Sec. 1. The officers of this organization shall consist of a president, a vice-president, a secretary-treasurer and three members of an executive board, who shall constitute a board of six members. Board members shall be elected, one from the north end of the sub-district by the delegates from the north end of the sub-district and

the two from the south end to be elected by the delegates from the south end and the Pan-handle of West Va."

Article II.
p. 10, l. 24–32.

(406) "Sec. 1. In case of trouble arising in any Local with the employer, it shall be the duty of the Local officers to try to effect a settlement; failing in this the grievance shall be presented to the Sub-District President in writing, who shall investigate the grievance or dispute and settle if possible. Should he fail he shall consult the District President, who shall settle the dispute either by suspending work or by such other methods as they may deem best. In case of a direct violation of agreements, the Sub-District President or Local Union affected are authorized to order a suspension of work."

Article IV.
p. 12, l. 5–17.

(407) "ARTICLE VI.
Salaries of Officers.

"Sec. 1. The salary of President shall be $80 per month and all necessary expenses in the performance of his duties.

"Sec. 2. The salary of the vice-president shall be $70 per month and all necessary expenses in the performance of his duties.

"Sec. 3. The salary of the Secretary-Treasurer shall be $75 per month and all necessary expenses in the performance of his duties.

"Sec. 4. The Board members and Auditors shall receive $3.10 per day and all necessary expenses when actively employed in the work of the organization.

"Sec. 5. The surplus revenue of this organization shall be deposited in a bank with interest.

"Sec. 6. The above prices are based on a 90c. mining rate, and that these prices be increased or decreased the same per cent as the miners."

p. 13, l. 13–32.

(408) "Sec. 7. All Checkweighmen employed by members of the United Mine Workers shall be members of the United Mine Workers six months prior to their election, except newly organized locals, and voted for and elected by those who pay to maintain them. Notice of election for Checkweighman shall be posted in some conspicuous place at the mines where Checkweighman is to be employed at least three days before the time set for such an election. It shall be the duty of such Checkweighman to keep a record of all men employed in and around the mine. Under no consideration shall a Checkweighman be considered an officer of the Local Union. The term for which a Checkweighman shall serve shall be left to the discretion of those who employ him. The above will not prevent any local officer from acting as Checkweighman."

Article VII.

p. 14, l. 42, 43.
p. 15, l. 1–16.

(409) "Sec. 2. That a fine of $10.00 in each case,where it can be proven that a member of our Union leaves his district for West Virginia or any other unfair mine, and remains one month or more without depositing a transfer card, and returns without giving a satisfactory account of why he has not deposited his transfer card, and a fine to be collected by the Local Union where he is working."

Article IX.

p. 15, l. 28–35.

(410) "Sec. 3. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense."

Article IX.
p. 15, l. 36–38.
p. 16, l. 1.

Excerpts from book entitled "OFFICIAL MINING SCALE OF ASSOCIATION OF PITTSBURG VEIN OPERATORS OF OHIO FOR THEIR MINES IN BELMONT, HARRISON AND JEFFERSON COUNTIES, OHIO, AND THE UNITED MINE WORKERS OF AMERICA." In Effect April 1, 1906, and Ending March 31, 1908.

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 8. [Record pp. 707, 292.]

(411) "RULE 9. We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, the local union or the party upon whom the fine is imposed object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling.

"In order to be honored the check-off must be furnished to the company not later than 5 p. m. on the second and seventeenth day of each month."

General Rules for Pick and Machine Mining.
p. 10, l. 28–38.

(412) "RULE 13. That all machine loaders be accorded two rooms for each two men, and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming scarce through a squeeze or striking horseback,

or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine."

General Rules for Pick and Machine Mining.
p. 11, l. 25–31.

(413) "RULE 14. There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit; but in no case shall entry miners be allowed more cars than room miners, and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that, by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length."

General Rules for Pick and Machine Mining.
p. 11, l. 32–42.
p. 12, l. 1–4.

(414) "RULE 17. Members of the Pit Committee and local officers shall remain at their working places the same as all other employees, unless a miner and a mine boss fail to agree on prices to be paid for extra work when they may be called in to confer with the superintendent to decide the dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union."

General Rules for Pick and Machine Mining.
p. 12, l. 16–25.

(415) "RULE 20. Any rule, either local or general, governing the scale or conditions of employment in the Pittsburg Vein of Sub-District No. 5 shall be mutually agreed to by the operator and miners interested, and said rules, before being enforced, shall receive the endorsement of the officials of the operators and officials of District No. 6, United Mine Workers of America."

General Rules for Pick and Machine Mining.
p. 12, l. 34–39.

Excerpts from book entitled "UNITED MINE WORKERS OF AMERICA. DISTRICT No. 6, OHIO. Issued by the authority of the Executive Board of District No. 6 (Ohio Miners) United Mine Workers of America. G. W. SAVAGE, Secretary-Treasurer. FOR SCALE YEAR, APRIL 1, 1908, TO MARCH 31, 1910."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Koch's Exhibit No. 1. [Record pp. 706, 277.]

(416) "REPORT OF JOINT SCALE COMMITTEE.

PITTSBURG, PA., January 24, 1899.

"First. Resolved, That the Chicago Agreement be adopted as the Agreement for the scale year, beginning April 1, 1899, and ending March 31, 1900.

"Second. It is the understanding that the machine question of Illinois, outside of the basic point (the Danville District, where the present prices shall continue in force), shall be taken up by the Illinois State Convention for adjustment, by conciliation or arbitration; provided an agreement cannot be arrived at by the Illinois State Convention, the question at issue shall be referred to a Board of Arbitration of seven members, three to be selected by the Illinois operators, and three by the United Mine Workers; the six so selected to appoint the seventh member, the question to be arbitrated being whether or not the various districts of Illinois are entitled to any reduction in the Springfield scale differentials, as against Danville, the basing point; and if so, how much.

"It is understood and agreed that arbitration, if resorted to, shall be proceeded with at a date to be agreed upon at the Springfield Convention.

Committee on behalf of Operators:

Illinois—
S. M. DALZELL,
J. H. GARAGHTY.

Indiana—
J. SMITH TALLEY,
W. S. BOGLE.

Ohio—
J. B. ZERBE,
N. O. GRAY.

Pennsylvania—
G.W.SCHLEUDERBERG,
C. L. SNOWDEN.

Committee on behalf of Miners:

Illinois—
JOHN M. HUNTER,
W. D. RYAN.

Indiana Bituminous—
W. D. VAN HORN,
J. H. KENNEDY.

Indiana Block—
P. D. ROBERTS,
BARNEY NAVIN.

Ohio—
WM. H. HASKINS,
T. L. LEWIS.

Pennsylvania—
P. DOLAN,
WM. WARNER.

Members of the National Executive Board, U.M.W. of A.:
JOHN MITCHELL, President.
THOMAS W. DAVIS, Vice-President.
W. C. PEARCE, Secretary-Treasurer."

p. 8, l. 29–39.
p. 9, l. 1–34.

(417) "INDIANAPOLIS AGREEMENT.

"Between the United Mine Workers of America and the coal operators of Pennsylvania, Ohio, Indiana and Illinois.

"Covering and effective during the scale year from April 1, 1900, to April 1, 1901.

IT IS HEREBY AGREED:

"Section 1. (a) That an advance of fourteen (14) cents per ton of two thousand (2,000) pounds for pick mined,

screened coal, shall take effect in Western Pennsylvania thin vein, the Hocking, the basing District of Ohio, and the Block Coal District of Indiana.

"(b) That the Danville District, the basing point of Illinois, shall be continued on an absolute run of mine basis, and that an advance of nine (9) cents per ton over present prices be paid in the district named.

"(c) That the bituminous Coal District of Indiana shall pay forty-nine (49) cents per ton for all mine run coal loaded and shipped as such. All other coal mined in that district shall be passed over a regulation screen and be paid for at the rate of eighty (80) cents per ton for two thousand (2,000) pounds for screened lump.

"Sec. 2. That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the Bituminous District of Indiana, shall be uniform in size, six (6) feet wide by twelve (12) feet long, built of flat or Akron-shaped bar, of not less than five-eighths ($\frac{5}{8}$) of an inch surface, with one and one-fourth ($1\frac{1}{4}$) inches between bars, free from obstructions, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Sec. 3. That the Block Coal District of Indiana may continue in the use of the Diamond Bar screen, to be seventy-two (72) feet superficial area, of uniform size, one and one-quarter inches between the bars, free from obstruction, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Sec. 4. That the differential between the thick and thin vein pick mines of the Pittsburgh District be referred to that district for settlement.

"Sec. 5. (a) That the price of machine mining in the Bituminous District of Indiana shall be eighteen (18) cents per ton less than the pick mining rate for screened lump

coal, when punching machines are used; and twenty-one and one-half (21½) cents per ton less than pick mining rate when chain machines are used.

"When coal is paid for on run of mine basis, the price shall be ten (10) cents per ton less than the pick mining rate when punching machines are used, and twelve and one-half (12½) cents per ton less than pick mining rates when chain machines are used.

"(b) That the machine mining rate in the Danville District, the basing point of Illinois, on both punching and chain machines, be thirty-nine (39) cents per ton.

"Sec. 6. That the machine mining rate in the thin vein of the Pittsburgh District, and the Hocking, the basing district of Ohio, for shooting, cutting and loading, shall be advanced nine (9) cents per ton. And that the Block Coal District of Indiana shall be advanced eleven and one-half (11½) cents per ton.

"Sec. 7. That the mining rates in the Central District of Pennsylvania be referred to that district for adjustment.

"Sec. 8. That the advance on inside labor be twenty per cent. (20 per cent.), based on the present Hocking Valley scale; with the exception of trappers, whose compensation shall be one dollar ($1.00) per day.

"Sec. 9. That all narrow, dead work and room turning shall be paid a proportionate advance with the pick mining rate.

"Sec. 10. That internal differences in any of the States or Districts, both as to prices or conditions, shall be referred to the States of Districts affected for adjustment.

"Sec. 11. The above scale is based upon an eight (8) hour work day.

"The foregoing scale, having been unanimously adopted by the Interstate Convention of miners and operators, at

Indianapolis, Indiana, on February 2, 1900, in witness whereof we hereto attach our signatures.

In behalf of Operators:	In behalf of Miners:
For Pennsylvania—	For Pennsylvania—
F. L. ROBBINS,	P. DOLAN,
WM. B. ROGERS.	WM. DODDS.
For Ohio—	For Ohio—
J. S. MORTON,	W. H. HASKINS,
W. J. MULLINS.	T. L. LEWIS.
For Bituminous District of Indiana—	For Bituminous District of Indiana—
J. SMITH TALLEY,	W. D. VAN HORN,
A. M. OGLE.	J. H. KENNEDY.
For Block District of Indiana—	For Block District of Indiana—
W. W. RISHER,	WM. WILSON,
M. H. JOHNSON	BARNEY NAVIN.
For Illinois—	For Illinois—
E. T. BENT,	JNO. M. HUNTER,
CHAS. E. HULL.	W. D. RYAN.

In behalf of the United Mine Workers of America:

JOHN MITCHELL, President.
W. C. PEARCE, Secretary."

COLUMBUS, OHIO, February 9, 1901.

"In accordance with the action of the Joint Convention of miners and operators held in Columbus, Ohio, January 31 to February 9, 1901, this agreement and the prices and conditions thereby fixed are renewed and continued in force for the year from April 1, 1901, to April 1, 1902.

In behalf of Operators:	In behalf of Miners:
For Thin Vein District of Pennsylvania—	For Thin Vein District of Pennsylvania—
G. W. SCHLUDERBERG,	P. DOLAN,
O. A. BLACKBURN.	WILLIAM DODDS.

For Ohio—	For Ohio—
THOS. JOHNSON,	W. H. HASKINS,
W. J. MULLINS.	D. H. SULLIVAN.
For Block District, Indiana—	For Block District, Indiana—
J. M. McCLELLAND,	WM. WILSON,
W. W. RISHER.	HARRY WRIGHT.
For Bituminous District, Indiana—	For Bituminous District, Indiana—
W. S. BOGLE,	J. H. KENNEDY,
P. H. PENNA.	W. D. VAN HORN.
For Illinois—	For Illinois—
JOHN M. HUNTER,	H. N. TAYLOR,
W. D. RYAN.	A. J. MOORSHEAD.

On behalf of the United Mine Workers of America:

JOHN MITCHELL, President.
T. L. LEWIS, Vice-President.
Attest: W. B. WILSON, Secretary.
W. B. WILSON, Secretary-Treasurer.

p. 9, l. 35–40.
p. 10, l. 1–41.
p. 11, l. 1–40.
p. 12, l. 1–41.
p. 13, l. 1–12.

(418) "INTERSTATE AGREEMENT FOR SCALE YEAR, BEGINNING APRIL 1, 1902.

"The committee designated to execute the contract met after the convention adjourned and executed the following:

INDIANAPOLIS, IND., February 8, 1902.

"In pursuance of the instructions from the Joint Convention we hereby reaffirm last year's scale for

the year beginning April 1, 1902, and ending April 1, 1903:

For Operators:	For Miners:
Thin Vein District of Pennsylvania—	Thin Vein District of Pennsylvania—
G. W. SCHLUDERBERG,	P. DOLAN,
O. A. BLACKBURN.	WILLIAM DODDS.
Ohio—	Ohio—
JNO. H. WINDER,	W. H. HASKINS,
W. J. MULLINS.	D. H. SULLIVAN.
Block District, Indiana—	Block District, Indiana—
J. H. McCLELLAND,	WM. WILSON,
W. W. RISHER.	HARRY WRIGHT.
Bituminous District, Indiana—	Bituminous District, Indiana—
JNO. K. SEIFERT,	W. D. VAN HORN,
HUGH SHIRKIE.	J. H. KENNEDY.
Illinois—	Illinois—
H. N. TAYLOR,	W. D. RUSSELL,
W. W. KEEFER.	W. D. RYAN.

In behalf of the United Mine Workers of America:
JOHN MITCHELL,
T. L. LEWIS,
W. B. WILSON.

Attest: W. B. WILSON, Secretary."

p. 13, l. 13–41.
p. 14, l. 1–5.

(419) "INDIANAPOLIS INTERSTATE AGREEMENT.

For Scale Year Beginning April 1, A. D., 1903.

INDIANAPOLIS, IND., February 7, 1903.

"That the Interstate agreement of the present year be continued with the same conditions for the scale year

beginning April 1, 1903, and ending March 31, 1904, with the exception of the mining prices and inside day wages.

"That the price for mining be increased ten (10) cents per ton on inch and a quarter screened lump coal, pick mining, in Western Pennsylvania thin vein, the Hocking the basing district of Ohio, and both Block and Bituminous Districts of Indiana; six (6) cents per ton on mine run coal, pick mining, in the Bituminous District of Indiana and at Danville, the basing point of Illinois.

"That the price for machine mining be increased eight (8) cents per ton on screened lump coal in Western Pennsylvania thin vein, and the Hocking the basing district of Ohio; ten (10) cents per ton on screened lump coal in the Block and Bituminous District of Indiana, and six (6) cents per ton on mine run coal in the Bituminous District, of Indiana and at Danville the basing point of Illinois.

"That the inside day wage scale shall be as follows, with the conditions of the Columbus day wage scale agreement of 1898, to wit:

Tracklayers	$2.56
Tracklayers' helpers	2.36
Trappers	1.13
Bottom cagers, drivers, trip riders	2.56
Water haulers, machine haulers	2.56
Timbermen, where such are employed	2.56
Pipemen for compressed air plants	2.50
Company men in long wall mines of Third Vein District, Northern Illinois	2.36
All other inside day labor	2.36

That yardage and dead work be advance 12½%.

In behalf of the Operators:	In behalf of the Miners:
Thin Vein District of Pennsylvania—	Thin Vein District of Pennsylvania—
G. W. SCHLUDERBERG,	P. DOLAN,
O. A. BLACKBURN.	WM. DODDS.

Ohio—
JNO. H. WINDER,
W. K. FIELD.

Block District, Indiana—
J. H. McCLELLAND,
W. W. RISHER.

Bituminous District, Indiana—
W. S. BOGLE,
W. L. GOULD.

Illinois—
H. N. TAYLOR,
A. J. MOORSHEAD.

Ohio—
W. H. HASKINS,
G. W. SAVAGE.

Block District, Indiana—
JAS. CANTWELL,
WM. TREAGER.

Bituminous District, Indiana—
GEO. HARGRAVE,
J. H. KENNEDY.

Illinois—
W. R. RUSSELL,
W. D. RYAN.

On behalf of the United Mine Workers of America:
JOHN MITCHELL, President.
T. L. LEWIS, Vice-President.
W. B. WILSON, Secretary-Treasurer.

Attest: W. B. WILSON, Secretary.

p. 14, l. 6–39.
p. 15, l. 1–29.

(420) "INTERSTATE AGREEMENT FOR YEARS BEGINNING APRIL 1, 1904, AND ENDING MARCH 31, 1906.

"IT IS HEREBY AGREED, That the Interstate Agreement of the present year shall be continued with the same conditions for two years from April 1, 1904, until March 31, 1906, with the following exceptions, to-wit:

"First. That the price for mining be reduced five cents (5c) per ton on inch and a quarter ($1\frac{1}{4}$-inch) screened lump coal, pick mining, in Western Pennsylvania thin vein, the Hocking, the basing district of Ohio, and in both Block and Bituminous Districts of Indiana three cents (3c.) per ton

on mine-run coal, pick mining, in the Bituminous District of Indiana, and at Danville, the basing point of Illinois.

"Second. That the price for machine mining be reduced four cents (4c.) per ton on screened lump coal in Western Pennsylvania thin vein, and the Hocking, the basing district of Ohio; five cents (5c.) per ton on screened lump coal in the Block and Bituminous Districts of Indiana, and three cents (3c.) per ton on mine-run coal in the Bituminous District of Indiana, and at Danville, the basing point of Illinois.

"Third. That the inside day wage scale shall be as follows, with the conditions of the Columbus day wage scale agreement of 1898, to-wit:

Tracklayers	$2.42
Tracklayers' helpers	2.23
Trappers	1.06½
Bottom cagers	2.42
Drivers	2.42
Trip riders	2.42
Water haulers and machine haulers	2.42
Timbermen, where such are employed	2.42
Pipemen, for compressed air plants	2.36
Company men in long wall mines of Third Vein District of Northern Illinois	2.23
All other inside day labor	2.23

"Fourth. That yardage and dead work be reduced in the same proportion.

"Fifth. That internal differences in any of the states or districts, both as to prices and conditions, shall be referred to the states or districts affected for adjustment.

"Further, in pursuance of the authority vested in us, we hereby call a Joint Convention of the coal operators and miners of Western Pennsylvania, Ohio, Indiana and Illinois to meet at Indianapolis, Indiana, at 10 o'clock a. m., January 25, 1906.

"The foregoing scale having been unanimously agreed to by the duly qualified representatives of the operators and miners of the four states of (Western) Pennsylvania, Ohio, Indiana and Illinois, by virtue of the authority vested in us by the operators and miners of the states aforesaid, we hereunto attach our signatures.

THIN VEIN DISTRICT OF PENNSYLVANIA.

In behalf of Operators:	In behalf of Miners:
Thin Vein District of Pennsylvania—	Thin Vein District of Pennsylvania—
FRANCIS L. ROBBINS,	P. DOLAN,
G. W. SCHLUDERBERG.	WM. DODDS.
Ohio—	Ohio—
JOHN H. WINDER,	W. H. HASKINS,
J. J. ROBY.	G. W. SAVAGE.
Indiana Block District—	Indiana Block District—
J. H. McCLELLAND.	WM. M. ZELLER,
	WM. WILSON.
Indiana Bituminous District—	Indiana Bituminous District—
W. S. BOGLE,	GEO. HARGROVE,
J. C. KOLSEM.	J. H. KENNEDY.
Illinois—	Illinois—
H. N. TAYLOR,	T. J. REYNOLDS,
J. H. GARAGHTY.	W. D. RYAN.

In behalf of the United Mine Workers of America:

JOHN MITCHELL, President.
T. L. LEWIS, Vice-President.
W. B. WILSON, Secretary-Treasurer.

Signed at Indianapolis, Ind., March 21, 1904.
Attest: F. S. BROOKS, Secretary.

p. 15, l. 30–39.
p. 16, l. 1–42.
p. 17, l. 1–31.

(421) "TOLEDO INTER-STATE AGREEMENT OF 1908.

TOLEDO, OHIO, April 17, 1908.

"It is hereby agreed between the operators' and miners' representatives of Western Pennsylvania, Ohio and Indiana:

"First: That the mining rates, day wage scale and general prices in existence in Western Pennsylvania, Ohio and Indiana in the year 1907 be reaffirmed:

"Second: That internal differences both as to prices and conditions be referred for adjustment to the various districts affected.

"Third: That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the Bituminous District of Indiana shall be uniform in size, six feet wide by twelve feet long, built of flat or Akron-shaped bars of not less than five-eighths of an inch surface, with one and one-fourth inches between bars, free from obstructions, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Fourth: That the Block Coal District of Indiana may continue the use of the diamond screen of present size and pattern, with the privilege of run-of-mine coal, the mining price of which shall be determined by the actual screenings.

"Fifth: That the eight-hour day of forty-eight hours of six days per week is hereby reaffirmed.

"Sixth: That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

"Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work begin-

ning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

"Seventh: That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time.

"Eighth: That the term of this contract shall begin April 1st, 1908, and expire March 31st, 1910;

"Ninth: That a general resumption of operations in Western Pennsylvania and Ohio (the mines of Indiana now being in operation) shall take place on Monday, April 20th, 1908;

"Tenth: That the renewal of the mining rates, day wage scale and general prices existing in 1907 is on condition of the approval of a two years contract by referendum vote of the United Mine Workers of America;

"Resolved, By representatives of the Interstate Joint Convention, composed of the operators and miners of Western Pennsylvania, Ohio and Indiana, that we condemn in the most vigorous and positive manner the practice of suspending the operation of mines, pending the investigation and adjustment of disputes arising under the terms of joint agreements in the various districts and sub-districts under the jurisdiction of this interstate movement; and we recommend that such provisions be agreed upon by the operators' and miners' representatives in the various districts and sub-districts as will require the mine managers and mine workers to comply with the terms of the

contract, and to adjust disputes without delay and without suspending the operation of mines.

"This Interstate Joint Convention shall adjourn to meet in Interstate Convention on the first Tuesday in February, 1910, at 10 a. m., in the City of Toledo, Ohio.

"Signed at Toledo, Ohio, April 17, 1908.

On behalf of Operators:	On behalf of Miners:
Pennsylvania—	Pennsylvania—
G.W.SCHLUDERBERG,	FRANCIS FEEHAN,
JOHN H. JONES.	S. A. WHETZEL.
Ohio—	Ohio—
H. L. CHAPMAN,	WM. GREEN,
F. M. OSBORNE.	G. W. SAVAGE.
Indiana Bituminous District—	Indiana Bituminous District—
INDIANA BITUMINOUS COAL OPERATORS ASSOCIATION.	W. D. VAN HORN,
By P. H. PENNA,	D. N. CURRY.
J. K. SIEFERT.	
Indiana Block Coal District—	Indiana Block Coal District—
J. H. McCLELLAND,	PATRICK GOLDEN,
W. J. SNYDER.	JOHN FOGG,
	T. L. LEWIS,
	President U. M. W. of A.
	J. B. ZERBE, Chairman.
	W. D. RYAN,
	F. S. BROOKS, Secretaries.

p. 18, l. 1–38.
p. 19, l. 1–41.
p. 20, l. 1–30.

(422) "SUB-DISTRICT NO. 5.

OFFICIAL MINING SCALE

Of Association of Pittsburgh Vein Operators of Ohio for Their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America.

RULES AND REGULATIONS.

"All persons accepting employment in these mines hereby agree to be governed by the following Rules and Regulations:

PICK MINING.

Mining, per ton, screened coal..... $0.90
Mining, run of mine coal, per ton..... .64 2-7"

p. 95, l. 1-13.

(423) "GENERAL RULES FOR PICK AND MACHINE MINING.

"Rule 1—Mining entries and entry break-throughs in pick and machine mines drove double shift, extra, per yard, 28c.

"Rule 2—Wet entry shall be paid 28c. per yard extra when it has been fully determined that it is entitled thereto by the miner and mine boss, or by the mine committee and mine superintendent, in case the former do not agree.

"Rule 3—Operators shall take the water out of rooms and entries and have rooms and entries dry at starting time, or pay 4½c. per barrel if the miner has to bail it. Barrels to be placed in rooms and entries, and where barrels cannot be placed in entries, the water box shall be forwarded for the entryman to bail water in.

"Rule 4—Prices to be paid for slate or soapstone coming down unavoidably over the coal shall be agreed upon by the mine boss and miner, and if they fail to agree, it shall be referred to the superintendent, mine boss and mine committee.

"Rule 5—Clay veins and spars shall be paid for, the matter to be referred to miner affected and mine boss. If they fail to agree, the company reserves the right to remove the same and give the miner another place.

"Rule 6—Any rolls or horsebacks coming up in bottom or down in top, shall be paid for as follows, per yard, running with rolls:

"Six to ten inches in thickness, 28c.

"Between ten and seventeen inches, 56c.

"Between seventeen and twenty-three inches, 84c.

"Between twenty-three and twenty-nine inches, $1.12, and rolls of more thickness shall be paid in the same proportion for each six inches.

"Miners shall take up and remove roll when same crosses roadway.

"When roll is so hard as to require drilling and blasting the operator shall furnish one-half and the miner one-half the labor for drilling and blasting.

"Rule 7—Work shall begin at 7.00 a. m., work until 11.00 a. m., not more than 30 minutes for dinner, and work from 11.30 a. m. to 3.30 p. m., Central Standard Time.

"Rule 8—Any man called from inside to perform outside day labor shall receive inside day wages.

"Rule 9—We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two-thirds of the members of the local union. However, should either the operator, the local union or the party upon whom the fine is imposed. object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling.

"In order to be honored the check-off must be furnished to the company not later than 5 p. m., on the second and seventeenth day of each month.

"Rule 10—No strike shall take place at any mine under the jurisdiction of Sub-District 5 of District No. 6 (Ohio), except for violation of agreements, refusal of employers to pay on regular pay day without explanation, until the grievances at the mine affected have been thoroughly investigated by the officers of District 6, U. M. W. of A., and operators interested.

"Rule 11—That a uniform rate of one per cent on the dollar be charged in pick mines, where company hires the blacksmith, and it is further agreed that no charge be made for blacksmithing for cutters and loaders in machine mines.

"Rule 12—Bottom coal in all narrow work must be taken up and loaded by the loader.

"Where bottom coal not to exceed 4 inches in thickness is required to be taken up in wide rooms and said coal is in normal state and parts freely from the bottom, the miner must take it up without extra compensation.

"Where coal sticks to bottom and extra labor is required to lift same, the company shall pay loader extra at a rate per crossing based upon maximum inside day labor scale.

"A committee of two operators and two miners to investigate and determine the method of payment on basis named.

"This committee shall determine what constitutes a sticky bottom.

"If a machine cutter leaves a sprag or a thick bottom in excess of 4 inches he shall be notified to remove same, and should he refuse he shall be charged 50 c. for each sprag or bottom, the same to be paid to the loader.

"Rule 13—That all machine loaders be accorded two rooms for each two men, and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming

scarce through a squeeze or striking horseback, or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine.

"Rule 14—There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit; but in no case shall entry miners be allowed more cars than room miners, and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the number of miners in each entry, so that by giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length.

"Rule 15—Miners shall exercise proper care in posting the soapstone in rooms, in order to prevent falls. When coal is taken out by the person employed in a room and soapstone falls to the amount of 750 pounds, it shall be removed by the miner without compensation, and when the fall of soapstone exceeds 750 pounds the miner shall be paid for removing it, or the company remove the same.

"Rule 16—Checkweighmen may be placed on tipple at expense of miners, and his duties shall be those prescribed by the laws of the State of Ohio, and all weigh scales may be tested by the miners at any reasonable time.

"Rule 17—Members of the Pit Committee and local officers shall remain at their working places the same as all other employes, unless a miner and a mine boss fail to agree on prices to be paid for extra work when they may be called in to confer with the superintendent to decide the

dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union.

"Rule 18—All rooms shall be 24 feet wide or over. Machine rooms, when ordered by mine boss, driven less than 24 feet wide, entry price shall be paid.

"Rule 19—Where entries are ordered driven fifteen degrees or more away from the line of butts or face, 25 cents extra per yard shall be paid in pick and machines, but shall not be construed to apply to necessary curves in turning one entry from another, and in order to lay track on a required radius.

"Rule 20—Any rule, either local or general, governing the scale or conditions of employment in the Pittsburg vein of Sub-District No. 5, shall be mutually agreed to by the operators and miners interested, and said rules, before being enforced, shall receive the endorsement of the officials of the operators and officials of District No. 6, United Mine Workers of America.

"Rule 21—No meeting shall be held during working hours, except by mutual arrangement between miners and superintendent.

"Rule 22—On the day that death by accident to an employe occurs in the mine, for that day only, the miners may cease working, but under no circumstances shall the mine be made idle for any funeral. And in consideration of the mine continuing to work on a day a funeral is held, the operators agree to contribute to the bereaved family, on the death of any of their workmen, one-third the amount paid by the miners, said amount not to exceed $25.00. This does not prevent friends from attending the funeral.

Rule 23—When any employe absents himself from duty two days or more, except on account of sickness, without giving advance notice to the mine boss or mine superintendent, when possible, he forfeits his position.

"When a machine runner or any employe upon whose work other employes of the mine are dependent, absents himself from duty without giving advance notice, when possible, to the mine boss, he forfeits his position.

"Rule 24—When any places on any territory are not cut and the machine runners have not worked as many hours as the mine has worked, by reason of breakdowns, sickness or absence of runners, the machine runners shall work on idle days or overtime until they have made up the lost time.

"Rule 25—In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers and other men necessary to keep mines in shape, shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension, and then subject to any subsequent settlement.

"Rule 26—The conditions, employment, duties, hours of labor, and membership in the U. M. W. of A., of the engineers, firemen, electricians and machinists existing prior to September 1, 1903, continue and remain in force during the life of this contract.

"It is further agreed that any interference on the part of any member of the U. M. W. of A., of a mine committee,

or local officer with the duties of engineer, fireman, electrician or machinist, shall subject such member or members of the U. M. W. of A., of a mine committee, or local officers to suspension or dismissal by the operator, with the understanding that the engineers, firemen, electricians, or machinists, who are now members, shall remain members of the U. M. W. of A., and those who are not members shall not be compelled to join.

"Rule 27—It is understood and agreed that should any dispute arise in regard to the interpretation of the rules and provisions of this scale that the interpretation shall be left entirely to the Committee of Operators and Miners who formulated and signed this agreement.

"Rule 28—Pay days shall be uniform on the 10th and 25th of each month.

C. E. MAURER, Chairman.
LEE RANKIN, Secretary.

On behalf of the miners:

WILLIAM GREEN,
President District 6.

A. R. WATKINS,
President Sub-District 5.
JOHN ZELENKA,
Vice-President Sub-District 5.

L. D. DEVORE,
WALTER MILLS,
NOBLE AULT,
B. SEDLECKY,
JOHN JEFFERS,

On behalf of the operators:

F. M. OSBORNE,
President Pittsburgh Vein Operators' Association.

P. McBRIDE,
Secretary Pittsburgh Vein Operators' Association.

J. J. ROBY,
LUTE HORNICKEL,
JOHN SIMPSON,
EDW. JOHNSON,
JOHN WHALEN, JR.

Miners' Scale Committee. Operators' Scale Committee
T. L. LEWIS,
National President U. M.
W. of A.
Signed at Wheeling, W. Va., June 9, 1908."

p. 100, l. 10–41.
p. 101, l. 1–41.
p. 102, l. 1–42.
p. 103, l. 1–40.
p. 104, l. 1–41.
p. 105, l. 1–39.
p. 106, l. 1–22.

Excerpts from book entitled "DETAILED MINING SCALE FOR SUB-DISTRICT 5 OF DISTRICT 6, U. M. W. OF A. EFFECTIVE FROM APRIL 1, 1910, TO MARCH 31, 1912."

This book is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as McKinley's Exhibit No. 9. [Record pp. 707, 388.]

(424) "COLUMBUS AGREEMENT.

Columbus, Ohio, April 5, 1910.

"Sub-District No. 5.

"Agreement between the Association of Pittsburg Vein Operators of Ohio for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America.

"It is hereby agreed by and between the United Mine Workers of America and the Pittsburg Vein Operators' Association of Ohio, operating what is known as the Pittsburg or No. 8 vein.

"That for a period of two (2) years, viz., from April 1, 1910, until April 1, 1912, the price of mining be increased five cents per ton, viz., from ninety to ninety-five cents, pick mining, and four cents per ton on machine mined coal; $1\frac{1}{4}$ (inch and quarter) screened-lump coal.

"The inside day wage scale shall be increased 5.55 per cent, with the conditions of the Columbus Day Wage Scale of 1898.

"That all narrow and dead work, room turning, and outside day labor shall be paid a proportionate advance with the pick mining rate.

"That internal differences both as to prices and conditions shall be referred for adjustment to a joint conven-

tion of miners and operators of said district, to be held at the earliest date possible.

"Signed this fifth day of April, 1910, at Columbus, Ohio:

"Behalf Pittsburg Vein Operators of Ohio:

F. M. OSBORNE, President.
J. J. ROBY, Vice-President.
M. D. RATCHFORD, Secretary.

"Behalf of U. M. W. of A., District No. 6:

D. H. SULLIVAN, President.
G. W. SAVAGE, Secretary.

p. 1, l. 1–23.
p. 2, l. 1–13.

(425) "OFFICIAL MINING SCALE.

Of Association of Pittsburg Vein Operators of Ohio, for their Mines in Belmont, Harrison and Jefferson Counties and the United Mine Workers of America.

In effect April 1, 1910, and ending March 31, 1912.

RULES AND REGULATIONS.

PICK MINING.

"Mining, per ton, screened coal.....$0.95
"Mining, run of mine coal, per ton..... .6785"

p. 3, l. 1–12.

(426) "GENERAL RULES FOR PICK AND MACHINE MINING.

"Rule 1. The screen adopted by the Toledo Interstate agreement of 1908 is reaffirmed and shall be uniform in size, six feet wide by 12 feet long, built of flat or Akron shaped bars of not less than five-eighths of an inch surface, with one and one-fourth inches between bars, free from obstruction; and such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

"Rule 2. That the eight-hour day of forty-eight hours of six days per week is hereby reaffirmed.

"Rule 3. That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night. Regarding drivers, they shall take their mules to and from the stables and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

"Rule 4. That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fraction part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time.

"Rule 5. Mining entries and entry break-throughs in pick and machine mines drove double shifts, extra, per yard 29½ cents.

"Rule 6. Wet entry shall be paid 29½ cents per yard extra when it has been fully determined that it is entitled thereto by the miner and the mine boss, or by the mine committee and mine superintendent, in case the former do not agree.

"Rule 7. Operators shall take the water out of rooms and entries and have rooms and entries dry at starting time, or pay 4¾ cents per barrel if the miner has to bail it. Barrels to be placed in rooms and entries, and where barrels cannot be placed in entries, the water box shall be forwarded for the entrymen to bail water in.

"Rule 8. Prices to be paid for slate or soapstone coming down unavoidably over the coal shall be agreed upon by the mine boss and the miner, and if they fail to agree, it shall be referred to the superintendent, mine boss and mine committee.

"Rule 9. Clay veins and spars shall be paid for, the matter to be referred to miner affected and mine boss. If they fail to agree, the company reserves the right to remove the same and give the miner another place.

"Rule 10. Any rolls or horsebacks coming up in bottom or down in top, shall be paid for as follows, per yard, running with rolls:

Six to ten inches in thickness	$0.29½
Between ten and seventeen inches	.59
Between seventeen and twenty-three inches	.89
Between twenty-three and twenty-nine inches	1.18

"And rolls of more thickness shall be paid in the same proportion for each six inches.

"Miners shall take up and remove roll where same crosses roadway.

"When roll is so hard as to require drilling and blasting the operator shall furnish one-half and the miner one-half the labor for drilling and blasting.

"Rule 11. Work shall begin at 7 a. m., work to 11 a. m., not more than 30 minutes for dinner, and work from 11.30 a. m. to 3.30 p. m., Central Standard time.

"Rule 12. Any man called from inside to perform outside day labor shall receive inside day wages.

"Rule 13. We adopt the check-off system as a part of the agreement of this district. This pertains to regular dues and assessments of the U. M. W. of A., but shall not give any right to collect fines unless such fines are ordered by two thirds of the members of the local Union. However, should either the operator, the local union or the

party upon whom the fine is imposed, object to said fine, each of them shall have the right of appeal to the sub-district president for a final ruling. In order to be honored the check-off must be furnished to the company not later than 5 p. m., on the second and seventeenth day of each month.

"Rule 14. No strike shall take place at any mine under the jurisdiction of Sub-District 5 of District No. 6 (Ohio) except for violation of agreements, or refusal of employers to pay on the regular pay day without explanation, until the grievances at the mine affected have been thoroughly investigated by the officers of District 6, U. M. W. of A., and operators interested.

"Rule 15. That a uniform rate of 1 per cent on the dollar be charged in pick mines where company hires the blacksmith, and it is further agreed that no charge be made for blacksmithing for cutters and loaders in machine mines.

"Rule 16. Machine men in both wide and narrow work are required to cut coal level and close to bottom, and in no case shall thickness of bottom exceed four inches. If a machine cutter leaves a sprag or a thick bottom in excess of four inches he shall be notified to remove same, and should he fail or refuse, he shall be charged 50 cents for each sprag, or 25 cents for each run, or both, the same to be paid to the loader.

"Bottom coal in all narrow work must be taken up and loaded by the loader. When the operator requires bottom coal not to exceed four inches in thickness, to be taken up in wide rooms and said coal is in normal state and parts freely from the bottom, the miner must take it up without extra compensation. Where coal sticks to the bottom and extra labor is required to lift same, the company shall

pay loader extra at a rate per crossing based upon maximum inside day labor scale.

"Should the loader and the mine foreman fail to agree on the character of the bottom coal, or the compensation to which the loader is entitled, the matter shall be referred to the mine committee and superintendent. In case they disagree, the miner or miners affected shall be given an average place in the mine pending a final settlement of the question in dispute, then the matter shall be referred to the Sub-District President and the Operators' Commissioner, who shall use every effort to settle the controversy, and in case they disagree, then the Sub-District President may call in one experienced miner, and the commissioner, one operator or superintendent, and the matter referred to them and their decision shall be final and binding. Said investigations and decisions shall not be delayed, but be determined at the earliest possible date.

"Rule 17. That all machine loaders be accorded two rooms for each two men and the operators pledge themselves to provide two rooms for two men at the earliest possible moment, but in the event of territory becoming scarce through a squeeze or striking a horseback, or any unavoidable obstacle, this shall not be construed so as to diminish the output of the mine.

"Rule 18. There shall be no free turns allowed for either rooms or entries. The entries shall be driven as fast as operators desire or conditions permit; but in no case shall entry miners be allowed more cars than room miners and at least once each pay the turn shall be made uniform throughout the mine for the time previously worked. If, however, the regular turn will not allow cars enough to drive the entries as fast as desired, the operators shall increase the n mber of miners in each entry, so that, by

giving to each the regular turn, the entries shall be driven as fast as two miners could do with full work.

"If, however, the room men decline to take their place in the entries when requested to do so by the operator, then the entry man shall have free turns until the entries are driven their required length.

"Rule 19. Miners shall exercise proper care in posting the soapstone in rooms, in order to prevent falls. When coal is taken out by the person employed in a room and soapstone falls to the amount of 750 pounds, it shall be removed by the miner without compensation, and when the fall of soapstone exceeds 750 pounds, the miner shall be paid for removing it, or the company remove the same.

"Rule 20. Checkweighmen may be placed on tipple at expense of miners, and his duty shall be that prescribed by the laws of the State of Ohio, and all weigh scales may be tested by the miners at any reasonable time.

"Rule 21. Members of the Pit Committee and local officers shall remain at their working places the same as all other employes unless a miner and a mine boss fail to agree on prices to be paid for extra work, when they may be called in to confer with the superintendent to decide the dispute. This, however, shall not prevent the committee from looking after the proper interest pertaining to the miners' organization.

"It is understood that mine committees have no authority to order a suspension of work except upon a vote of three-fourths of the members of the local union.

"Rule 22. All rooms shall be 24 feet wide or over. Machine rooms when ordered by the mine boss, driven less than 24 feet wide, entry price shall be paid.

"Rule 23. When entries are ordered driven 15 degrees or more away from the line of butts or face, 25 cents extra per yard shall be paid in pick and machine mines, but

shall not be construed to apply to necessary curves in turning one entry from another, and in order to lay track on a required radius.

"Rule 24. Any rule, either local or general, governing the scale or conditions of employment in the Pittsburg Vein of Sub-District No. 5, shall be mutually agreed to by the operator and miners interested, and said rules before being enforced, shall receive the endorsement of the officials of the operators and officials of the District No. 6, United Mine Workers of America.

"Rule 25. No meeting shall be held during working hours, except by mutual agreement between miners and superintendent.

"Rule 26. On the day that death by accident to an employe occurs in the mine, for that day only, the miners may cease working, but under no circumstances shall the mine be made idle for any funeral. And in consideration of the mine continuing to work on a day a funeral is held, the operators agree to contribute to the bereaved family, on the death of any of their workmen, one third of the amount paid by the miners, said amount not to exceed $25.00. This does not prevent friends from attending a funeral.

"Rule 27. When any employe absents himself from duty two days or more, except on account of sickness, without giving advance notice to the mine boss or mine superintendent, when possible, he forfeits the position.

"When a machine runner or any employe upon whose work other employes of the mine are dependent, absents himself from duty without giving advance notice, when possible, to the mine boss, he forfeits his position.

"Rule 28. When any places or any territory are not cut and the machine runners have not worked as many hours as the mine has worked by reason of break-downs, sickness

or absence of runners, the machine runners shall work on idle days or overtime until they have made up the lost time.

"Rule 29. In case of local or general suspension of mining, either at the expiration of this contract or otherwise, the engineers, firemen, pumpers, and other men necessary to keep the mines in shape shall not suspend work, but shall, when mine is suspended, fully protect and keep in repair all of the company's property under their care, and operate fans and pumps, and lower and hoist such men or supplies as may be required to keep up steam at the company's coal plant; but it is understood and agreed that the operators will not ask them to hoist any coal produced by non-union labor for sale on the market. The rates to be paid for such work to be those in effect at the time of suspension and then subject to any subsequent settlement.

"Rule 30. The conditions, employment, duties, hours of labor, and membership of the U. M. W. of A., of the engineers, firemen, electricians and machinists existing prior to September 1, 1903, continue and remain in force during the life of this contract.

"It is further agreed that any interference on the part of any member of the U. M. W. of A. of a mine committee, or local officer, with the duties of engineers, fireman, electrician or machinist shall subject such member or members of the U. M. W. of A., of a mine committee, or local officer to suspension or dismissal by the operator with the understanding that the engineers, firemen, electricians or machinists who are now members shall remain members of the U. M. W. of A., and those who are not members shall not be compelled to join.

"Rule 31. It is understood and agreed that should any dispute arise in regard to the interpretation of the Rules and Provisions of this scale that the interpretation

shall be left entirely to the Committee of Operators and Miners who formulated and signed this agreement.

"Rule 32. Pay days shall be uniform on the 10th and 25th of each month.

"Rule 33. All draw-slate over twelve (12) inches in thickness shall be considered thick slate and shall be paid for at the following prices per yard, for the full width of and running with the working place:

When Thickness of Slate is	To be paid for	Price in Room 24 wide	Price in Entry 12 ft. wide	Price in Entries 8 ft. wide.
13 inches	1 inch	$.06	$.04	$.03
14 inches	2 inch	.12	.08	.06
15 inches	3 inch	.18	.12	.09
16 inches	4 inch	.24	.16	.12
17 inches	5 inch	.30	.20	.15
18 inches	6 inch	.36	.24	.18
19 inches	7 inch	.42	.28	.21
20 inches	8 inch	.48	.32	.24
21 inches	9 inch	.54	.36	.27
22 inches	10 inch	.60	.40	.30
23 inches	11 inch	.66	.44	.33
24 inches	12 inch	.72	.48	.36
25 inches	13 inch	.78	.52	.39
26 inches	14 inch	.84	.56	.42
27 inches	15 inch	.90	.60	.45
28 inches	16 inch	.96	.64	.48
29 inches	17 inch	1.02	.68	.51
30 inches	18 inch	1.08	.72	.54
31 inches	19 inch	1.14	.76	.57
32 inches	20 inch	1.20	.80	.60
33 inches	21 inch	1.26	.84	.63
34 inches	22 inch	1.32	.88	.66
35 inches	23 inch	1.38	.92	.69
36 inches	24 inch	1.44	.96	.72

SCALE COMMITTEE.

FOR MINERS:

FRANK WOODY, NOBLE AULT,
FRANK HLAD, THOMAS HEPBURN,
R. I. PATTERSON.

FOR OPERATORS:

J. J. ROBY, C. E. MAURER,
MICHAEL GALLAGHER, EDWARD JOHNSON,
JOHN SIMPSON.

ON BEHALF OF MINERS:

D. H. SULLIVAN, President District No. 6.
JOHN ZELENKA, President Sub-District No. 5.
C. J. ALBASIN, Vice-President Sub-District 5.
A. R. WATKINS, National Executive Board Members.

ON BEHALF OF OPERATORS:

F. M. OSBORNE, President Pittsburg Vein Operators.
J. J. ROBY, Vice-President Pittsburg Vein Operators.
M. D. RATCHFORD, Secretary Pittsburgh Vein Operators.
J. B. ZERBE, Chair Joint Convention.
LEE RANKIN, Secretary Joint Convention.
Signed at Wheeling, W. Va., May 18, 1910."

p. 10, l. 1–33.
p. 11, l. 1–35.
p. 12, l. 1–34.
p. 13, l. 1–35.
p. 14, l. 1–35.
p. 15, l. 1–35.
p. 16, l. 1–35.
p. 17, l. 1–35.
p. 18, l. 1–35.
p. 19, l. 1–31.
p. 20, l. 1–26.

(427) "Wheeling, W. Va., May 19, 1910.

"This certifies that the Miners of the Eastern Ohio or No. 8 District, by a referendum vote, taken on May 18, 1910, have ratified and approved the report of the joint Scale Committee of May 13, 1910. The vote officially reported is as follows:

Total vote cast		6038
For ratification of Scale	3491	
Against ratification of Scale	2547	6038
Plurality in favor of Scale	944	

(Signed.)

D. H. SULLIVAN,
Pres. District No. 6, U. M. W. of A.
JOHN ZELENKA,
Pres. Sub-District No. 5, U. M. W. of A.
LEE RANKIN,
Sec'y Sub-District No. 5, U. M. W. of A.
F. M. OSBORNE,
Pres. Pittsburg Vein Operators of Ohio.
M. D. RATCHFORD,
Sec'y Pittsburg Vein Operators of Ohio."

p. 22, l. 1–22.

Excerpts from President T. L. Lewis' Report to the Twenty-Second Annual Convention of the United Mine Workers of America held at Indianapolis, Indiana, in January, 1911, as published in the United Mine Workers' Journal in its issue of January 19, 1911.

This report is otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 1. [Record pp. 707, 560-563.]

While all of the report is in evidence, ten excerpts follow, and are marked a to j inclusive:

(428)

(a) "President Lewis' Report.

Submitted to the Twenty-Second Annual Convention of the International United Mine Workers of America.

"To the Officers and Representatives of the Twenty-second Annual Convention, United Mine Workers of America:

"Fellow Mine Workers: With the opening of this, the Twenty-Second Annual Convention of the United Mine Workers of America, we are reminded that another year has come and gone in the history of our movement. We are also reminded that just twenty-one years ago there assembled in the city of Columbus, Ohio, a small but determined body of miners. The miners' representatives to that convention were determined that no longer would personal animosities be permitted to jeopardize the interests and welfare of the men who toil in and around the coal mines. As a result of their deliberations, the United Mine Workers of America was organized and embarked on its mission of bringing into one organization all the mine workers of the country.

"Those of you who remember the history of the miners' unions for several years previous to 1890, will recall that rival organizations in the mining industry had divided our forces. The rivalry that existed at that time between the two miners' unions created bitter animosities among the members and destroyed the effectiveness of either organization, to accomplish any permanent good for the mine workers. The time and energy of the members of both organizations was spent fighting each other, instead of combining their forces to resist the unjust conditions imposed on the mine workers. Is it any wonder that many miners, as well as others, were skeptical of the success of the United Mine Workers' organization at the time it was organized on January 25, 1890?

"In the twenty-one years' existence of the United Mine Workers the good judgment of the founders of our union has been fully vindicated. Our hopes and expectations have not always been realized, but an impartial review of the history of our movement will convince any one of the splendid results accomplished by the organized mine workers of the country. It is true that the United Mine Workers of America has not always been successful. It has met with its reverses and defeats as well as won its victories. But its work has brought to the membership a steady increase in wages and a permanent improvement in the working conditions of the men who are employed in the mines. We have reason to congratulate ourselves that in the thoroughly and partly organized mining States we have nearly 350,000 men who are now employed under joint agreements that provide the highest rate of wages ever paid the mine workers of the country.

"When we last met in regular annual convention we were confronted with the work of outlining a plan to extend the interstate joint movement. We were expected to

adopt a policy that would provide a higher wage standard to meet the increased cost of living.

"I have always been opposed to a division of our forces in negotiating our wage contracts either in districts or with individual operators. I am a firm believer in unity of action and this must be the basis of the future success of the organization. In harmony with my position on this question, I submitted to the representatives in the last annual convention the following general recommendation in the form of a resolution:

1. That we demand an advance in wages for each and every mining district of the country.

2. That all district officers are authorized and instructed to negotiate wage agreements, but no district shall sign a contract until all wage contracts are negotiated.

3. That all mines shall continue working after the 1st of April and continue working until wage contracts are finally negotiated, provided the present rates continue until final action is determined upon.

"In the recommendation that I submitted to the convention there were three essential features. One was to the effect that we were entitled to and should receive an advance in wages. The other was to give each scale district an opportunity to negotiate the terms of wage contracts in accord with the declared policy of the International convention, but denied the right of the representatives of any district or group of districts to sign an agreement until each and every scale district in the country had completed their negotiations. The third important feature in my recommendation was to avoid a suspension of operation of the mines, by continuing to work until all wage contracts were finally negotiated.

"I firmly believed at that time and have been thoroughly convinced since, that if the proposition I submitted

to the last annual convention had been adopted we would have avoided the prolonged strikes of the past year, prevented the enormous expense and secured as good if not better terms in the wage contracts which were finally negotiated and agreed upon.

"What I desire to explain at this time is that the recommendations I submitted to the last annual International convention were in perfect harmony with the position I have taken for years; *i. e.*, that we should keep our forces united at all times; that we should not have sectional strikes or settlements, and that all contracts should be negotiated before any contracts can be signed. To make this policy effective and avoid periodical strikes, either more time must be taken to negotiate wage contracts or the mines should continue working pending the negotiation of wage agreements.

NEGOTIATIONS OF AGREEMENTS.

"The policy of the last annual convention to govern the negotiations of wage contracts included the following general propositions:

"A demand for run-of-mine system. Ten cents per ton advance in the mining rate. A uniform rate of wages for all classes of inside and outside labor with time and a half for overtime, Sundays, and holidays. An eight-hour day from 'bank to bank' and Saturday half holiday. That the contract be made for two years. That local inequalities be referred to districts affected. To adjust the new powder controversy in the Pittsburg district. No limit to amount of deductions for the organization. That no district negotiate an agreement to reimburse the operators for legislation that added cost to the production of coal. That contracts be negotiated but not signed by any district until all contracts were negotiated. That the Inter-

national convention should not adjourn to reconvene in Toledo, Ohio.

"Immediately upon the adjournment of the International convention the miners' representatives of Illinois, Indiana, Ohio and western Pennsylvania went to Toledo, Ohio, to meet the operators in interstate joint convention which had been called to meet in that city.

"The interstate joint convention at Toledo, Ohio, was called to order and committees on credentials and rules of order were appointed. The credential committee disagreed, the miners' representatives insisted that the Illinois miners should be seated in the interstate joint convention with voice and vote. The operators objected to the seating of the Illinois miners' representatives in the absence of the Illinois operators. The interstate joint convention at Toledo failed to even effect a permanent organization on the single issue of seating the Illinois miners.

"My position in the Toledo joint convention was clearly defined to the operators and miners. As a firm believer in the interstate joint movement, I was unwilling to negotiate a wage contract for three states. This position was in harmony with my declarations time and again of uniting, instead of dividing our forces in an effort to extend the interstate joint movement.

"When we adjourned the convention at Toledo there was little or no prospect of negotiating wage contracts. Conferences were held in various districts but with no success. A conference was called to meet in Cincinnati, Ohio, February 23, and it was agreed to issue a call for a joint convention of the representatives of the miners and operators of Indiana, Ohio and western Pennsylvania to meet in joint convention in Cincinnati, Ohio, March 8, 1910. An invitation was also extended to the Illinois

miners and operators to take part in the interstate convention but they were not present. On February 25 a call was issued for a special International convention of the United Mine Workers to meet in Cincinnati, Ohio, March 15, 1910, to take such action as necessary to protect the interests of the mine workers of the country.

"After several weeks' deliberation the interstate joint convention in Cincinnati adjourned without reaching an agreement. The special International convention at Cincinnati adopted as the basis upon which wage contracts could be negotiated the following proposition:

> 1. That the following is the terms on which agreements can be negotiated:
>
> That the agreement of the present year be continued for the scale year beginning April 1, 1910, and ending March 31, 1912, with the exception of the mining prices and day wages.
>
> That the price for mining be increased five (5) cents per ton on inch-and-a-quarter screen lump coal, pick mining in western Pennsylvania thin vein, the Hocking the basing district of Ohio, and both block and bituminous districts of Indiana; three cents per ton on mine-run coal pick mining in the bituminous district of Indiana.
>
> That the price for machine mines be increased (4) cents per ton on screen lump coal in western Pennsylvania, thin vein, in the Hocking, the basing district of Ohio; four (4) cents per ton on screen lump coal in the block and bituminous district of Indiana, and three (3) cents per ton on mine-run coal in the bituminous district of Indiana.
>
> This internal differences both as to prices and condition be referred for adjustment to the various districts affected, it being understood that in the adjustment of such differences there shall be no modification of the advance of wages provided for in the proposition.

The inside day wage scale shall be advanced 5.55 per cent with the conditions of the Columbus day wage scale agreement of 1898.

That all narrow, dead work and room turning and outside day labor shall be paid a proportionate advance with the pick mining rate.

2. That contracts may be negotiated and agreed upon by states, districts or groups of districts.

3. That where all the operators within one district fail to sign the terms of the proposed contract that the operators of any sub-district may agree upon the general terms of the contract.

4. That where the operators of an entire state, district or sub-district agree to pay the general advance demanded their mines may continue in operation pending the final negotiations and agreement upon the details of the wage contract in the state, district or sub-district affected.

5. That details not herein specified are referred to the International Executive Board with full power to act, except the Board is not empowered to modify in any respect the terms of the demand for an advance in wages as it applies to mining, day labor—inside and out—narrow and dead work.

6. All coal companies shall be required to sign the contract for all the mines that operate in one or more districts, unless permission is given district officials to do otherwise by the International Executive Board.

7. That in any district where new explosives are used the mines affected shall operate on a run-of-mine basis and the company shall furnish the miners with new explosives at the same relative cost as black powder.

"Immediately upon the adjournment of the Special International Convention at Cincinnati, Ohio, the following letter was sent to the presidents of the various districts where wage contracts expired on April 1, 1910:

Indianapolis, Ind., March 30, 1910.

Dear Sir and Brother—You will find inclosed a

copy of the proposition adopted at the special convention at Cincinnati, yesterday evening.

You can see by this proposition that the first thing necessary to be done is to get the operators of your district together and have them agree to sign the general terms of the contract providing they want the mines to continue in operation after April 1.

According to the rules laid down by the special convention at Cincinnati, no contracts can be signed up by individual operators. This rule should be adhered to as well as the other rules embodied in the proposition adopted by the special convention.

In accordance with the policy of the United Mine Workers, any of the operators that desire to have pumpers and such other men employed as may be necessary to take care and protect the property, such men should be permitted to work providing they receive the advance in wages provided for in the enclosed proposition.

With the hope that you will be able to arrange a conference of the operators of the District immediately, I remain,

Yours very truly,

(Signed) T. L. Lewis, President, U. M. W. of A.

"This letter was sent to each of the district presidents where contracts expired in order that we would have some definite understanding in regard to negotiating contracts on the basis provided by the policy outlined at the Cincinnati Special Convention.

"On April 1 about 300,000 mine workers suspended work to enforce the demands of the Cincinnati convention."

(429) "IRWIN DISTRICT.

(b) "There has been a strike in progress in the Irwin district of Pennsylvania that has cost the International organization of the United Mine Workers $329,900 up to November 30. Inasmuch as that strike was ordered by officers of the Pittsburgh district without even consulting

the International officers and without even organizing the men, I feel it my duty to give you the facts in regard to the situation in that field.

"I made the statement at the last annual convention that we had organizers in the Irwin district, in the Greensburg and other non-union sections of Pennsylvania, as well as in Maryland and West Virginia. In the early part of March I learned that President Feehan had sent district officers or organizers into the Irwin district, and on March 5 I wrote President Feehan the following letter:

Indianapolis, Ind., March 5, 1910.

Mr. Francis Feehan,
President, District 5, Pittsburg, Pa.

Dear Sir and Brother: You may not be aware that we have organizers in the coke regions and in the Irwin field and that both of those districts are outside of the jurisdiction of District 5.

I am writing to inquire if it is true that your board members, or any of them, are working in those fields. If they are, they are interfering with our arrangements and may serio isly interfere with our plans to try and organize those fields.

I am writing to suggest that you have your board members confine their efforts to the territory under the jurisdiction of District 5. There are many men in District 5 that need to be brought into the organization and they will find plenty to do.

Hoping to hear from you immediately on this sub ject, I remain,

Yours very truly,

(Signed) T. L. LEWIS,
President, U. M. W. of A.

"I received a communication from President Feehan, dated March 7, in which he stated that the district vice-president with interpreters had been authorized to go to Greensburg on Friday, March 4, and succeeded in establishing an organization with about four hundred miners.

On March 20, while in Cincinnati, I communicated with President Feehan and stated that the Irwin district and the Connellsville coke regions would be separate districts when organized, and called his attention to the fact that a serious mistake had been committed in organizing a few men and declaring a strike in a district outside of the Pittsburg district. I received a letter from President Feehan, dated March 11, in which he stated that there was a necessity for a strike in the Irwin field, in order that the mine workers of that section could be given an opportunity to improve their working conditions. He also stated that he had made his position plain to the miners in the Irwin district, and that he did not think they expected to get any financial assistance from the International organization, and he stated that the Pittsburg District was willing to give the Irwin field men financial assistance.

"In reply to his communication, dated March 11, I sent him the following letter:

Burnett House,
Cincinnati, Ohio, March 14, 1910.

Mr. Francis Feehan, Cincinnati, Ohio:

Dear Sir and Brother: Desire to acknowledge receipt of your communication of March 11. I have read your letter very carefully and desire to state again that the Irwin district is not under the jurisdiction of District 5 and never was. It is District 3 if it was organized and the Connellsville coke regions is District 4. I am surprised that you did not know, according to your letter, that the Irwin field was no part of your district.

Any attempts to organize one mine in the Irwin field will simply jeopardize the possibility of organizing the entire district. When the International Executive Board has decided on a definite policy in regard to the situation in the Irwin field, those men will not be required to fight their battles alone.

Thanking you for the information contained in your letter, I remain,

Yours very truly,

(Signed) T. L. LEWIS,
President U. M. W. of A.

"On May 17, 1910, while the International Executive Board was in session at Indianapolis, an appeal from the secretary of the Pittsburg district was read. This appeal contained the following preamble and resolutions:

Whereas, We recognize that it is the duty of our organization to get every man who works in and around the mines to become a member of the U. M. W. of A., and

Whereas, We know that we owe it to ourselves and to our fellow workmen in the Greensburg and Irwin fields to do all in our power to bring them within the folds of our union, not only for their protection but our own; therefore, be it

Resolved, That we, the delegates to the Twenty-first Annual Convention of District No. 5, pledge our hearty cooperation and support to the striking miners in that field, and be it further

Resolved, That when the miners in the Pittsburg district resume operation that the district executive board be authorized to levy an assessment of twenty-five (25) cents per week on the membership in order to carry this strike to a successful termination, and be it further

Resolved, That we appeal to the International Executive Board to donate fifty thousand ($50,000.00) dollars to these people in order to promote the strike and extend the jurisdiction of the United Mine Workers of America, and be it further

Resolved, That the district officials appeal to officers and members of all district organizations affiliated with the U. M. W. of A. and all other trade organizations, if necessary, and urge them to send financial assistance to succeed in permanently establishing an organization and negotiating a wage scale in that field.

"In March, President Feehan expressed the opinion in his letter to me that he did not think the Irwin district mine workers expected any relief, and yet the resolutions adopted by the Pittsburg district convention requested the International Executive Board to donate fifty thousand dollars to support the men on strike in the Irwin district, and this at a time when we had over one hundred thousand members on strike through a failure to negotiate wage contracts.

"In keeping with the well-established custom and rules of the International Executive Board to investigate the merits of every appeal for financial assistance before it is endorsed, a committee of five International Board members, composed of Vice-President Hayes, Board Members Dagger, Haggerty, Powell and Smith was appointed to visit the Irwin district and learn the facts in regard to the existing conditions. The committee returned and failed to agree upon the kind of a report that should be submitted to the International Executive Board, but the majority of the committee of five recommended that the Irwin district strike be granted the moral and financial support of the International Executive Board.

"The recommendations of the majority of the committee of International Executive Board members appointed to go to the Irwin district was adopted.

"During the afternoon session of the International Executive Board, May 23, a motion was adopted to appoint a committee of five International Board members to draft a plan with reference to the Irwin strike. On May 28 the committee submitted to the International Executive Board a report that provided for the calling of a convention in the Irwin district for the purpose of forming a scale. That three International Executive Board Members, including the International Board member from District

5, be appointed to attend the convention. That the International and district officials co-operate to the fullest extent in conducting the strike and negotiating a settlement. That in the event of a conflict of authority the International Executive Board be recognized as the higher authority. That the financial relief donated by the International organization be handled through the district office. That the district secretary-treasurer furnish a statement to the International Secretary-Treasurer of the money expended. These recommendations were adopted.

"At a meeting of the International Executive Board held Friday evening, July 22, 1910, there appeared before the Board a committee representing eleven local unions in the Irwin district and presented a petition in which the International Executive Board was requested to form a district with a complete set of officers in the Irwin field, to issue orders to the engineers, firemen and other outside labor to quit work and to furnish more finance for the strike.

"The reason assigned by the committee representing the eleven local unions in the Irwin district for wanting a district formed immediately was to effect a settlement of the strike. It was stated by the committee from the Irwin district that the operators were unwilling to agree to any settlement with the officers of the Pittsburg district.

"The situation in the Irwin field was discussed from every possible phase and the following resolutions were offered and unanimously adopted:

> That a committee of three be appointed to co-operate with the officers of District 5 and the representatives of the strike district, with a view of trying to bring about a settlement of the strike in that field.
>
> That the forming of the district in the Irwin field be left in abeyance until we get a report from the committee provided for.

That the question of furnishing more money to that district be left in the hands of the resident officers.

"The reason that the International Executive Board was unwilling to form the new district immediately was that it would be additional expense to pay the district officers, as there was no per capita tax reported from any of the local unions in the Irwin district.

"In reporting the situation in the Irwin district, I have brought to your attention the fact that the mine workers of the Irwin district were involved in a strike before they were organized. The strike was declared without any preparation. It was inaugurated by the officers of the Pittsburg district without consulting the International Officers. The International organization has furnished financial assistance to the extent of $329,900 up to November 30, 1910, and since November 30, $20,000 per week has been sent. The International organization has had representatives in the Irwin district for months, not in full authority, but co-operating with the officers of the Pittsburg district and the representatives of the Irwin district to make the strike a success.

"That the Irwin district mine workers should be organized is a well-known fact; that they could have been organized without a strike is my firm belief; that the Irwin district miners made a splendid effort to win the strike after it was declared is well known to every person who is conversant with the situation. That the strike has not been a success in establishing the organization and wage contracts is due to the following reasons:

"1. The calling of a meeting of the men at one mine and declaring a strike without the men being organized.

"2. The failure to make proper preparation by organizing local unions and then calling a convention to formu-

late demands to be presented to the operators of the Irwin district.

"3. The failure to formulate demands to present to the operators of the Irwin district before a strike was declared.

"4. The failure of the officers of the Pittsburg district to consult the representatives of the International organization until a large number of unorganized men were on strike and in need of financial support.

"I have but briefly stated the many incidents that have taken place in connection with the Irwin district strike. I have been severely criticised by the officers of the Pittsburg district and others because I have tried to defend, in my own way, the interests of the miners. I have been made the subject of the most scurrilous abuse and I have remained silent and refused to be drawn into controversies over the Irwin strike situation. I remained silent but gave every possible assistance that the International could give in order that the miners of the Irwin district might win in their heroic struggle for justice.

"It may be a matter of information to you and for the the mine workers of the country to learn that I assisted in bringing a representative of one of the large companies in the Irwin district and President Feehan together to negotiate a settlement. In my judgment, if he had acted promptly, one thousand of the Irwin district miners would have returned to work under union wages and conditions last June. I believe that other settlements could have been effected if an agreement had been promptly made with the company mentioned. Later, I offered again to try and effect a settlement, but could not get President Feehan to agree upon any definite basis. He insisted that there should be a conference and then consider the basis of settlement.

"The Irwin district strike is still being conducted by the officers of the Pittsburg district and representatives of the International organization and the Irwin district. The production of coal in that district has reached that point where there is no hope of winning the strike under the present circumstances. The International organization is furnishing relief to support the men on strike to the extent of $20,000 per week. I have no desire and I have no right to deceive you in regard to the situation in any district. It is my duty to tell you frankly that it is a waste of money to continue the Irwin district strike under the present circumstances. In my opinion the strike in the Irwin district will be completely lost if continued under the present method of conducting that strike. The International organization is furnishing the financial support and should have complete control to perfect the interest of the miners now idle.

"Those men have been misled and deceived long enough and the International organization has contributed to their support without authority to settle the strike. Let me call your attention to a remarkable fact. It was stated to me by President Feehan in the early part of last year that a local was organized at Greensburg, Pa., March 4, and yet, according to the books at the International Office, not one cent of per capita tax or assessments have been paid by the miners of the Irwin district to the International organization."

(430) "COST OF STRIKES.

(c) "The United Mine Workers has passed through several criticial periods in its history.

"In the year 1894, with less than 20,000 members, the organization engaged in a contest of a national character.

"The outcome of that contest was a compromise and the leaders of that strike were severely criticized by those of our members who did not understand the conditions of the mining industry at that time. In the year 1897, as a result of internal strife and dissension, the organization had less than 10,000 members. Wages had reached a point where the mine workers of the country were in a condition of starvation. Desperation itself compelled the miners to engage in a national strike, and without any financial means of support the strike was declared on July 4 and brought to an end in September with a compromise on wages and an agreement to re-establish the interstate joint movement. The interstate joint convention in January, 1898, gave to the mine workers of the country an eight-hour day without a strike.

"In the year 1904, in order to avoid a national strike, the mine workers of the competitive field accepted a reduction in wages and there was very little criticism of the leaders who were directing the affairs of the organization at that time. In the year 1906 the organization was again confronted with a criticial situation and after a struggle the wage scale of 1903 was restored, but many important conditions were sacrificed that year in a number of the States, including Illinois, Ohio and the Southwest. In the year 1908, in the midst of an industrial depression that affected the entire country, the United Mine Workers was able to maintain its standard of wages and partially re-establish the interstate joint movement that had been disrupted in 1906. Last year we were convinced that we were entitled to an advance in wages and, failing to negotiate wage contracts previous to the expiration of our agreements, about 300,000 mine workers suspended work on April, 1910. Our efforts last year might have been more

successful and less costly if we had avoided sectional strikes and sectional settlements.

"I have referred to those periods in the history of our movement in order that you and our members might take greater interest in the success of the organization. If you will carefully study the history of the United Mine Workers, I believe you will be convinced that strikes have not brought the greatest measure of success to our organization.

"Sectional strikes of any magnitude have been a complete failure in promoting the welfare of the United Mine Workers of America. This fact emphasizes again the necessity of changing our policy and adopting new methods that will be more effective in protecting our rights.

"I have prepared a statement, covering a period of eleven years, in which is given the amount of money paid to each district in support of mine workers who have been on strike. The period begins with 1900 and ends with the year 1910.

AMOUNT PAID TO EACH DISTRICT FOR STRIKE RELIEF.

District 1, Anthracite	$705,830.94
District 2, Central Pennsylvania	497,987.48
District 3, Irwin Field	329,900.00
District 5, Western Pennsylvania	44,016.07
District 6, Ohio	216,566.13
District 7, Anthracite	261,500.00
District 8, Indiana Block	500.00
District 9, Anthracite	501,100.00
District 10, Washington	59,500.00
District 12, Illinois	74,250.00
District 14, Kansas	122,500.00
District 15, Colorado	707,676.45

District 16, Maryland and Meyersdale	421,335.21
District 17, West Virginia	669,938.81
District 18, British Columbia	49,800.18
District 19, Tennessee	461,306.01
District 20, Alabama	1,286,031.32
District 21, Arkansas and Oklahoma	293,061.00
District 22, Wyoming	3,439.30
District 23, Kentucky	312,222.26
District 24, Michigan	7,700.00
District 25, Missouri	95,000.00
District 26, Nova Scotia	968,775.00
Total	$8,089,986.16

"In addition to the foregoing information I have also prepared another financial statement giving the amount that has been paid each year to support mine workers on strike for the same period beginning with the year 1900 and ending with the year 1910:

AMOUNT PAID OUT ANNUALLY IN SUPPORT OF STRIKES.

Year 1900	$144,462.50
Year 1901	202,202.71
Year 1902	1,834,506.53
Year 1903	301,922.44
Year 1904	1,065,435.47
Year 1905	753,626.02
Year 1906	805,599.92
Year 1907	105,045.57
Year 1908	744,897.19
Year 1909	600,267.39
Year 1910	1,532,020.42
Total	$8,089,986.16

"To the eight million dollars spent by the International organization must be added the hundreds of thousands of dollars contributed by our members to the districts and spent for the same purpose. If you will examine these two statements you will discover that where we have spent the most money, in support of strikes, is where we have the least membership.

"This information should be conclusive evidence that the strike as a method of organizing has not proven a success. I am convinced that sectional strikes will not organize the non-union mining districts of our country.

"The enormous expenditure of money and the tremendous waste of energy incident to a strike should be avoided. Our right to strike must never be surrendered, but as the strike is an industrial war measure it should be the last method resorted to in our effort to enforce any demands that we present to the mine owners.

(431) "MEMBERSHIP.

(d) "Herewith is given a table showing the average paid-up membership for each year since the formation of the United Mine Workers of America in 1890:

Year.	Members.	Year.	Members.	Year.	Members.
1890	20,912	1897	39,731	1904	251,006
1891	17,044	1898	32,902	1905	264,950
1892	19,376	1899	61,887	1906	230,667
1893	14,244	1900	115,321	1907	260,740
1894	17,628	1901	198,024	1908	252,018
1895	10,871	1902	175,367	1909	265,274
1896	9,617	1903	247,240	1910	231,392

"It is a matter of congratulation to our membership that we are able to report that we received per capita tax at the International Office on an average of 231,392 members for each month for the year ending November

30, 1910. This is especially significant when we pause to consider the large number of mine workers who were on strike and who, according to our laws, are not required to pay monthly dues.

"In the month of March, 1910, per capita tax was received from 310,744 members, the highest number in the history of the organization. That the strike affected our paying membership you can readily understand, when I call your attention to the fact that in May, 1910, we received per capita tax on but 118,811 members.

"As a further evidence that the United Mine Workers of America has lost none of its prestige, we received per capita tax at the International office in December, 1910, on 308,660 members. This is the highest number of members upon which per capita tax has been reported for any December month in the history of the organization. In my opinion we ought to be proud of this remarkable showing on the part of our members, in view of the prolonged strikes and the extra assessment of $1.00 per month that has been levied on our membership since May of last year. You know that heavy assessments have a tendency to cause a falling off in our membership.

"If the enemies of the United Mine Workers can derive any consolation from this statement of the actual condition of our union we have no objection. Let me here suggest that if these results can be secured and maintained by the organization when we have members who are doing all they can to create friction and divide our forces, what could we do if every member of the United Mine Workers was actually lending his assistance to make the organization a greater power for good. Let us try and work for the success of the United Mine Workers' Union and the welfare of the people we represent."

(432) "UNORGANIZED MINING DISTRICTS.

(e) "The all important problem confronting the United Mine Workers of America is, how can we organize the mine workers in the non-union districts and complete the work in those districts which are but partly organized? Costly and unsuccessful efforts have been made to organize the non-union districts through the medium of strikes.

"The tremendous expenditure of the funds of the organization and the failure to organize the States of the Ohio river as well as Colorado, Maryland and a large section of Pennsylvania, should prompt us to investigate the cause of the hostile attitude and the bitterness shown toward the organization by many of the operators in the States named.

"I have called attention in former reports to the fact that in West Virginia and other southern coal producing States, there is a firm conviction in the minds of a number of the operators that it is our purpose to organize the miners of those States in order to shut them out of the markets into which operators of organized districts ship coal. This is an unfortunate condition but is partly due to the action of a few of our own members in misrepresenting the facts and deceiving our members.

"During the past year I assigned International Vice-President Hayes and Board Members Farrington, Watkins and Garner to visit the Norfolk and Western district and the Fairmont region of West Virginia to investigate and report the prospects of organizing that State. The reports submitted to me verified what I have known for years—that in certain non-union districts, an organizer jeopardized his own life the instant he undertook to organize the miners.

"My experience in West Virginia and other non-union mining States prompts me to believe that we should clearly

define our position with reference to those States. We should declare in the most emphatic manner that it is not our purpose to organize the non-union mining districts to curtail their coal production. We should emphasize our position that every non-union mining district of the country is entitled to an equal opportunity with every other mining district to market the product of their mines.

"Let us clearly define our position as organized mine workers. Let us then appeal to the intelligence of the operator and the miner in the non-union districts. If we desire to establish that confidence necessary to our success we should be perfectly frank in stating our position and we must be absolutely sincere in carrying into effect our declarations.

"I have stated in former conventions, and I repeat again, that the application of common sense should be the basis of a new method of extending our organization into the non-union mining districts and to establish permanent industrial peace between the mine owners and the mine workers of the country.

(433) "JOINT WAGE AGREEMENTS.

(f) "The joint conference method adopted by the operators and miners for the purpose of negotiating wage contracts has done much to establish peace in the mining industry. Whether this method is to be continued will depend entirely upon the sincerity of those who have been parties to the joint movement.

"Time and again we have declared in our conventions that differences existing between the employer and employe in the mining industry should be settled without resorting to strikes. In recent years there has been a disposition among our members to ignore the terms of the contracts under which they are employed, and to refuse to accept or be governed by the advice of their official rep-

resentatives. If this condition is allowed to continue, and if there is no way by which our members can be convinced that agreements should be respected and complied with, then the joint movement will necessarily pass out of existence.

"In a number of districts there are so many rules being incorporated in our joint agreements that it is difficult for our members to understand the meaning and the application of the terms of the contract. Those rules are no doubt insisted upon by the operators in order to avoid strikes. There is so much delay in settling even trifling disputes, owing to technicalities in the rules, that our members become restless and finally become desperate at the failure of having grievances adjusted. The result is that instead of strikes being prevented, the mines are stopped in violation of the expressed terms of the agreement.

"Simplicity should be the basis of our joint agreements. A contract should be so clear and specific that there would be no trouble for any member to understand what it means. Penalties for failure to comply with the terms of wage agreements and incorporated in our contracts, should apply to the mine foreman and superintendent as well as to the miner and mine laborer.

"What are known as stampede strikes, locally or otherwise, are becoming a serious menace to the permanency of the joint movement method of arranging wage contracts. There is no excuse that should justify a suspension of the operation of the mines, especially under a contract mutually agreed to by the operators' and miners' representatives. That strikes take place at mines where a contract is in effect proves either that there is a defect in the contract itself, or that the parties to the contract were not sincere when it was negotiated.

"If we are to give stability to the joint movement we must adopt some practical method, not only to negotiate wage contracts, but to have them strictly complied with in every respect.

"The existence of the joint movement and the future well-being of the mine workers of the country depends upon what action this convention may take to restore that confidence necessary for the success of the United Mine Workers and the joint movement method of negotiating wage agreements."

(434) "RIGHT TO ORGANIZE.

(g) "In my report to the last annual convention I expressed my opinion in regard to the right of the laboring people to organize. This is a subject of such vital importance to the wage earners of the country that I deem it my duty to again emphasize the importance of insisting upon our right to organize the mine workers in every State in the Union.

"The power of co-operation and the dependency of individuals upon each other in every walk of life, we are compelled to more fully realize every day of our existence. Regardless of the tremendous impulse given to each movement through unity of purpose, there are employers of labor, and even representatives of the government, who deny that unity of action among laboring people, that they, themselves, exercise in their every day affairs.

"The employers of labor and those representatives of the government who attempt to prevent the laboring men from organizing and seek to destroy labor unions are hastening the day when the laboring people of this country will assert themselves and by the intelligent use of the franchise will take complete charge of every branch of the United States government.

"The time has come when we must bring forcibly but intelligently to the attention of the enemies of organized labor that in an era of concerted effort there is no such a thing as individual liberty. We must convince those who are attempting to destroy the labor movement that we will not be denied the right to co-operate with each other to better our condition and secure for ourselves a brighter future.

"Capital has a right to be invested through human agencies, either in dollars singly or in combination with millions of other dollars. The wage earner must be conceded the right to act singly or in conjunction with all of his fellow laborers. This is not a sentimental expression but a statement of a condition that will eventually be recognized by the nation and respected by the employers of labor, as well as men in public life. Capital and labor should co-operate and work together where it is possible for such a condition to exist. There can be no industrial peace and there can be no permanent progress for the nation where men are compelled to be subordinate to the influence of wealth."

(435) "WHY WE ORGANIZE.

(h) "The status of the miners' organization must be explained by its representatives, not from a charitable or a sympathetic standpoint. We must make it clear to the American people, and especially to the enemies of our movement, that we have our existence legally and morally as a matter of absolute right, not only the right to organize but the right to accomplish the purpose for which we are united.

"Few men today, even among the rankest enemies of labor unions, would hesitate to publicly express the opinion that the wage earners of our country have no right to form themselves into labor unions. There is a further

right, the right to make the organization effective in accomplishing the purpose for which we organize or else the existence of the union is a farce.

"It is well known that as mine workers we are organized to secure fair wages, better conditions of employment, shorter hours of labor and the enactment of such laws as will provide greater safeguards and lessen the danger in the mine. In addition to this we are seeking to educate ourselves and those depending upon us. In fact, the basic principle of our movement is to make better citizens of the men who work in and around the coal mines of the country.

"When we present our claims to certain employers or mine owners we are told that we must respect individual liberty, or the right of the mine owner to do what he pleases with his own. This may sound plausible and might be considered as reasonable if every individual were permitted to do as he pleased. What we insist upon is that if our labor is needed to develop the mining industry we have a right as an individual or collectively to dictate the terms upon which we will sell our labor.

"It is unfortunate but true that there are a number of employers and men in public life who seem to forget that rights, duties and obligations are mutual. They seem to forget that every man who has become a part of the government has made a concession and surrendered certain individual rights. They seem to forget that the producers of the wealth of the country make it possible for the nation and the government to exist.

"As members of the United Mine Workers' organization we are asking for no special privilege. All we ask for is an equal opportunity before the law, and this we have a right to insist upon. Those employers of labor and those representatives of the United States government who are attempting to destroy labor unions should remember that, when driven too far, the mighty army of labor, by

organized effort and the intelligent use of the ballot, can remove from public office the enemies of the people, and can destroy the power of the coprorations and make them harmless as a factor to enslave the wealth producers of our country."

(436) "SHERMAN ANTI-TRUST LAW.

(i) "We have in this country a law known as the Sherman anti-trust law. Its alleged object is to destroy trusts and to prohibit combinations that are inimical to the interest of the people.

"We have no knowledge that the great industrial corporations have been limited in their authority to control certain commodities. There is no likelihood that the Standard Oil Company, the United States Steel Corporation and other great industrial institutions will be dissolved by the enforcement of the provisions of the Sherman anti-trust law.

"This law, like others enacted for the alleged purpose of protecting the rights of the people, is in reality being used to deprive the wage earners of the right to organize. We know that the Sherman anti-trust law, as well as many similar State laws, are being used to keep the mining industry from being elevated to a higher standard.

"In my opinion the Sherman anti-trust law and every other law of a similar character, should be either amended or repealed, and instead of attempting to regulate corporations and trusts in the manner provided by the Sherman law, the national and State governments should enact laws providing for a method of taxation that would remove any incentive for large corporations to accumulate wealth by illegitimate methods.

"As laboring men, and especially as mine workers, we should lend every influence we possess to repeal those provisions of the Sherman law that deprive us of our right to organize and establish the object for which we are

united. Now is the time to act as we may at any time be made the victims of a law that was enacted to control trusts but which is being diverted to destroy organized labor."

(437) "WESTERN FEDERATION OF MINERS.

(j) "Our last Annual Convention clearly defined the attitude of the United Mine Workers of America toward our fellow workers who are members of the Western Federation of Miners.

"By a unanimous vote of our last International Convention we adopted the following:

1. We recommend that at some time in the future there shall be a complete solidification of the organized forces now enlisted under the names of Western Federation of Miners and the United Mine Workers of America.

2. That we declare in favor of continuing the present agreement of a mutual exchange of transfer cards.

3. We favor co-operation of the organizers of the two unions in organizing the non-union coal miners and metal miners in every section of the American continent.

4. We recommend to the Western Federation of Miners that they make application for affiliation with the American Federation of Labor, on condition that the present jurisdiction of the Western Federation of Miners and United Mine Workers will be recognized by the Executive Council of the American Federation of Labor.

5. We declare in favor of forming a mining department under the jurisdiction of the American Federation of Labor to control the mining industry of the American continent, along similar lines to those departments which are now organized under the jurisdiction of the American Federation of Labor.

6. In the event that this general outline is ratified by representatives of the United Mine Workers of America and the Western Federation of Miners, either in convention

or by a referendum vote, all details to bring about a better working alliance to be referred to the International Executive Boards of the Western Federation of Miners and the United Mine Workers of America.

7. That whatever agreement this joint committee may reach is tentative and not binding on either organization, but subject to the action of each organization, either of whom has the right to accept, reject or modify this proposition, and nothing shall be binding on either organization, unless ratified by both.

"This general proposition was ratified by the members of the Western Federation of Miners. Representatives of the United Mine Workers of America and representatives of the Western Federation of Miners met in Washington, D. C., with the Executive Council of the American Federation of Labor to arrange the granting of a charter. A conference of representatives of the United Mine Workers and the Western Federation of Miners together with representatives of the Executive Council of the American Federation of Labor, held another conference in Indianapolis to agree upon the granting of a charter to the Western Federation of Miners, but without success.

"The United Mine Workers' delegation to the Convention of the American Federation of Labor at St. Louis introduced the following resolution:

> Whereas, The Western Federation of Miners have applied for a charter of affiliation to the American Federation of Labor, with similar jurisdiction to be accorded to them that is now accorded to the United Mine Workers of America.
>
> Whereas, We believe that the Western Federation of Miners should be affiliated with the American Federation of Labor, and accorded the same rights and privileges as the United Mine Workers of America in their jurisdiction of men working in and around the mines, to be organized under the Western Federation of Miners.

> Resolved, That it is the sense of the delegates representing the Thirtieth Annual Convention of the American Federation of Labor that the Western Federation of Miners should be granted a charter of affiliation, with jurisdiction of employes working in and around the metalliferous mines under their present organization and that the officers and Executive Council of the American Federation of Labor are hereby instructed to issue to the Western Federation of Miners a charter of affiliation with the American Federation of Labor on that basis. On behalf of the United Mine Workers of America.

"The resolution, together with the report of the Executive Council, was referred to a special committee which reported to the Convention of the American Federation of Labor, recommending that a charter be granted to the Western Federation of Miners with a limited jurisdiction.

"It is to be regretted that, owing to technical objections of representatives who believe strictly in the trade idea of labor unions, a charter of affiliation with the American Federation of Labor was not granted to the Western Federation of Miners.

"I am still of the opinion that a charter should be granted to the Western Federation of Miners, giving to them similar jurisdiction over the men working in and around the metalliferous mines as has been conceded to the United Mine Workers of America. We should renew our efforts and determination to do everything within our power to secure a charter for the Western Federation of Miners. We should form a closer alliance in order that all the mine workers on the American Continent may finally be enrolled in one Union, fighting in a common cause for the industrial emancipation of the mine workers of the world."

EXPENDITURES of the United Mine Workers of America for the year 1910, as published in the United Mine Workers' Journal in its issue of January 26, 1911; otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 2. [Record pp. 707, 563.]

(438) "EXPENDITURES.

	Salaries and Expenses.	Supplies.	Office Expenses.
1909.			
December	$21,152.38	$19.70	$703.38
1910.			
January	20,182.55	529.67	753.68
February	16,452.99	432.94	383.22
March	22,571.66	824.73	431.44
April	16,639.39	1,041.79	374.35
May	20,947.90	448.55	320.54
June	19,100.31	535.36	832.24
July	18,957.52	319.10	450.13
August	18,087.08	47.65	337.98
September	15,308.72	12.85	339.95
October	12,744.65	224.15	331.95
November	14,097.33	140.00	336.93
	$216,242.48	$4,576.49	$5,595.79

	Printing.	Journal.	Telephone, Postage and Express.
1909.			
December	$66.25	$910.78	$630.75
1910.			
January	644.38	498.46	326.92
February	1,701.30	2,280.39	454.64
March	6,328.10	1,246.90	412.08
April	66.25	1,207.74	315.67
May	842.00	1,234.37	699.45
June	8,706.70	1,107.71	552.30
July	175.75	1,172.94	689.07
August	333.11	1,032.05	363.89
September	381.60	711.37	622.83
October	3,245.64	1,084.87	655.70
November	254.25	1,459.77	1,412.40
	$22,745.33	$13,947.33	$7,135.70

	Aid.	Miscellaneous.	Total.
1909.			
December	$80,542.18	$7,822.36	$111,847.76
1910.			
January	76,148.85	28,853.58	127,938.09
February	71,943.03	27,555.50	121,204.01
March	70,300.00	29,309.66	131,424.57
April	142,342.51	8,455.05	170,442.75
May	134,850.00	3,193.03	162,535.84
June	168,985.50	2,528.30	202,348.42
July	161,118.54	2,002.16	184,885.21
August	133,165.00	27,008.10	180,374.86
September	147,950.00	12,562.45	177,889.77
October	157,750.00	27,575.69	203,612.65
November	186,944.81	512.22	205,157.71
	$1,532,040.42	$177,378.10	$1,979,661.64"

INCOME of the United Mine Workers of America for the year 1910, as published in the United Mine Workers' Journal in its issue of January 26, 1911; otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 3. [Record pp. 707, 604, 605.]

(439) "INCOME.

1909.	Tax.	Supplies.	Journal.	Assessment.	Miscellaneous.	Total.
December	$73,130.76	$522.89	.....	.....	$537.31	$74,190.96
1910.						
January	70,982.38	544.29	.....	$20.00	683.57	72,230.24
February	63,403.31	579.37	$2,537.96	.....	5,013.04	71,533.68
March	77,686.07	729.79	.....	.....	429.26	78,845.12
April	59,125.69	896.55	1,338.94	.....	319.49	61,680.67
May	29,712.75	682.95	685.18	.....	669.79	31,750.67
June	43,061.63	641.11	421.65	45,354.49	100,209.61	189,688.49
July	50,688.82	475.11	.....	118,392.25	25,597.37	195,153.55
August	49,585.71	491.21	1,296.11	112,123.48	341.44	163,837.95
September	51,760.53	667.22	.....	173,776.78	263.40	226,467.93
October	59,038.78	818.22	.....	190,953.32	32.48	250,842.80
November	66,055.85	631.24	2,028.11	184,306.21	391.25	253,412.66
	$694,232.28	$7,679.95	$8,307.95	$824,926.53	$134,488.01	$1,669,634.72

INCOME.

Tax	$694,208.28	[694,232.28]
Supplies	7,679.95	
Journal	8,307.95	
Assessment	824,950.53	[824,926.53]
Miscellaneous	134,488.01	
Total	$1,669,634.72	

EXPENDITURES.

Salaries and expenses	$216,242.48
Supplies	4,576.49
Office expenses	5,595.79
Printing	22,745.33
Journal	13,947.33
Telephone, postage and express	7,135.70
Aid	1,532,040.42
Miscellaneous	177,378.10
Total	$1,979,661.64

RECAPITULATION.

Balance on hand, December 1, 1909	$470,820.69	
Income, December 1, 1909, to November 30, 1910, inclusive	1,669,634.72	
	$2,140,455.41	
Expenditures, December 1, 1909, to November 30, 1910, inclusive	1,979,661.64	
Balance on hand December 1, 1910	$160,793.77	
Amount on deposit, Edwin Perry		$51,666.51
Amount on deposit, strike account		77,753.25
Amount on deposit, Capital National Bank		40,169.04
Amount on deposit, Union National Bank		35,035.62
Total amount on deposit		$204,624.42
Outstanding checks		43,830.65
Balance on hand December 1, 1910		$160,793.77"

ANNUAL REPORT OF INTERNATIONAL AUDITORS showing Income and Expenditures for the year 1910, as published in the United Mine Workers' Journal in its issue of January 26, 1911, otherwise known in the record of the case of the Hitchman Coal & Coke Company against John Mitchell and others as Lewis' Exhibit No. 4. [Record pp. 707, 605.]

(440) "ANNUAL REPORT OF INTERNATIONAL AUDITORS.

"Columbus, Ohio, January 17, 1911.

"To the Officers and Delegates of the Twenty-Second Annual Convention of the International United Mine Workers of America, in Convention here Assembled:

"We, the undersigned auditors of the International United Mine Workers of America, have examined the books and accounts of Secretary-Treasurer Edwin Perry, commencing December 1, 1909, and ending November 30, 1910, and beg leave to submit our findings for your consideration.

INCOME.

Tax	$694,232.28
Supplies	7,679.95
Journal	8,307.95
Assessment	324,926.53
Loans from districts	125,160.00
Miscellaneous	9,328.01
Total	$1,669,634.72

IN CENTER

EXPENDITURES.

Salaries and Expenses	$216,242.48
Supplies	4,576.49
Office expenses	5,595.79
Printing	22,745.33
Journal	13,947.33
Telephone, postage and express	7,135.70
Aid	1,532,040.42
Refunded loan to District No. 6	25,000.00
Miscellaneous	152,378.10
Total	$1,979,661.64

RECAPITULATION.

Balance on hand December 1, 1909	$470,820.69
Income from December 1, 1909, to November 30, inc., 1910	1,669,634.72
Total	2,140,455.41
Expenditures from December 1, 1909, to November 30, inc	1,979,661.64
Balance on hand December 1, 1910	$160,793.77

Indianapolis, Ind., December 22, 1910.

Messrs. John J. Mossop, Albert Neutzling, William Donaldson, Auditors, U. M. W. of A.:

Gentlemen: We beg to advise you that the following are the balances to the various accounts of the United Mine Workers of America, November 30, 1910:

Edwin Perry, Secretary-Treasurer	$51,666.51
United Mine Workers of America	40,169.04
Strike Fund	77,753.25

Yours truly,

ANDREW SMITH, Vice-President.

Indianapolis, Ind., December 22, 1910.

Messres. John Mossop, Albert Neutzling, William Donaldson, Auditors, U. M. W. of A.:

Gentlemen: This is to certify that there was on deposit at the close of business December 1 to the credit of the United Mine Workers of America, thirty-five thousand, thirty-five dollars and sixty-two cents ($35,035.62).

Yours truly,

UNION NATIONAL BANK,
ROSS H. WALLACE, Cashier.

Total amount on deposit.....	$204,624.42
Outstanding checks.....	43,830.65
Balance on hand December 1, 1910.....	$160,793.77

Respectfully submitted.

JOHN J. MOSSOP,
ALBERT NEUTZLING,
WILLIAM DONALDSON,
Auditors."

Supreme Court of the United States

OCTOBER TERM, 1915.

No. [redacted] 11

HITCHMAN COAL AND COKE COMPANY, *Appellant*,

vs.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al*,

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said Court.

Brief of George R. E. Gilchrist and Hannis Taylor for the Hitchman Coal and Coke Company, Appellant and Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1915.

No. 241

HITCHMAN COAL AND COKE COMPANY, *Appellant*,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said Court.

BRIEF OF GEORGE R. E. GILCHRIST AND HANNIS TAYLOR FOR THE HITCHMAN COAL AND COKE COMPANY, APPELLANT AND PETITIONER.

The decision of the Circuit Court of Appeals is reported in 131 C. C. A. 425, and 214 Federal 685.

The decision of the District Court for the Northern District of West Virginia, Dayton, Judge, reversed by the Circuit Court of Appeals, is reported in 202 Federal 512.

Each decision is a final decree upon the merits.

STATEMENT OF THE CASE.

THE PLAINTIFF.

Is a West Virginia corporation operating a coal mine at Benwood, West Virginia, near Wheeling.

Record, p. 249, l. 45–49.

Its Mine.

When and Why Opened. 1902.

(*a*) Primarily, to supply coal to the B. & O. R. R. engines at its yards at Benwood, West Virginia, four miles below Wheeling, for which trade a contract was made before the mine was opened. Such coal is termed "Engine Coal."

(*b*) Secondarily, to ship coal to the general markets, local and otherwise, as its production became great enough in the course of its development to admit of that trade. Such coal is termed "Commercial Coal."

Record, p. 248, l. 20–43.
Record, pp. 249, 250, l. 1–6.

Its Trade.

About half engine and half commercial.

Record, p. 253, l. 26–34.

Engine Coal.

Engine coal must be mined and delivered with regularity and without the shut-downs that are incident to strikes.

Record, p. 282, l. 9–23.

Lake Coal.

The same is true as to mining coal for the lake trade. It can only be mined and shipped while lake navigation is open.

Record, p. 282, l. 2–5.
Record, p. 296, l. 8–46.

Ohio Mines are Competitors.

Mines in Ohio near Wheeling are plaintiff's competitors in supplying engine coal and in shipping coal for the lake trade.

Record, p. 571, l. 1–3.

Were members of Operators' Association holding joint conferences with United Mine Workers. Lorain Coal & Dock Co. was such a competitor.

So was the Pursglove mine.

Record, p. 477, l. 51.
Record, p. 478, l. 1–3.
Record, p. 482, l. 43–51.
Record, p. 483, l. 1–36.
Record, p. 485, l. 5–30.
Record, p. 485, l. 32–47.
Record, p. 486, l. 1–18.

These Ohio mines are union, that is, they are operated under contracts entered into between the operators and officials of the United Mine Workers of America.

Hitchman Mine and its Relation to the Union.

Opened up and was run non-union to April 1, 1903, was run union to April 16, 1906, and has run non-union since June 12, 1906.

Record, p. 249, l. 1–13.
Record, p. 255, l. 28–51.
Record, p. 256, l. 1–7.
Record, p. 272, l. 45–49.
Record, p. 273, l. 1–35.
Record, p. 301, l. 13–18.
Record, p. 518, l. 50, 51.
Record, p. 249, l. 1–13.
Record, p. 250, l. 25–41.
Record, p. 256, l. 36–50.
Record, p. 257, l. 1–21.
Record, p. 273, l. 30–51.

Record, p. 274, l. 1–6.
Record, p. 276, l. 25–41.
Record, p. 301, l. 13–18.
Record, p. 518, l. 50, 51.

Idle 164 Days while Running Union.

Due to strikes called by union officials.

Record, p. 263, l. 12–17.

No Strike, Shut-Down, nor Suspension while Running Non-Union.

The Hitchman Company never had any shut-down or suspension even for one day running non-union.

Record, p. 274, l. 33–36.

No strike.

Record, p. 263, l. 16, 17.

Has lost no time by reason of labor troubles since June 12, 1906.

Record, p. 254, l. 32–34.

Makes Individual Contracts with its Employees.

Since resuming non-union June 12, 1906, the Hitchman Company has made individual contracts with its employees whereby it aims to protect itself against the United Mine Workers of America in the efforts of that organization to unionize its mine again, and that agreement is evidenced by memorandum cards, signed by the men, reading as follows:

> "I am employed by, and work for, the Hitchman Coal & Coke Company, with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company, and that the Hitchman Coal & Coke Company is run non-union, and agrees with me that it will run non-union while I am in its employ. If at any time

while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any effort amongst its employees to bring about the unionizing of that mine, against the company's wish. I have either read the above or heard same read."

Record, p. 264, l. 42–52.
Record, p. 265, l. 1–5.
Record, p. 284, l. 37–53.
Record, p. 285, l. 1–4.
Record, p. 689, l. 45–50.
Record, p. 690, l. 1–13.

Hitchman Mine Pays Union Scale.

The wages paid by the Hitchman Company are the same except in one instance and in that instance a little better than the wages paid by mines operated under the United Mine Workers' scale.

Record, p. 263, l. 18–27.

Union Men Work only 16 or 17 Days per Month on an Average.

In the unionized State of Ohio 16 or 17 days in the month constitute a high average and many engaged in the mines decline to labor more than 12 or 14 days.

Record, p. 676, l. 48–51.

THE DEFENDANTS.

Are Higher Officers of Union.

Are the national officers of the United Mine Workers of America, the officers of District No. 6, which covers the State of Ohio and the Northern Panhandle of West Virginia, and the officers of Sub-district No. 5 of District

No. 6, which covers the southeastern portion of Ohio and the Panhandle in West Virginia.

Record, p. 550, l. 36–51.
Record, pp. 551, 552, l. 1–43.
Record, p. 575, l. 42–46.
Record, p. 630, l. 25–49.
Record, pp. 631 to 635, l. 1–45, incl.
Record, p. 250, l. 17–37.
Record, p. 256, l. 17–19, l. 23–50.
Record, p. 257, l. 1–23.
Record, p. 358, l. 17–36.
Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.
Record, p. 453, l. 41–47.
Record, pp. 454, 455, l. 1–18.

Reason for Including West Virginia Panhandle in Ohio District.

The reason for including the West Virginia Panhandle in the Ohio District is that the vein of coal mined in southeastern Ohio and in the West Virginia Panhandle is the same and that mining conditions and markets are the same, the latter being competitive.

Record, p. 571, l. 1–3.
Record, p. 486, l. 1–18.

Voluntary Organizations.

The United Mine Workers of America and their district and their sub-district organizations are voluntary and no one of them is incorporated.

Record, p. 505, l. 27–29.

Membership.

They have a membership of about 300,000.

Record, p. 559, l. 31–33.
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

Residence of Members.

More than two-thirds of this total membership is in the States of Pennsylvania, Ohio, Indiana, and Illinois.

Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

Contract for and Enforce "Closed Shop."

In signing the scale for the operation of a union mine the officials of the United Mine Workers contract for and enforce the closed shop, under which agreement no man may work at the mine who is not a member of the United Mine Workers of America.

Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 618, l. 25–50.

Closed Shop States.

States in which closed shop agreements are made and enforced by the United Mine Workers of America:

Ohio, Indiana, Michigan, Illinois, Iowa, Kansas, Missouri, Oklahoma, Texas, Arkansas, part of Kentucky, part of British Columbia, part of Washington, all Wyoming, all Montana, part of Central Pennsylvania and greater part of Western Pennsylvania.

Record, p. 618, l. 25–41.

The Controversy Between Plaintiff and the Defendants.

Hinges upon efforts of the United Mine Workers of America to carry out their contracts with union operators and to advance the cause of their own union.

(*a*) Chicago Agreement of 1898.

(*b*) Resolution No. 8 of 1907 Convention of Sub-district No. 5 of District No. 6, U. M. W. of A.

Chicago Agreement of 1898.

We quote from Judge Dayton's opinion, Record, p. 665, beginning with line 24: "It appears clearly established

that in 1898 this organization had a membership of over 30,000, the bulk of which resided in Western Pennsylvania, Ohio, Indiana, and Illinois; that in that year they sought and secured a joint conference with an organization of coal operators, the employers of its members, in these States; such conference was had and as a result a distinct agreement was entered into. From the stenographic report (admitted to be correct) of the "Proceedings of Joint Conference of Coal Operators and Coal Miners of Western Pennsylvania, Ohio, and Indiana," subsequently held in Cincinnati, March 8–29, 1910, filed in this cause as "McKinley's Exhibit No. 4," the purport of this Chicago Agreement is fully disclosed. In reply to certain propositions presented by the defendant here, Mr. Lewis, then President of the Union, Mr. Maurer of Ohio read on behalf of the operators a statement from which I quote:

> "'The answer of the operators to the proposition of the miners, in order to be thoroughly understood, makes it necessary to recall the history of wage agreements, and trace with brevity the conditions under which we have from time to time met as operators and miners and effected such agreements, so as to show connectedly the factors which have controlled both parties up to the present time.
>
> "'In the years prior to any substantial agreement the conditions of the mining industry were very unsatisfactory in their influence upon both the operators of mines and the miners in the various competitive districts. A remedy for this state of chaos was earnestly sought by both parties, and resulted in the early '80's in agreements between the operators and miners of Western Pennsylvania, Ohio, Indiana, and Illinois. In 1886 the institution of contracts between miners and operators was effected. These contracts operated with varying degrees of success and failure for some years and until about the year 1894, when

these relations were dissolved. The conditions again took on an aspect of demoralization, which continued with varying degrees of intensity, numerous strikes, lockouts, and consequent loss in wages and profits and sometimes injuries to property, until in the year 1898.

"'During this period the conditions were such, both as to the price received for coal by operators and the price paid to the miners, that it became imperative for the interests of each to reestablish in some form the former agreements. At this time the basing price of the Hocking district was 56 cents per ton for screened lump coal. For a short time immediately preceding that year, the mining rate was 51 cents. The working hours in the districts, parties to the early agreements, were from nine and a half to ten hours per day.

"'*The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sustained contractual relations with that organization. Some of the more important factors influencing these conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements.*

"'In order to correct these most harmful conditions a joint convention of operators and miners of Western Pennsylvania, Ohio, Indiana, and Illinois, at the solicitation of the miners' officials, was called to meet at Chicago in January, 1898. At this convention an interstate joint agreement was established. After a long session of deliberation and negotiation, continuing over a period of about three weeks, the basing price for mining in Ohio and Pennsylvania was increased from 56 to 66 cents per ton, an advance of practically 18 per cent, and *both the existing price and method of screening and weighing of coal was made uniform throughout the entire territory covered by the terms of the contract.* As a result of the Chicago con-

vention a representative meeting was subsequently held at Columbus, at which a uniform day-wage scale was established for inside labor. All of these concessions made by the operators were of substantial benefit to the miners.

" 'In addition to the advance in the price of mining and the other important concessions enumerated, the action of this convention had an effect of the most far-reaching and salutary character, not alone for the mine workers, but for the entire labor world, in the recognition of eight hours as constituting a day's labor, this being the first recognition of the eight-hour day by any large body of employers in the United States.

" '*The granting of the eight-hour day by the operators, after making these numerous other important concessions, was with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting States adequate protection against the competition of the unorganized fields. From year to year they have been called upon to fulfill that promise.*

" '*The operators*, parties to that agreement, at the time of its execution *felt* that *it was* absolutely *necessary* to the safety of their investments *that they be protected from the encroachments upon them by their competitors of the unorganized fields.* The tonnage of the non-union fields entering into the competitive market, particularly of West Virginia and Kentucky, at that time was not so large, as it was aggressive and threatening, the total tonnage entering directly into competition from those fields being approximately 600,000 tons. Since, however, coal from this unorganized territory coming into direct competition with Ohio and Pennsylvania has so increased that a fair estimate places this competitive tonnage at 8,000,000 tons, which does not include the tonnage from non-union fields adjacent to the Pittsburgh district. The markets in western and northern Ohio, eastern Indiana, and Michigan, from year to year, have been encroached upon by coal from the unorganized districts until at the present

time nearly 50 per cent of the coal consumed in these markets is supplied from fields operated with non-union labor. To find a market for the union tonnage displaced in the territory named, the mine owners of Ohio and Pennsylvania within the past five years, have made heavy investments and built and equipped large coal docks to secure the markets at the upper lake ports; but these operators now find the non-union coal rapidly commanding a heavy percentage of this market, when, at the time of the Chicago Agreement the non-union fields had but a small fraction of this trade, and unless these conditions are corrected the markets so secured will soon be replaced by the tonnage from West Virginia and Kentucky.

" 'Though in the very heart of the consuming territory, on account of the wide difference between the price of labor in the organized fields of Ohio and Pennsylvania and the unorganized fields of West Virginia, Kentucky, and the fields adjacent to the Pittsburgh district, Ohio and Western Pennsylvania are rapidly losing the markets at their very doors.

" 'It is evident to any candid observer that *such unfair conditions should not be imposed upon the operators and miners of the unionized territory.* That the interests of operators and miners are mutual in every respect does not admit of controversy. *Each is equally concerned in rescuing this business from its present peril.*

" 'Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for twelve years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time, to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concessions. It is now, in

> our view, not only to the interest of the miners, but their duty, as well, to do their share to meet these conditions.'

"The Chicago agreement and its purposes as set forth by Maurer were subsequently admitted. In proof of this I quote from the remarks of Mr. Green, a defendant here, as follows:

> "'Our friend, Mr. Maurer, in the well prepared statement he has submitted to this convention, referred to an obligation he claims was assumed by the United Mine Workers of America in the meeting at Chicago in 1898. Mr. Chairman and gentlemen, we agreed to a certain extent that was right; but I do not believe it was ever understood that one party to this contract was obligated exclusively to carry out that promise. I believe it was intended to be a mutual understanding and that both sides would cooperate in trying to organize West Virginia and other non-union districts in order to extend this business like basis of adjusting our differences to those fields.
>
> "'Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. *Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia.*

"'Is the fact that we have spent hundreds of thousands of dollars appropriated from the small earnings of our people in the Central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does not that show that we have honestly, sincerely, and diligently attempted to redeem it? I believe, gentlemen, that if the operators had done one-half as much as the miners have done, if they had even cooperated with us in what we have done, West Virginia would be organized and the operators and miners of that State would be here today participating in this joint movement.'

"The 'plea in the nature of confession and avoidance' contained in the last paragraph of Mr. Green's argument had been advanced by Mr. Lewis and was urged by him in these words:

"'We want to say, and we say it kindly but positively to the gentlemen on the other side of the house, "Get together and organize, not only in Ohio and West Virginia—and I know a lot of you have influence enough over there, if you do as much work as we do, to organize them."'

"But at the same time, it is manifest that he recognized the danger of the *public* declaration of such purpose for, prior in the discussion, he had said:

"'If I have a proper conception of this movement it means the uplifting of the industry. If I have a proper conception of this movement it does not mean that either operators or miners can *publicly* say, "We will organize West Virginia in order that the miners of Ohio or Indiana can get more work." That has done more to prevent the organization of West Virginia than anything I know of. Coupled with that is the attitude of Ohio and Western Pennsylvania, probably of Indiana, and I know of some Illinois operators who have gone to West Virginia and have built human

fences around their properties. I mean by that that they surround their properties with pickets, men who, even when the organizers of the United Mine Workers want to walk along a country or township road passing through the properties, is met at the property line and compelled to state what his business is before he can walk on the public highway. Men will say that that is not possible in a free country, but I say it is possible. It is possible in some mining districts in this country, and I believe they are in the United States, because they are in West Virginia, Kentucky, Tennessee, Alabama and a few places in Pennsylvania.'

"I further quote from the remarks of Mr. Feehan of Pennsylvania, another member and representative of the Union, as follows:

"'We are unwilling that the non-union operators and miners of West Virginia or of any other coal field shall set the standard of prices and the standard of living for the intelligent operators and miners engaged in the mining industry in the States that are represented here. I believe that is the honest opinion of all of the operators who are present. It is unnecessary for me to refer to the fact that many of the operators who are represented here in this joint conference have interests in West Virginia and in other non-union coal fields whose products are going into the markets they are complaining of. It is true that they have contributed, with the other operators who are engaged in the industry in those States and districts, to keep the organization from obtaining a hold or becoming a factor in the industry in those fields, of which they complain. If they will withdraw their objections to the establishment of the organization in those fields, I am sure they would not be confronted with those conditions, and we would be able to remove the evil in a very brief time. The practices resorted to by the non-union operators of West Virginia are un-American.'

"Also from Mr. Maurer's reply:

"'We have a condition confronting this convention as grave as confronted the convention that met in Chicago in 1898. We have this great tonnage from the unorganized fields of West Virginia and Kentucky that is absolutely taking away from us our markets and taking away the employment which belongs to you. It is a condition that not one of us must meet, but that both of us must meet, not only for our protection but for your protection as well. The cost of living is only incident to it, and the mine-run basis is only incident to it. Every man who swings the pick will agree with me that we can pay you no more for mining coal than we can get for the product of your labor. And I am going to put up to you, I am willing to concede to this covention, that West Virginia is not organized; that for ten or twelve long years the miners have done everything in their power to organize that field, and that they did it diligently and earnestly is admitted, nevertheless that field today is unorganized. Nobody is to blame. Neither the operator nor the miner is to blame for that condition; but it is a condition that we must meet and each one bear his share of the burden. Eight million tons of the coal from that unorganized state is today taking away from you the product of your labor, and taking away from the operator every cent of profit he ever had in the business. You cannot correct that. *You may say to us, "You must get together and agree upon prices; you must get the West Virginia operators in and agree upon a price." Why, every man who stands here knows that if the operators in the State of Ohio attempt it they do so in violation of the Valentine law and that the penitentiary stares them in the face. Every miner here knows that if in the States of Ohio and West Virginia the operators were to attempt anything of the kind, they would violate, not only the Valentine law of Ohio, but they would violate the Sherman Anti-trust Law.* It is easy to tell us what to do, but you should also tell us how to do it. Does any miner here believe that the

operators of the State of Ohio have not tried to get the best price they can for their commodity? We have some interest in our business, we have our money invested in it, and I assure you that for two years the miners and the railroads have got every cent there was in it, and more too.

"'However, we stayed in the market, we gave you employment. Now it is up to the miners of this State to meet those conditions and bear their share of that burden. I want to tell you here that if the miners of the State of Ohio insist on an increased price of their coal they will lose every bit of business they have on the Great Lakes. You have already lost your commercial business. Who supplies Michigan today with commercial coal? Who supplies Detroit? Who supplies Toledo? Who supplies Marion? Who supplies Columbus, right in the heart of the Hocking District? Who supplies Eastern Indiana? Who supplies all of Western Ohio? Tell me, tell me, you miners from the Hocking Valley, who have seen your mines lay idle while West Virginia coal in train load lots has gone past your mines! Tell me, you miners in Eastern Ohio, who have stood idly by and watched Fairmont coal in train load lots taking your markets! Ninety per cent of that market is supplied by West Virginia coal from the non-union fields. I say to you the cost of living does not enter into this. I say to you these other elements did not enter into this. I say to you that the best price we can get for our coal under the competitive conditions will not admit of it.

"'You miners who mine coal in the State of Ohio, and, if you please, in Western Pennsylvania, know that every bit of the trade I refer to was formerly supplied by Ohio and Pennsylvania, even down to the gas business, but it is now supplied by West Virginia.'

"And from Mr. Lewis' rejoinder:

"'Now the argument is made that we ought to turn our attention to West Virginia and stop the competition from that State. I admit that argument

is good; but in order for that argument to have strength it is necessary for the operators at home to stop the kind of guerilla warfare they have among themselves.

"'Mr. Maurer has very well said—and I am glad he has brought the subject up—that we say to the operators, "Get a better price for your coal in order that you can pay us a better price for our labor." Then he supplements that statement, and very properly, by the statement that if they were to organize to get a better price for their coal they would be haled into court under the provisions of the Valentine law of Ohio and possibly sent to the penitentiary. Probably we would too. He supplements that statement by asking us to tell them how to get a better price for their coal. I am going to tell you. First, stop making war on the railroads. The poor fellows need help! And this proposition is going to be no joke. I recognize what the mining industry is; I recognize that it is more important than transportation. I recognize that the Valentine law of the State of Ohio was put on the statute books by a lot of political demagogues who believe they were working in the interests of the dear people—and they did it once for the dear people and about twenty times for themselves! I recognize that this industry does not occupy the plane among the industries of the country that it ought to occupy, because we have met in joint conventions year after year and discussed our wage relations instead of devoting some of our time to going out and telling certain people to keep their hands off our business. The railroad companies of this country say to the mine owners, "We want our fuel at a certain rate." The mine owners, in order to get a part of the fuel trade of the railroads, put down the prices in some instances to cost, not because of competition, but because of your desire to get a part of that trade. Then after securing a part of that trade the official representatives of the railroads are in so close touch with the leaders of the manufacturing industries of our country that the steam

trade, as we call it, buys fuel almost at as cheap a price as the railroad company. Then in order to make ends meet somebody must pay a better price, and it is usually the domestic consumers, the masses of the people. And that is where the political demagogues get their work in, because they are the people who have votes and that is why they have anti-conspiracy laws placed on the statute books.'

"Mr. Chapman of Ohio, an operator, contributed to the discussion some figures, as follows:

"'It is an admitted fact that there is a difference today of between 40 and 50 cents per ton in the cost of production of coal in the union fields of Ohio and the non-union fields of the trade east and south of us in West Virginia, Kentucky, Tennessee, and Alabama, and three of those States, gentlemen, are competitors in the markets of Ohio coal—West Virginia, Kentucky, and Tennessee.

"'The production of West Virginia for 1907 was 40,043,311 gross tons, 44,091,000 being net tons. In 1908 the production was 44,091,000 net tons. In 1909 the production was 44,495,000 net tons.

"'Ohio's production for 1907 was 32,365,949 net tons; in 1908, 26,287,800 net tons, and in 1909, 27,756,172 net tons.

"'There are some more interesting statistics connected with this proposition. The following are the numbers of days the miners worked in West Virginia during the years from 1904 to 1909: 1904, 209; 1905, 213; 1906, 237; 1907, 234; 1908, 211; 1909, 192; making an average of 216 days of ten hours per day, or a total of 2,160 hours work each year. Reduced to eight hours per day would be an average of 270 days each year. Ohio worked in 1904, 164 days; 1905, 171; 1906, 175; 1907, 204; 1908, 157; 1909, 165 days, an average for the six years of 173 days, or 97 days less than the average work in West Virginia on the eight-hour basis.'

"And then said:

"'Now, gentlemen, it is useless, after the discussions that have taken place here by the gentlemen who preceded me, to discuss at any great length the market that the non-union fields have taken from Ohio in the past. It has been well said that they are putting coal into Columbus, into Michigan, into Detroit, taking the markets that heretofore have been enjoyed by Ohio coal. In the city of Athens, Ohio, which is within three miles of several of the large producing Hocking Valley mines, West Virginia coal is being sold. The gentlemen who are familiar with the situation have informed me that over 2,000 tons of West Virginia coal was sold there between the first of September and a short time ago. Even in the town of Logan, one of the points where Hocking Valley gathers its trains to start its coal out to the markets they have, West Virginia is taking that market. The gentlemen who were in the Toledo convention and returned on the Hocking Valley train, if they had their eyes open, would have seen full solid trains of Norfolk and Western coal passing up over that road to Toledo. There was not a single car of Hocking Valley coal in the trains. At the town of Bowling Green, twenty miles south of Toledo, when I came through a few weeks ago, I saw every car of coal standing on the side tracks were loaded with West Virginia coal.

"'*Think of the proposition, gentlemen! Toledo, the central point at which several Ohio coal roads bring everything, and 60 per cent or more of the coal being consumed there is from West Virginia! The Pennsylvania people have a road coming in there, the Wheeling and Lake Erie have a road coming in there, the Toledo and Ohio Central goes in there, the Hocking Valley goes in there, and the D. T. & I. goes in there on a direct line. Now just consider that proposition for a minute, and is it any wonder that Ohio coal operators and interests are in the condition they are today with that state of affairs?*

"It was well said by Mr. Lewis and Mr. Penna that

people buy their fuel where they can buy it cheapest. I am not through with this proposition. I want to bring you to the city we are now holding this convention in and give you a few figures. In 1897 Pittsburg shipped by river 1,401,000 tons of coal to the city of Cincinnati. The Kanawha region shipped by river 717,000 tons of coal. The Kanawha field shipped by rail 704,000 tons. The other interests from West Virginia, Kentucky and Tennessee shipped here 275,400 tons. Now we will come to the year 1908.

"'Pittsburg District shipped 535,000 tons to the city of Cincinnati in 1908 as against 10,041,000 (manifestly a mistake—should be 1,401,000) in 1897. Kanawha shipped by river 867,000 tons in 1908, as against 717,000 tons in 1897, and Kanawha shipped by rail in 1908 1,848,000 tons, as against 462,000 in 1897. The Pocahontas District, the Tennessee and Alabama fields shipped in 1908 by rail 1,512,000 tons to the city of Cincinnati as against 275,400 in 1907.'

"The reasons why West Virginia coals are able to supplant those of Ohio, Western Pennsylvania, Indiana and Illinois, operations in which both sides of this conference were so vitally interested, are contributed by both operator and mine representative.

"By Mr. Chapman, operator:

"'It is not surprising that West Virginia is on a mine-run basis. Why? Because a large per cent of all the fine coal that is produced in that state is made into coke. They even crush the lump coal after they produce it to make coke, which is much more valuable product to them and yields them more returns than the raw coal will. We haven't any of those coals in Ohio or Indiana and they have none of them in Western Pennsylvania outside of the coking coal as it is known there.'

"By Mr. Feehan, mine representative:

"There is one point I want to bring out that has not been made clear, and that is the disadvantage the

operators of Eastern Ohio are put to in competing for the markets against the operators who have interests in West Virginia, and that is the character of the veins. In West Virginia it is not an uncommon thing to have them develop from six to ten feet of clean coal. There is no slate to remove; it is easily mined; it is a good grade of coal; it can find a market; and when you take into consideration the cost of producing a ton of that coal compared with the little five-foot vein of coal in Eastern Ohio with its many impurities and its thick slate, and the Pittsburg District, with its weak roof, where in many cases it is difficult to operate a machine, as well as many other natural disadvantages the operators have, herein lies the cause of the competition more than in the cost of labor. The cost of labor is not the important factor that is crowding the eastern Ohio operators out of the market on the lakes or elsewhere. It is the natural disadvantages that is doing it. There is one advantage the operators in Eastern Ohio have, and that is their geographical situation. They are nearer the lake markets and other markets, and I believe they have an advantage of from 15 to 25 cents a ton in freight rates. I understand that when the decision of the Interstate Commerce Commission goes into effect they will have even greater advantages in freight rates. It is fortunate for them that they have these advantages. Were it not for their advantages in the matter of freight rates I am positive that many of the veins of coal now being worked in Ohio and elsewhere would be abandoned, and they would wait until the big veins with the greater natural advantages in West Virginia were worked out before they would again operate there. These factors have not been seriously enough considered heretofore."

"By Mr. Chapman:

"'In 1907 and 1908 the miners earned more money in West Virginia at the prices they were paid there than were earned by Ohio. In fact they earned from one hundred to one hundred and fifty dollars more

to the man. That tells the tale concerning that matter. * * *

"'The coals of West Virginia are said to be mined at about one-half the cost of producing Ohio coals and the West Virginia product has taken the Ohio markets to the full extent permitted by the difference in transportation expenses, leaving Ohio coals only such markets as may be near the mines, and as the means of transportation increases by which West Virginia coals are put farther into Ohio markets, the prospect of the Ohio mines is not bright.'

"I quote further from the remarks of Mr. Savage, one of the defendants here, as follows:

"'Mr. Savage, Ohio: I was surprised a minute ago to hear that some of the operators were not in sympathy with the men in trying to get a readjustment of their freight rates in Ohio. I know as one miner we did all we possibly could in giving testimony before the commission in Columbus, and from what I heard then I believed, and I believe now, that the operators were absolutely right in asking for this readjustment. I believe I can assure you that we will help you in every manner that we can to get that readjustment. But we would ask you, on the other hand, if we are willing to help you—and by helping you we agree we are helping ourselves—if you operators from Ohio and Pennsylvania will lend us the same assistance in West Virginia in getting the mining price up so that competition will not prevail. When we ask that what do we find? Operators have told me in years past that they were willing to have the miners organized in Ohio, but they were not willing that their miners should be organized in West Virginia. We find as great opposition on the part of the operators from this State who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union State. Go down there and practice what you preach in Ohio. Help us get the

protection of the law in that State and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that State. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of those men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe those contracts as religiously as the miners in Ohio, Pennsylvania, Indiana or any other State.'

"And finally from Mr. Zerbe of Ohio, an operator:

"'A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one State or another to furnish fuel for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon them burdens in the organized fields that do not exist in the unorganized fields. By reason of the fact that you cannot control in the production of this commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self-defense find it necessary, in order to carry out contracts and fulfill their obligations to those who take this commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated. * * *

"'We might argue this up one side and down another for a year and we would be no nearer a solu-

tion of this proposition. *We are*, when we get through, *right up against* the one proposition we cannot get through which has been created by *the competition brought to bear against us by the operators and the miners of West Virginia in the unorganized field.'*

"It is impossible to deny the conclusions to be drawn from all this. By reason of the natural advantages in the way of superior veins, roofs and quality, West Virginia coals can be mined for something like fifty per cent less than those of Ohio, Western Pennsylvania, Indiana, and Illinois, and then even, her miners can make better wages; the officers and members of this Union are almost wholly resident of Ohio, Western Pennsylvania, Indiana, and Illinois; in 1898 as an organization they entered into a direct contract with the operators of that field for and in consideration of an eight hour labor day and other concessions, to organize the West Virginia miners and, by reason of the control they would have under the Union's laws over such miners when so organized, 'protect' these operators in Ohio, Western Pennsylvania, Indiana, and Illinois from the existing open competition even then threatening the markets of such operators, especially in the West and the Lake regions. For the purpose of carrying out the agreement, this labor organization has, in the language of the defendant, Green, one of its officers, 'at various times spent hundreds of thousands of dollars trying to unionize West Virginia' and 'sacrificed human life in the attempt to redeem that promise.' Was this in the interest of and for the bettering of mine laborers in West Virginia? It is impossible to see how it could be for in this conference between

the operators and Union representatives in March, 1910, as we have shown, direct statistics were given by Mr. Chapman and not controverted, showing that the West Virginia miners, unorganized, were getting more work and more wages than miners in this unionized field of Ohio, Western Pennsylvania, Indiana, and Illinois. In illustration of this, it seems to me that I may properly refer to conditions as they exist today, as disclosed by a public report made to the Governor of the State of West Virginia by a commission appointed by him to investigate and report upon such conditions. The members of this commission were Bishop P. J. Donahue of the Catholic Diocese of this State, Capt. S. L. Walker of the State Militia, and F. O. Blue, State Tax Commissioner, men of the highest character and integrity. *From this report and current history, it appears that the effort to unionize West Virginia still continues and has more recently been directed to the Paint Creek and Cabin Creek fields in Kanawha County; that such efforts have led to such a condition of riot, bloodshed and general lawlessness as to require the Governor of the State to twice put the district under martial law to save life and property. I quote from the report as to the condition of the miners:*

> "'To this inquiry we have devoted special attention within the limits of the time and opportunity at our disposal, and after careful personal investigation, supplemented by a great body of formal sworn testimony sifted and tested by severe and exhaustive cross examination, this Commission has arrived at the unanimous conclusion that the general surroundings of the miners on Paint Creek and Cabin Creek respectively are very good, when compared with those of the miners of the few unionized plants on the right bank of the Kanawha and with those of the miners throughout the state and the nation. We have gone into their houses and carefully examined them. They are above the average of miners' homes in most places.'

"And as to wages:

"'A careful consideration of the evidence adduced leads us to the following conclusions:

"(1) The average annual wage of miners in West Virginia for the years 1905–11, inclusive, is $554.26.

"(2) The average annual wage of miners on Paint Creek and Cabin Creek is from $600.00 to $700.00.

"(3) The average wage on Paint Creek and Cabin Creek (non-union) is fully equal to if not greater than that of the miners in the very limited number of unionized plants in the State on the opposite bank of the Kanawha River."

"'These figures may appear small and inadequate, but, slender as they are, they exceed the average wage obtained in Illinois, a unionized state, which is but $510.86 a year. We have been unable to secure any official figures as to the average annual wage in the unionized States of Indiana, Western Pennsylvania and Ohio. But we are informed by experts and we believe that the average wage in the two States first mentioned probably falls a little below that prevailing in Illinois; while the annual wage in Ohio, owing to local mining conditions, falls a little below those of Western Pennsylvania. This classification, in the order of the rewards of labor, puts West Virginia at the head of the list. If we inquire into these figures more closely we find they are very substantially affected by several causes, among which comes first the unwillingness of a large number of the miners to work more than four days a week at the most. A minute examination of the payrolls discloses the fact that sixteen or seventeen days in the month constitute a high average, and that many engaged in the mines decline to labor more than twelve or fourteen days. This is particularly true of some of the native born miners and many colored men and results in the necessity of keeping twenty or thirty per cent more miners in a given operation than would be required if steady application to work were the rule. At several of the mines in the districts under investigation were found

men wholly illiterate and without any special knowledge or skill, other than that acquired by their daily experience, earning four to five and in some cases even six dollars a day of eight or nine hours; men with savings bank accounts of one or two thousand dollars and others who had purchased out of their savings small farms or other properties adjacent to the mines.'

"And as to the causes of the trouble.:

"'This arises, in our judgment, from the efforts of the United Mine Workers to organize the union in the whole chain of plants along said creeks. Their desire is to make the present strike region the place for the insertion of the thin edge of the wedge of Unionism with the ultimate aim of organizing the whole State. The frank declaration on oath of Mr. Thos. Cairns, Local President of District No. 17, would appear to put this intention beyond the region of doubt. The United Mine Workers' association contends that this is essential to the well being of the seventy-six thousand or more miners of West Virginia. That by this means and this alone can their lot be improved, their rights safeguarded, and the standard of living so raised as to bring it up to a level befitting a citizen, howsoever lowly, of this republic. All classes of people, recognizing the force of the adage "In union there is strength," do so organize. Even the operators themselves form associations; "Why," say the toilers, "should we also not unite in lawful combinations"? The operators cannot and do not resist this right as a general proposition, but their claim is that the peculiar industrial conditions in West Virginia would render it ruinous and therefore impossible for them to recognize the Union. The geographical position of this State is such, together with the small consumption within her own borders, that of her total coal output of over sixty millions of tons, she markets barely ten per cent within her own borders and ninety per cent or more must be hauled to the market through the competing territories of Pennsylvania, Ohio,

Indiana and Illinois known as the four competitive States; that the operators of said States have always on the floors of joint miners' and mine-owners' conventions shown fierce and undisguised hostility to this State, endeavoring in every way to crowd her out of the market and going the length of stating by the mouth of one of Pennsylvania's leading operators, that the opening of mines here at all was "an economic blunder." Resort has even been had to the Interstate Commerce Commission resulting in reduction of rates to the material advantage of the competitors of West Virginia operators in freight differentials. It has been claimed too, and with some appearance of probability, that the operators of the said four competitive States are hand and glove with the United Mine Workers in their attempts to unionize West Virginia so that the representatives of the coal interests of this State must go with their relative small representation into conventions to regulate conditions and prices and would come home having rates imposed upon them which, taking into consideration the heavy differentials in railroad hauls, would practically put them out of business and close every mine in the State. They decline, they say, to be wiped out in such fashion; they claim the right to settle their own affairs within the borders of their own State. Even if they come to terms with the district authorities of the United Mine Workers here in West Virginia those terms may not be approved at the headquarters at Indianapolis, and all the labored attempts at amicable adjustment may fall through. Further they claim that the few unionized mines in West Virginia do not and cannot obtain anything like an adequate return on the capital invested. And so, to probe this deplorable situation down to the bedrock of facts, the geographical position of West Virginia is largely responsible for all this industrial strife. Our retarded manufacturing development is also a contributing cause. The consumption of coal within our borders, as elsewhere noted herein, particularly by manufactories, is almost negligible. No

State in the Nation has more inviting natural resources nor offers greater inducements to manufacturing enterprise than West Virginia—great areas of superior coal for steam and coke, splendid timber of many species, almost inexhaustible supply of natural gas and unlimited water power awaiting to be utilized in the arts of industry. It is impossible not to recognize the merit of, and to sympathize with, many of the contentions on both sides of this unhappy quarrel. Most assuredly each party believes unreservedly in the justice of its claim. It is in the attempted enforcement of them that each has passed the limits of justice to say nothing of christian charity and broad humanity. Two facts loom big over the smaller ones developed in this bulk of testimony—the desperate efforts and often unwarranted and unlawful acts of the United Miners to force the union into the disturbed districts, and the equally desperate, unwarranted and unlawful acts of the operators and their agents to keep the union out. Thus, for months before the acutal break, union agitators, many of them strangers, attempted to invade Paint Creek and Cabin Creek to persuade the miners to join the union. They called meetings of the workers and described to them the hardships and injustice of their lot and the oppression under which they suffered. The wildest theories concerning the rights of property and the means of production were propounded and advocated, and doctrines closely verging upon anarchy were upheld with such effect that men, who before were living peaceably and in comparative prosperity, purchased Winchesters, revolvers, blackjacks and other murderous weapons to shoot down the coal "barons" and their myrmidons. Mild eyed men, seventy-five per cent of them with usually cool Anglo-Saxon blood in their veins and with instincts leading to law and order inherited down through the centuries gradually saw red, and with minds bent on havoc and slaughter marched from union districts across the river like Hugheston, Cannelton and Boomer, patrolled the woods overhanging the creek bed and the mining

plants, finally massing on the ridges at the head waters and arranging a march to sweep down Cabin Creek and destroy everything before them to the junction. Meanwhile, the operators hurried in over a hundred guards heavily armed, purchased several deadly machine guns and many thousands of rounds of ammunition. Several murders were perpetrated and all who could, got away; men, women and children fled in terror and many hid in cellars and caves. If ever there was a case for some strong measure like martial law, the conditions prevailing on Monday, September 2, 1912, the eve of the proclamation, presented it. In fact, in the opinion of expert witnesses on the scene, martial law, and martial law alone, was the only measure to meet the desperate situation. We believe, partly on the evidence adduced, and in part from the personal knowledge of two members of the Commission who were on the ground, one in active military service, that but for such proclamation taking effect on Tuesday, September 3, at daylight, there would have been great destruction of property and loss of life in the strike zone. The enormous quantities of Winchesters, revolvers and other weapons up to machine guns captured from both sides and brought to camp at Paint Creek Junction also bore mute, but eloquent, witness of the height to which the passions of the opposing forces had mounted.

" 'Now these propositions, trite and fundamental as they are, will assist us to apportion the blame for the strike and the subsequent disorders on Paint Creek and Cabin Creek and the close neighborhood:

" 'First. Every man has a right to quit his employment and seek other work for any grievance he has or injustice which he may conceive to have been done to him, but

" 'Second. He has absolutely no right to obstruct, molest, threaten or otherwise prevent another man from taking the position he has of his own accord abandoned. Organized society and natural law can never yield one jot or tittle on that head. To do so

would be to acquiesce in the régime of brute force—a veritable reign of terror.

"'*Third. Labor has the right to organize for its benefit, protection, increase of wages, and better living conditions, and to have recognition of such organization, but*

"'*Fourth. Its organization has no right to coerce by threats or violence any one to become affiliated with it when he does not desire to do so; nor to assault or put in bodily fear one who desires to labor without belonging to it; nor to destroy property of the employer who does not desire to contract with it; nor to violate its contract with its employer without cause.*

"'There is abundant evidence before us that a reign of terror was attempted to be organized in the strike district and outside of it. It is true that the officers of the United Mine Workers professed to counsel moderation and a strict observance of law and order on various occasions, but there is testimony tending strongly to show that harangues delivered in public, and of which stenographic reports have been submitted as exhibits, incited the miners to violence and in some cases to murder. These harangues were in some instances delivered in the presence of officers of the United Mine Workers' Association and from platforms upon which they stood and from which they, too, spoke; but the murderous and anarchistic utterances referred to were never disclaimed or disapproved by them either at the time or subsequent to their delivery. Furthermore, there is some evidence tending to show that officers stood by without interfering or protesting while non-union men were brutally beaten. Again, the warning to other miners from outside not to come into the strike region published for many weeks in their local organ and also filed as an exhibit and amounting in effect to a grave threat, throws a strong light on the actual situation. We fear that the net result of the action and utterances of those acting and speaking under the apparent sanction and approval of the officers of the United Mine Workers was to foment bitter feeling and to

incite to serious breaches of the peace. In all this, even granting that they were not acting against any express law set down in the statute books, yet they were acting against the fundamental principles of right and justice.'

"These commissioners also examined the mining conditions existing in the Fairmont and Norfolk and Western regions of the State. I cannot extend this opinion by quoting further from it but am justified in saying that they found and report such conditions to be in effect very superior to those obtaining elsewhere in unionized fields; conditions under which men have remained in continuous employment for fifteen to twenty years; have saved money and purchased homes and farms; have furnished to them houses comfortable, with electric lights, some with shower baths, good sanitation and water supply, and with wages such as to enable the foreign-born miners in the forty-four operations of the Consolidated Coal Company (Fairmont field) to send from $125,000 to $150,000 annually to their dependent relatives in Europe.

"*All the evidence in this voluminous record goes to show pretty conclusively that the fourteen years' struggle of this labor organization since it entered into the compact with the operators of Ohio, Western Pennsylvania, Indiana, and Illinois in 1898 to unionize the operations in West Virginia has not been in the interest either of the betterment of mine labor in the State or of upholding that free commerce in coal between the States guaranteed by Federal law, but to restrain and even destroy it in West Virginia for the benefit of these unionized competitive States. It may be unfortunate for those States that nature has favored West Virginia, Kentucky and other Southern States by giving them better coal and less expensive mining conditions, but this does not warrant the operators and miners there to combine and confederate for the purpose of depriving the consuming public*

of the right to purchase the better coal at the lower cost, if desired. Such a combination is clearly a common law conspiracy, too far reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust law. It is further, in my judgment, a combination or conspiracy against the rights of the many thousands of non-union miners in West Virginia who are entitled to enjoy the advantages in their labor that nature has given them."

Record, p. 665, l. 24–51.
Record, pp. 666–680, l. 1–49.

Resolution No. 8 of 1907 Convention of Sub-District 5 of District 6.

Text of

"RESOLUTION NO. 8.

"Whereas, there are mines in the Panhandle District and Ohio that are not organized, and believing every mine should be organized; be it

"Resolved, by this ninth annual convention that the sub-district officers, together with the district officers, be authorized to take up the work of organizing every mine in the sub-district as quickly as it can be done."

Record, p. 414, l. 35–42.

(*a*) The immediate moving cause for the adoption of this resolution is found in the report of the Secretary-Treasurer, Lee Rankin, one of the defendants, in his report to that Sub-District Convention, which is quoted below:

"We have one mine at Bellaire, Ohio, and five mines in the Panhandle district which I believe should be organized. I believe those mines can be organized and in my opinion this convention should adopt some plan to organize those mines."

Report of Secy-Treas. Lee Rankin, p. 10, l. 34–38. (Original document transmitted to U. S. Supreme Court.)

Record, p. 414, l. 21–30.

(*b*) Hitchman mine was one of those intended to be organized under this resolution.

Record, p. 415, l. 15–22.

(*c*) The Glendale mine and the Richland mine were also intended to be organized under this resolution.

Record, p. 414, l. 13–49.
Record, p. 415, l. 1–48.

(*d*) These defendants made efforts to induce the Hitchman Company to agree to again run a union mine after it started up non-union June 12, 1906, and before their organizer, Hughes, appeared at the plant in the fall of 1907.

Record, p. 285, l. 50–52.
Record, pp. 286, 287, l. 1–24.
Record, p. 294, l. 14–48.
Record, p. 295, l. 1, 2.
Record, p. 302, l. 47–52.
Record, p. 303, l. 1–21.
Record, p. 358, l. 13–36.
Record, p. 364, l. 47–52.
Record, p. 365, l. 1–23.
Record, p. 366, l. 20–22.
Record, p. 377, l. 42–46.
Record, p. 378, l. 1–10.

(*e*) Some of the defendants who, before the organizer, Hughes, appeared, tried to induce the Hitchman Company to reunionize, subsequently appeared to assist Hughes in his work—thus connecting them up with Hughes in the entire scheme.

Record, p. 358, l. 17–36.

(*f*) The efforts of organizer Hughes were successful.

(1) At the Richland mine Hughes got about 50 men to join the union and then he shut the mine down.

Record, p. 432, l. 6–31.

(2) At the Glendale mine Hughes got 20 men to join the union and quit work.

Record, p. 312, l. 40–48.
Record, p. 313, l. 1–25.

That mine was crippled but it continued to operate.

(3) At the Hitchman mine Hughes got sixty men to join the union, and defendants stated that they were going to shut the Hitchman mine down as soon as they got a few more men, and that all of the mines in the Panhandle district would have to recognize the union or remain closed.

Record, p. 415, l. 25–33.

The Richland, the Glendale, and the Hitchman Companies then filed their bills for injunctions in the District (then Circuit) Court of the United States for the Northern District of West Virginia, and were awarded temporary restraining orders. Temporary injunctions were granted later on in each case and by agreement of counsel and Court further progress in the Richland case and in the Glendale case was stayed until there should be a final decision by this Court in the Hitchman case, which, it was agreed, should be made a test case.

See plaintiff's Documentary Exhibits Nos. 7, 15, 11, and 16, and decree of November 5, 1910, in the Glendale case, suspending further action in the Glendale case, pending disposition of the Hitchman case, all of which documentary exhibits and the decree mentioned are, as introduced in evidence in the Hitchman case, before this Court.

(Original documents transmitted to U. S. Supreme Court.)

If unionized, West Virginia operators would have to go with their relatively small representation into joint conventions between union operators, their competitors, and the

United Mine Workers, to regulate conditions and prices, and would come home having conditions and prices imposed upon them which, taking into consideration the heavy differentials in railroad hauls, would practically put them out of business and close every mine in the State.

Record, p. 677, l. 46–51.
Record, p. 678, l. 1–9.

How the Union Can Carry Out the Contract it made by the Chicago Agreement to Substantially Restrain or Suppress Coal Mining in West Virginia.

On this point we again quote from Judge Dayton's opinion, Record, p. 680, beginning with line 50:

"But the question at once arises, how could this union carry out this contract with the operators of Ohio, Western Pennsylvania, Indiana, and Illinois to substantially restrain or suppress coal mining in West Virginia, Kentucky and other States by unionizing them? *This brings us squarely to an examination of its constitution, manual, obligations, by-laws and rules, by which, according to the English decisions, the legality or illegality of such combinations is to be determined.* Turning to these, which are in evidence and not denied, we find that when a miner is initiated into this organization he is required to take an obligation for life, as follows:

> "'I do sincerely promise of my own free will to abide by the laws of this union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow-worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.
>
> "'That I will not reveal to any employer or boss the name of any one a member of our union. That I

will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged if I can prevent it.

"'To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the United Mine Workers of America.'

"This obligation is required under assurance beforehand that it will require 'nothing contrary to your civil or religious duties,' yet it does in fact require him to alienate for life or until the Union absolves him 'his freedom to dispose of his own labor or his own capital according to his own will * * * make himself a slave' contrary to all law, English, American and common, and in express violation of the bill of rights set forth in the Constitution of West Virginia. It binds him never to accept employment in place of a fellow member 'idle for advancing the interests of the Union or seeking better remuneration for his labor' no matter how anxious he may be to secure work, how well satified he might be with the wage offered, and how much he may need the work by reason of a starving family on his hands to support. It further binds him 'to cease work at any time I am called upon by the organization to do so,' regardless of the dire consequence that may result to him and those dependent upon him. It may well be said that such provisions under the law cannot be enforced. No, not legally, but

practically it is different. His refusal to comply with this obligation subjects or may subject him to such social ostracism on the part of his fellow members as to compel obedience. They may taunt him with being without honor or integrity, they may call him 'black sheep,' 'scab' and other opprobrious epithets given new meanings in the English language because of just such conditions arising under the operations of these labor combinations, and they may and do drive him out of work and the community as shown by the facts set forth in many decisions of the courts of this country. But this is immaterial from a legal standpoint for, as I have shown, the law distinctly bans such obligations as unlawful and, therefore, the requiring them on the part of these labor organizations is unlawful. But to further show how complete control the Union thus obtains and how complete the surrender to such control on the part of the member is I quote further from the Constitution of its national organization as follows:

"'ARTICLE I.

"'Sec. 3. This organization shall be composed of International, District, Sub-District and Local Unions.

"'Sec. 4. The International Union shall have jurisdiction over all Districts, Sub-Districts and Local Unions, which shall be governed by this Constitution.

"'ARTICLE II.

"'Section 1. The officers of the Union shall be one President, one Vice-President, one Secretary-Treasurer, and an Executive Board to be composed of one member from each district under the jurisdiction of the United Mine Workers, each district to elect its members of the International Executive Board, the President, Vice-President and Secretary-Treasurer to be members of the Board by reason of their position.

"'ARTICLE IV.

"'Sec. 11. The funds of the organization shall be used for the purpose of assisting those who are in need from idleness or distress, when the payment of the same has been approved by the International Executive Board.

"ARTICLE VII.

"'*Cards.*

"'Section 1. Local Unions shall provide each member with a Due Card, upon which the dues and assessments paid by the member shall be entered, which shall be his receipt for the same.

"'Sec. 2. Due Cards shall not admit any person to membership from one local to another, and to protect the membership of individuals who are unable to pay their dues because of no Local existing where they reside, the International, District and Sub-District Secretaries shall, upon the payment of dues and assessments by said member, issue the usual cards for the same; provided that this shall not apply to a member living in a locality where a Local Union is in existence.

"'Sec. 3. No person a member of the organization, who holds a Due or Transfer Card showing him to be a member in good standing, shall be debarred or hindered from obtaining work on account of race, creed or nationality. Cards properly filled out and signed by the officers of miners' unions in foreign countries shall be accepted in lieu of initiation fees.

"'Sec. 4. Any member desiring to leave the mine where his Local is located and work elsewhere shall immediately make application to the Secretary of the Local for a Transfer Card, and if he has paid all dues and assessments, the President and Recording Secretary shall issue a Transfer Card to him, which shall be attested by the Financial Secretary, providing the Local Union is in good standing with the International, District and Sub-District Unions, which shall be

accepted in any District, and in case such person cannot produce a Transfer Card he shall pay the regular initiation fee. All Transfer Cards shall be deposited as the laws of the District where work is secured may direct.

"'Sec. 5. When a person who has not been a member of the organization three months or more secures a Transfer Card from a Local Union in a District where a dispensation has been granted said Transfer Card shall not be accepted by any Local in a different District from the one in which the Local issuing the same is located, unless said Transfer Card is accompanied by an amount equal to the difference between the initiation fee paid by said member and the initiation fee provided for in the District where the card is deposited.

"'Sec. 6. No card shall be issued to any member when the Local is three or more months in arrears to the International, District or Sub-District for dues or assessments. Officers of any Local Union issuing cards in violation of any Section of Article VII shall be fined $10.00 for each card issued, the fine to be collected in the same manner as dues and assessments.

"'Sec. 7. The Transfer Card must show that the member receiving it has paid all dues and assessments for the month in which it was issued, and must also show at what class of labor he was employed.

"'Sec. 8. When a Transfer Card is issued to any member, it must be deposited by him with some Local Union or with the International Secretary-Treasurer, within three months after the last day of the month in which it was issued to him, else the card will become void and he can only become a member again by initiation as a new member.

"'Sec. 9. When a member presents a Transfer Card to a Local Union at any mine where he works or desires to work, the Local Union must accept the same and admit him to membership in that Local, unless the local issuing the same is not in good standing as shown by the monthly report of the Secretary-Treasurer, or the person to whom the card is issued

has not been a member of the organization for three months as provided for in Section 5 of this Article, and shall collect from him all dues and assessments from the time between the last day of the month in which the card was issued and the date of depositing the same.

" 'Sec. 10. The Sub-District, District or International Secretary-Treasurer shall not accept a Transfer Card if the member is where he can deposit with a Local Union.

" 'Sec. 11. The International Secretary-Treasurer shall prepare and send out monthly a statement of all Locals three months or more in arrears for dues and assessments, and no Local Union shall refuse to accept a Transfer Card from any Local unless it appears on said list as being in bad standing. Local Unions on strike shall be exempt from the provisions of this section.

" 'Sec. 12. All Transfer Cards shall be made in book form, with two stubs attached. The books to be numbered, and each card in the book to be numbered and bear the number of the book. The stubs to be printed in conformity with the card itself. The card and one stub to be filled out by the Recording Secretary and certified to by the President and Financial Secretary of the Local Union granting the same; one stub to be retained by the Local issuing the card for future reference, the other stub to accompany the card and must be immediately filled out by the Secretary of the Local where the card is deposited, and returned by him to the Secretary of the Local that issued the card.

" 'Sec. 13. The President, Financial and Recording Secretary of the Local Union shall keep a record of all Transfer Cards bought by, issued by and deposited in their respective Local Unions. The Auditing Committee shall compare their records every three months, and in the presence of the Local Union destroy all Transfer Cards that have been deposited that there is no dispute about.

" 'ARTICLE XII.

" 'Sec. 2. Districts may adopt such laws for their government as they deem necessary, provided they do not conflict with the International Union.

" 'ARTICLE XIII.

" 'Sec. 2. Sub-Districts may adopt such laws for their government as they may deem necessary, provided they do not conflict with International and District Constitutions or agreements entered into.

" 'Sec. 3. All Local Unions within the territory of Sub-Districts already organized in any District shall contribute and become a part of the same and comply with its laws, before they are entitled to pass-word or representation in either International or District organization.

" 'ARTICLE XIV.

" 'Section 1. Local Unions shall be composed of miners, mine laborers and other workmen, skilled and unskilled, working in and about the mines, except mine manager, top boss and persons engaged in the sale of intoxicating liquors, and shall be given such numbers as the International Secretary-Treasurer may assign them.

" 'Sec. 2. All Locals shall be under the jurisdiction of the International, District, and Sub-District Unions, and may make such laws for their government as they deem necessary, provided they do not conflict with the International, District, and Sub-District Constitutions or agreements entered into. Any Local Union or members thereof violating this section shall be subject to a fine of not less than $5.00.'

"And to further show how this Union undertakes to control the freedom of its members to work when and for whom they please, also its determination to destroy the right of the employer to conduct his own business as he

pleases and to discharge and employ whom he pleases, I quote these sections of Article X of this Constitution:

"'Section 1. When trouble of a local character arises between members of a Local Union and their employers, the officers of said Local shall endeavor to effect an amicable adjustment, and failing in this they shall immediately notify the officers of the District to which the affected Locals are attached, and said District officers shall immediately investigate the cause of complaint; and failing to effect a peaceable settlement on a basis that would be fair and just to aggrieved members, finding that a strike would best serve the interests of the locality affected, they may order the inauguration of a strike, but no local strike shall be legalized or supported by a District unless its inauguration was approved by the officers of the District or by the International Executive Board, upon an appeal taken by the aggrieved members from the decision of the District officers; any Local Union striking in violation of the above provisions shall not be sustained or recognized by the International officers.

"'Sec. 3. When any member of the United Mine Workers is suspended or discharged, it shall be the duty of the Mine Committee to immediately investigate the case, and if the member discharged is not guilty of an offense justifying the same, the grievance shall immediately be reported to the Sub-District and District President in writing, under the seal of the Local, and, if, upon investigation, the report of the Local Committee is found correct, the Sub-District and District President shall immediately insist upon the reinstatement of the suspended or discharged member.

"'Sec. 4. The International officers shall, at any time they deem it to be the best interests of mine workers in a District that is idle, for just and sufficient reasons, order a suspension in any other District or Districts that would in any way impede the settlement of the District affected; provided, that such action

would conserve to the best interests of the United Mine Workers of America.'

"I also quote the following from the Constitution of District No. 6:

"'ARTICLE I.

"'Section 1. This organization shall be known as District No. 6 of the United Mine Workers of America.

"'Sec. 2. One of the objects of this organization is to unite all employees in and around the coal mines of Ohio and the Panhandle District of West Virginia.

"'ARTICLE VIII.

"'Section 1. In case of trouble arising in any local with the employer, it shall be the duty of the local officers to try to effect a settlement; failing in this the grievance shall be presented to the sub-district President in writing, who shall investigate the grievance or dispute and settle, if possible. Should he fail, he shall consult the District President, who shall settle the dispute either by suspending work or such other methods as they may deem best. In case of a direct violation of agreements the sub-district President or Local Union affected are authorized to order a suspension of work.

"'Sec. 2. When it becomes necessary for the District President to close a mine, or when a mine or mines from some other legitimate cause has been forced to close down, said officers may, if they deem it wise, close every other mine in district, or may distribute those idle men into any other mine or mines in the district in which said mine or mines so closed may be situated.

"'ARTICLE IX.

"'Section 1. The initiation fee in District 6 shall be $10.00, and all persons applying for and securing work in the mines who are not practical workers shall pay $10.00 initiation fee. Any person applying

for work at any organized mine shall present a United Mine Workers' card. In case said person cannot present such a union card he shall pay the regular initiation fee.

" 'Sec. 6. All persons employed as check-weighmen shall be members of the United Mine Workers for a period of six months before they are elected to such position. Notice shall be posted near the weigh sheet at least three days before the election of a check-weighman, and no persons are entitled to vote except those who are assessed to pay him his wages.

" 'Sec. 12. When a miner's son becomes old enough to work in mine he shall be given the preference over other applicants for work.

" 'Sec. 15. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.

" 'Sec. 17. That a fine of $10.00 in each individual case where it can be proven that a member of the Union leaves his district for West Virginia, or any other unfair mines, and remains there one month or more without having deposited his transfer card and returns without giving a satisfactory account of why he has not deposited his transfer card; and the fine to be collected by the Local Union where he works.'

"And these from the Constitution of Sub-District 5 of District 6:

" 'ARTICLE I.

" 'Section 1. This organization shall be known as Sub-District 5 of District 6, United Mine Workers of America.

" 'Sec. 2. The object of this organization is to unite the mine employees of Belmont, Jefferson, Tuscarawas, Harrison, and Carroll counties in Ohio, and that part of Stark County south of Canton, other than the Massillon Seam, and Hancock, Brooke, Ohio, and Marshall counties of West Virginia, to

ameliorate their conditions by methods of conciliation, arbitration, or strike.

"'Sec. 3. All men are eligible and must be members of the U. M. W. of A. who work in and around the mines.

"'ARTICLE IX.

"'Sec. 2. That a fine of $10.00 in each case, where it can be proven that a member of our Union leaves his district for West Virginia or any other unfair mine, and remains one month or more without depositing a transfer card, and returns without giving a satisfactory account of why he has not deposited his transfer card, and a fine to be collected by the Local Union where he is working.

"'Sec. 3. Any member of our organization working in or around the mine, working on idle days or extra time, in violation of our Constitution or agreements, shall be fined $2.50 for each offense.'

"It very clearly appears from a study of these rules that (*a*) they undertake to require members of the organization to surrender their individual freedom of action; (*b*) to coerce non-union miners to join the union, whether wishing to do so or not for they must be members 'who work in and around the mines;' (*c*) to control or rather abrogate and destroy the right of the employer to contract with the men independent of the organization; (*d*) to exclude his right to employ non-union labor if he desires; (*e*) to limit his right, in the absence of contract, to discharge whom he pleases, when he pleases, and for what reason he sees fit, and (*f*) to assume the right on the part of the organization, through its officers to control the employer's business, to shut down his mine by calling out the men in obedience to their obligation, whenever it is deemed to the interests of the Union regardless of the employer's interests or the effect that such action may have upon him, as regards loss, damage and necessary violations, on account thereof,

of his existing contracts with others. To such extent in this direction does such assumption of power and control go, that it is directly provided that such suspension of operations may be ordered, even though there be no dispute between the employer and the Union, but solely because such dispute exists between the Union and some one or more of his rival operators in business in the same district. In all these particulars these provisions violate the law guaranteeing, under our free government, the rights of both the labor and capital involved and, further, the rights of the public consuming the product of such labor and capital. But still further and what manifestly is of far more vital importance, under the power so assumed by this close and compact organization, *and by reason of these obligations and rules enforced by it upon its members, it is more than probable, that if allowed to unionize and control the mining operations in West Virginia, it will be entirely able to fulfill its express contract of 1898 with its co-conspirators, the operators of Ohio, Western Pennsylvania, Indiana and Illinois and 'protect' them from the competition of West Virginia coals, restore to them their lost markets and practically destroy the coal mining industry of this State to accomplish which, the Union has admittedly already spent hundreds of thousands of dollars and sacrificed human life, as yet to no avail.* It is not to be assumed that because I have not discussed other of the rules and purposes of this organization that I have ignored their meritorious and beneficent character; nor that I have not considered the very natural and human instinct inspiring the officers and members of this Union, resident in other States and laboring under physical disadvantage in mining conditions, to regard their personal interests as paramount. Most of its officers have testified in open court before me and have fully convinced me that they are men sincere in the con-

viction of the integrity of their action, perfectly frank and truthful in their testimony, self educated and who have by their own effort rightly acquired the leadership in their life work. So far as I am concerned *the law requires me to consider these rules of the organization and ascertain whether any of them are unlawful in character.* If so, whether the unlawful ones dominate the actions and purposes of the organization, or whether the purposes contemplated by the unlawful ones are so intermingled with those designed by the lawful ones as to render separation impracticable. *If such domination of the unlawful prevails or such separation cannot be made then under the authorities I have cited the organization becomes unlawful. In view of the undisputed testimony in this case I am constrained to believe both unlawful conditions exist as to these rules.* They go far beyond those held to be unlawful, dominating and inseparable by the English cases which I have cited. They have permitted the officers of this organization to expend, by their own admission, hundreds of thousands of dollars of the funds derived from members bound by these rules, in an unlawful conspiracy to restrain trade upon such a large scale as to involve the whole vast coal mining industry of West Virginia."

Record, p. 680, l. 50, 51.
Record, pp. 681–688, l. 1–36.

The Hitchman mine unionized April 1, 1903, under a threat from defendants that, unless unionized, defendants would shut down the Mt. Pleasant mine in Ohio then owned by the same persons who owned the Hitchman mine.

Record, p. 250, l. 11–16.
Record, p. 250, l. 17–41.
Record, p. 255, l. 41–51.
Record, p. 256, l. 1–5.
Record, p. 256, l. 20–22.

The Loss of the Hitchman Company.

(*a*) Between April 1, 1903, and June 12, 1906.
One hundred and sixty-four days running time.

Record, p. 263, l. 12–17.

$48,742.00 in money.

Record, p. 275, l. 37–49.
Record, p. 276, l. 1–24.
Record, p. 276, l. 25–48.
Record, p. 276, l. 49–51.
Record, p. 277, l. 1–15.

(*b*) Since June 12, 1906.

Record, p. 296, l. 8–52.
Record, p. 297, l. 1–15.
Record, p. 485, l. 5–30.
Record, p. 485, l. 32–47.
Record, p. 487, l. 51, 52.
Record, p. 488, l. 1–33.

Efforts were made by defendants to unionize Hitchman mine after the restraining order of October 24, 1907, was granted.

Record, p. 255, l. 9–26.
Record, p. 258, l. 34–37.

Efforts to unionize the Hitchman mine would still be made if the injunction forbidding it were out of the way.

Record, p. 534, l. 17–21.
Record, p. 628, l. 50–53.
Record, p. 629, l. 1–11.
Record, p. 503, l. 34, 35.

DECISION OF DISTRICT COURT IN HITCHMAN CASE.

We quote from Judge Dayton's opinion, Record, p. 691, beginning with the first line,

> "*I conclude, therefore, that this organization, known as the United Mine Workers of America, is an unlawful*

one because, (a) *of its principles as set forth in its constitutions, obligation for membership and rules, which* (1) *require its members to surrender their individual freedom of action;* (2) *seeks to require, in practical effect, all mine workers to become members of it whether desirous of doing so or not;* (3) *seeks to control, and restrict, if not destroy, the right of the mine owner to contract with its employees independent of the organization;* (4) *to exclude his right to employ non-union labor if he desires;* (5) *to limit his right to discharge, in the absence of contract, whom he pleases, when he pleases and for any cause or reason that to him seems proper;* (6) *assumes the right on its part, by and through its officers, to control the mine owner's business by shutting down his mine, calling out his men upon indefinite strike in obedience to their obligation to the Union, whether the men desire to quit work or not, whenever the Union's officers deem it to be for the best interests of the Union, regardless of the rights and interests of the mine owner, and regardless of his direct loss and damages and such indirect loss and damage as may be incurred by him by reason of the resultant violation of contracts by him with others. Adair* v. *United States, 208 U. S. 161, 52 L. ed. 436. I further conclude that it is an unlawful organization because,* (b) *of its procedure and practices in that* (1) *it seeks to create a monopoly of mine labor such as to enable it, as an organization, to control the coal mining business of the country, and* (2) *has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other States, to control, restrain, and, to an extent at least, destroy the coal trade of the State of West Virginia. It has spent fourteen years' time and hundreds of thousands of dollars in effort to accomplish this unlawful purpose."*

Record, p. 691, l. 1–31.

And further from Record, p. 693, beginning with line 36.

"I further conclude that this Union, in pursuit of its unlawful purposes to secure control and the monopoly of

mine labor, and to restrain, suppress, if not destroy, the coal-mining industry of West Virginia in the interest of their co-conspirators, rival operators and producers in Ohio, Western Pennsylvania, Illinois and Indiana competitive fields, have sought and still seek to compel the plaintiff, the Hitchman Coal and Coke Company, to submit to contractual relations with it as an organization, relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful effort to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its said employees. It is admitted in the testimony of Lewis, Sullivan and Savage that, if this injunction is dissolved, such efforts will be repeated."

Record, p. 693, l. 36–51.

And further from Record, p. 694, beginning with line 1,

"It therefore necessarily follows that the plaintiff had by reason of the damage and loss it had already incurred and the damage and loss threatened and imminent to it in futuro, just right to appeal to this court of equity for injunctive relief; that by reason of its unlawful organization, purposes and practices, as hereinbefore set forth, this organization, combination or Union, as now constituted, is unlawful and under the law, therefore, has no right to seek plaintiff's employees to become members thereof or to become party to its unlawful purposes and practices.

"The injunction will be made perpetual."

Record, p. 694, l. 1–10.

DECISION OF THE CIRCUIT COURT OF APPEALS.

Upon exactly the same evidence the Circuit Court of Appeals reversed Judge Dayton upon every point and dismissed plaintiff's bill as without merit.

SPECIFICATION OF ERRORS IN THE DECREE OF THE CIRCUIT COURT OF APPEALS.

Reversing Judge Dayton's decision upon every point, dissolving the injunction, and dismissing plaintiff's bill.

ARGUMENT.

THE PLAINTIFF'S CONTENTION IN THIS CASE BEFORE THIS COURT IS STATED UNDER THREE HEADS:

1. *Chicago Agreement of 1898 and the efforts of defendants to carry it out.*

(*a*) By the Chicago Agreement of 1898 the defendants conspired with Union operators, competitors of West Virginia operators and of operators of other States, to substantially restrain or suppress coal mining in West Virginia, and in the fulfillment of that contract caused the plaintiff to suffer loss and damage by reason of the unionizing of its mine April 1, 1903, and by reason of its operations under coerced contracts with the Union to June 12, 1906, whereby in operating time the plaintiff lost 164 days and $48,742 in money.

(*b*) Through the adoption of Resolution No. 8 by the 1907 Convention of Sub-District 5 of District No. 6 of the United Mine Workers of America the defendants caused loss and damage to the plaintiff by reason of its inability, owing to organizing efforts, to fulfill its contracts for lake coal in the summer and fall of 1907, and are about to cause the plaintiff to suffer incalculable loss and damage by reason of their announced intention to proceed again to unionize the Hitchman mine, if the injunction now forbidding it were out of the way.

(*c*) Through induced breaches of contracts, existing between the plaintiff and its employees, known to the defendants, and with which they have no concern, defendants have caused plaintiff to suffer great loss and damage

through its inability to comply with its contracts for lake coal during the summer and fall of 1907, and are about to cause plaintiff to suffer incalculable loss and damage through their efforts to unionize plaintiff's mine, which they propose to again attempt, providing the injunction now restraining them can be gotten out of the way.

2. *The United Mine Workers are an oppressive monopoly and seek absolute control of all labor in the coal mining industry.*

(*a*) Owing to this purpose the United Mine Workers entered into the Chicago Agreement of 1898.

(*b*) In pursuit of the same purpose they passed Resolution No. 8 at the 1907 Convention of Sub-District 5 of District 6.

(*c*) And likewise they undertook to induce breaches of contracts of employment between plaintiff and plaintiff's employees, which were known to them, and with which they had no concern, and they propose to continue to breach these contracts until plaintiff shall submit to them and unionize its mine, provided the injunction now preventing that course of action on their part can be gotten rid of.

3. *If the effort of the United Mine Workers to get all men working in and about each mine to join their Union is lawful, still they may not exercise that right in such a way as will be inconsistent with, or as will destroy the constitutional right, of equal dignity, of the employer, and in this case the right of the Hitchman Company, to contract with its employees upon such terms as may be agreed upon between it and its employees. Neither may they make use of their right to organize in such a manner as will be inconsistent with, or as will interfere with or destroy such contracts between the employer and employee, and in this case between the Hitchman Company and its*

employees, with which contracts the defendants have no concern.

> "Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.
>
> "*But the very fact that it is lawful to form these bodies with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.*"
>
> Gompers v. Buck's Stove & Range Co. (1911), 221 U. S., 418–452, 55 L. Ed. 797, *805*, 31 S. C. 492.

ERRORS IN THE DECREE OF THE CIRCUIT COURT OF APPEALS.

First.

As to the Organization, the Circuit Court of Appeals says:

> "A consideration of the purposes of this organization as set forth in its constitution impels us to the conclusion that there is nothing contained therein to justify the contention that its purposes are unlawful."
>
> Record, p. 733, l. 40–43.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

(a) *Proved purposes and practices of the Union.*

(1) It aims to organize every mine on the American Continent.

Record, p. 569, l. 48–52.
Record, pp. 570, 571, l. 1–15.
Record, p. 619, l. 12–14.

(2) All men are eligible and must be members of the U. M. W. of A. who work in and around the mine.

Article 1, Section 3, Constitution of Sub-District 5 of District 6.

(3) Largest labor organization in the world.

Record, p. 569, l. 40–43.

(4) About 300,000 members now.

Record, p. 559, l. 31–33.
Record, p. 603, l. 36–50.
Record, p. 604, l. 1–49.

(5) Enforces the closed shop.

Record, p. 538, l. 33–51.
Record, pp. 539, 540, 541, l. 1–32.
Record, p. 538, l. 33–49.
Record, p. 618, l. 1–25.

(6) It has spent more than $8,000,000.00 since 1900 in support of strikes.

Excerpt 430 (*c*).

(7) Is a secret organization. Has pass-word.

Article I, section 2.
Article XIII, section 3.
Constitution of International Union.
Excerpts 377, 382.
See also Constitution of Sub-District 5 of District 6.
Excerpt 400.

(8) None but members admitted to meetings of.

Manual. Constitution of District No. 6. United Mine Workers of America.
Excerpt 382.
Manual. Constitution Sub-District 5 of District 6.
Excerpt 400.

(9) Put men in the field to boycott the coal coming from West Virginia.

Excerpt 336.

(10) Constantly aim and plan to involve West Virginia and other non-union fields in local or national strikes.

Excerpts 347, 348, 349.

(11) Officers may close down mines whenever they deem it to be for the best interests of the Union.

Excerpts 373, 374, 389, 390, 406.

(12) The rule prohibiting men from working on idle days should be enforced.

Watkins Report to 1907 Convention.
Excerpts 359, 395, 410.

(13) Day men may work on idle days when necessary, but such work must be distributed equally amongst the employees.

Excerpts 149, 179.

(14) If cars are not at mine within thirty minutes after starting time in the morning the miners are to go home and not work that day.

Excerpts 150, 167, 178, 187, 217, 257, 258, 259, 290.

(15) If the operator shall so manage his business that four of his employees are out of cutting or drilling when work time comes in the morning, the mine committee may shut the mine down for the next day.

Excerpts 151, 165.

(16) If miner receives a car in time to load it before quitting time he shall load it provided he has enough coal mined to do so; but if as a result the car is derailed the operator must take charge of that car.

Excerpts 158, 162.

(17) Sons of members of United Mine Workers are to be given the preference of going into mines, when becoming of proper age.

Excerpts 152, 186, 394.

(18) Each two men shall have two working places in the mine and the operator is not allowed to employ more men until each two men have two working places.

Excerpts 164, 176, 216, 412, 422, 426.

(19) The Union regulates the speed with which the operator may drive entries by providing that the turn shall be uniform throughout the mine, and the same rule operates to control the operator in mining the coal in rooms.

Excerpts 174, 183, 196, 201, 207, 219, 220, 223, 230, 413, 422, 426.

(20) If operator insists on machine men cutting places, the operator shall pay for all coal lost by places falling in.

Excerpts 170, 177, 185.

(21) Members of the mine committee are not required to remain at their working places in the mine if while away from their work they are looking after the proper interests of the Union.

Excerpts 197, 414, 422.

(22) A minimum pay for two hours is exacted whether the mine works two hours or not.

Excerpts 147, 157, 161, 193, 421, 426.

Excerpt 232—Columbus Day Wage Scale—See Resolution IV.

(23) Membership of engineers, firemen, electricians, and machinists in U. M. W. of A., considered and solidarity of Union insisted on.

Excerpts 199, 313, 422, 428 (*a*).

(24) Engineers, firemen, pumpers and other necessary men may work during suspension of work—otherwise during a strike—provided that the operator does not produce coal by non-union labor, and if in addition the operator pays the rate of wages which may subsequently be agreed upon.

Excerpts 153, 159, 163, 168, 180, 188, 198, 206, 214, 228, 422, 426, 428 (*a*).

(25) Operator must have water out of working place at starting time and keep it out during working hours. Where loaders bail water the operator shall furnish sufficient barrels and pay loader ten cents per barrel for water bailed.

Excerpts 202, 422, 426.

(26) Spike team drivers shall harness but one mule.

Excerpt 203.

(27) There shall be but one loader in each entry.

Excerpts 204, 209.

(28) Operator is given permission to close down his mine if miners fail to observe contract to produce clean coal.

Excerpts 148, 215.

(29) Miner may not be transferred from his place inside to outside the mine unless he consents and in addition unless he is paid inside scale wages.

Excerpts 166, 181, 194, 422.

(30) Work day is eight hours of forty-eight hours a week of six days of eight hours per day.

Excerpt 192.
Excerpt 231—Chicago Agreement 1898—Rule 5.
Excerpt 232—Columbus Day Wage Scale—Resolution III.

(31) Day laborers working at the mine must be members of the Union.

Excerpt 213.

(32) Operators must keep people out of engine room.

Excerpt 229.

(33) Where any company operates more than one mine on the same line of road in the same vein of coal, the work between the respective mines shall be as nearly as business conditions will permit equally divided.

Excerpt 218.

(34) In case of emergency work, if the mine committee approve of the work being done on overtime, the men engaged thereon shall not be required to lay off until their time is equalized with the others working in such mine.

Excerpt 227.

(35) If for any grievance, real or supposed, any of the workmen shut down the mine, each employee shall pay the Company one dollar per day during shut down; and if because of any grievance with any employee, real or supposed, the Company shuts down its mine, it shall pay one dollar per day to each workman in and about the mine during such shut down.

Excerpts 226, 238.

(b) *The test of the lawfulness of a voluntary organization, under the common law, and under the law of West Virginia,* is to ascertain:

(1) *Whether any of the rules of the organization are unlawful in character.*

(2) *If there are any unlawful ones, then whether the unlawful ones dominate the actions and purposes of the organization.*

(3) *Or, whether the purposes contemplated by the unlawful ones are so intermingled with those designed by the lawful ones as to render separation impracticable.*

Record, p. 688, l. 19–25.

(c) *If such domination of the unlawful prevails, or such separation cannot be made, then, under the law, the organization becomes unlawful.*

Record, p. 688, l. 25–27.

Russell *v.* Amalgamated Society of Carpenters and Joiners [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 433; 56 S. J. 342; 28 T. L. R. 276; H. L. (E).

(d) *Labor unions may be unlawful.*

In the case of Coppage *v.* Kansas, decided January 25, 1915, 236 U. S. 1, this Court said:

> "Of course we do not intend to say, nor to intimate, anything inconsistent with the right of individuals to join labor unions, nor do we question the legitimacy of such organizations so long as they conform to the laws of the land as others are required to do."

But even as to this, the Court added this significant qualification:

> "And we have no reference to questions of monopoly, or interference with the rights of third parties or the general public. These involve other considerations, respecting which we intend to intimate no opinion. See Curran *v.* Galen, 152 N. Y. 33,

37 L. R. A. 802, 57 Am. St. Rep. 496; 46 N. E. 297; Jacobs *v.* Cohen, 183 N. Y. 207, 213, 214; 2 L. R. A. (N. S.) 292; 111 Am. St. Rep. 730; 76 N. E. 5; 5 Ann. Cas. 280; Plant *v.* Woods, 176 Mass. 492; 51 L. R. A. 339; 79 Am. St. Rep. 330; 57 N. E. 1011; Berry *v.* Donovan, 188 Mass. 353; 5 L. R. A. (N. S.) 899; 108 Am. St. Rep. 499; 74 N. E. 603; 3 Ann. Cas. 738; Brennan *v.* United Hatters, 73 N. J. L. 729, 738; 9 L. R. A. (N. S.) 254; 118 Am. St. Rep. 727; 65 Atl. 165, 169; 9 Ann. Cas. 698, 702."

The cases referred to in this last quotation from Coppage *v.* Kansas hold, as follows:

"An agreement between a labor association and an employers' association, that all employees of the members of the latter association shall be members of the former association, and that no employee shall work for a longer period than four weeks without becoming a member, is illegal and constitutes no defense to an action for conspiracy by an employee who is discharged in pursuance of such agreement because of his refusal to become a member of the labor association."

Curran *v.* Galen (1897), 152 N. Y. 33; 37 L. R. A. 802.

"A contract by a manufacturer to employ as laborers none but members of a particular labor union is not void as against public policy."

Jacobs *v.* Cohen (1905), 183 N. Y. 207; 2 L. R. A. (N. S.) 292.

"Members of a labor union are entitled to an injunction restraining the members of another union from which they have withdrawn from doing acts in pursuance of a conspiracy to compel their reinstatement, by appeals to their employers to induce them to rejoin and to discharge them in case of refusal, accompanied by threats intimating results detrimental to the employer's business and property in case of a failure to comply, coercive in effect upon the

will, although they committed no acts of personal violence or physical injury to property, where complainants have been injured by such acts, and there is reason to believe that further proceedings of the same kind are contemplated which will result in still more injury to them."

Plant *v.* Woods (1900), 176 Mass. 492; 51 L. R. A. 339.

"A contract between an employer and a labor union obligating the employer to retain in his employ no one objectionable to the union for any cause does not of itself justify interference with a workman's employment by the one who secured the contract on behalf of the union.

"Whether or not interference with a laborer's employment under a contract between a labor union and an employer, obligating the employer to retain no one in his employ who was objectionable to the union, was for a justifiable cause, is a question for the jury.

"Interference by a combination of persons to obtain the discharge of a workman because he refuses to comply with their wishes and join a union for their advantage cannot be justified as a part of the competition of workmen with one another.

"The purpose of strengthening itself in future contests with the employer will not justify a labor union in interfering with the contracts of non-union workmen for the purpose of compelling them to join the union.

"The attempt to force all laborers to combine in unions is against the policy of the law because aiming at monopoly.

"The right of a laborer to recover damages for wrongful interference with his contract of employment is not affected by the fact that it was terminable at will, instead of ending at a stated time."

Berry *v.* Donovan (1905), 188 Mass. 353; 5 L. R. A. (N. S.) 899.

"Plaintiff was a member of a trade union (a voluntary association), whose rules provided for fining and otherwise punishing any member violating the laws of the association or the rules of trade. The rules provided for a trial of the accused member before a tribunal established within the association, at the same time providing that he should be entitled to 'due notice and a fair trial,' and should not be put on trial unless charges were submitted in writing by a member of the association. Plaintiff, having been put on trial without the submission of written charges and without due notice, was sentenced to pay a fine and to give up his place of employment for one year. Held, that this course of procedure, unless consented to by plaintiff, furnished no justification for the subsequent action of the association and its officers in procuring his discharge from employment.

"Whether plaintiff did consent to be put on trial without charges or notice was, under the evidence in this case, a question for the jury.

"*The Constitution of this State (article 1, par. 1) establishes the inalienable right of all men to acquire property and pursue and obtain safety and happiness. Included in this is the right of making contracts for personal service as a means of acquiring property. It is therefore the right of every man to engage in such lawful business or occupation as he may choose, free from hindrance or obstruction by his fellow men, saving such as may result from the exercise of equal or superior rights on their part.*

"*Whoever intentionally and without legal justification or excuse procures an employer to discharge his employee, to the damage of the latter, is liable to an action for damages at the suit of the employee; and this, although there was no binding contract of employment.*

"*Malice, in the law, is the intentional doing of a wrongful act, without justification or excuse. A 'wrongful act,' within the meaning of this definition, is any act which in the ordinary course will infringe upon*

the rights of another, to his damage, except it be done in the exercise of an equal or superior right."

Brennan *v.* United Hatters (1906), 73 N. J. L. 729; 9 L. R. A. (N. S.) 254.

Second.

Upon the subject of the Chicago Agreement of 1898, the Circuit Court of Appeals says:

> "A fair interpretation of the evidence shows that it was the purpose of the defendants to induce the miners of West Virginia to become members of the organization, and thereby secure as high wages as possible, compatible with the successful operation of the mines of that State by the respective owners. They had a perfect right to form a combination to accomplish such purposes by peaceable and lawful methods, and so long as they refrained from resorting to unlawful measures to effectuate the same they could not be said to be engaged in a conspiracy to unionize plaintiff's mine.
>
> "As we have already stated, the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance. Therefore, the court erred in holding the organization to be unlawful upon the theory that it was guilty of a conspiracy."
>
> Record, p. 736, l. 21–34.

IN REACHING THIS CONCLUSION, THE CIRCUIT COURT OF APPEALS ERRED AGAIN, IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

The Chicago Agreement of 1898 turned out in practice to be what it was intended to be when made. It was an oppressive combination entered into between the United Mine Workers organization and the Union operators of the Central Competitive States, for a consideration passing between them, whereby the United Mine Workers were to unionize the State of West Virginia, for the purpose of

substantially restraining or suppressing coal mining in West Virginia, to the end that the competition, theretofore existing between the non-union operators of West Virginia and the Union operators, the other parties to the Chicago Agreement of 1898, might be brought to an end.

That continuous efforts were made by the United Mine Workers' organization to carry out its part of the Chicago Agreement, and to unionize all the mines of West Virginia, is admitted by William Green, one of the defendants, now Secretary-Treasurer of the National Organization, in a statement made by him in the 1910 Joint Convention of the United Mine Workers and Union Operators of the Central Competitive States.

We quote Mr. Green's language as it appears on page 668 of the Record, beginning with line 12:

> "Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human life in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have gone there as missionaries in an attempt to redeem that promise have sacrificed their lives and their liberties, we should be given credit for what we have done. I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia."
>
> Record, p. 668, l. 12–25.

Third.

As to Resolution No. 8 the Circuit Court of Appeals is silent.

We quote from Record, page 742, beginning with line 39:

> "While it is not denied by the defendants that they sought by peaceable methods to induce those employed by the plaintiff to join the union, yet they stoutly contend that at no time since the mine has been operated as a non-union mine have they employed unlawful methods. We fail to find that there is sufficient legal evidence to show that the defendants entered into a conspiracy or combination for the purpose of unionizing the plaintiff's mine. While there was evidence admitted by the Court below as to statements made by certain officials of the United Mine Workers of America, and the coal operators of Pennsylvania and other States, bearing upon this question, yet there is no evidence to show that the United Mine Workers of America combined, or formed themselves into a conspiracy for the purpose of unionizing plaintiff's mines after it started to run its mine non-union in June, 1906."
>
> Record, p. 742, l. 39–50.
> Record, p. 743, l. 1, 2.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED AGAIN IN THE LIGHT OF THE FACTS AND IN THE LAW APPLICABLE THERETO.

We quote from the report of the Secretary-Treasurer, Lee Rankin, one of the defendants, in his report to the 1907 Convention of Sub-District 5 of District 6:

> "We have one mine at Bellaire, Ohio, and five mines in the Pan Handle District which I believe should be organized. I believe those mines can be organized and in my opinion this convention should adopt some plan to organize those mines."

Report of Secretary-Treasurer Lee Rankin, p. 10, l. 34–38.

(Original document transmitted to U. S. Supreme Court.)

Record, p. 414, l. 21–30.

"RESOLUTION NO. 8.

"Whereas, there are mines in the Panhandle District and Ohio that are not organized, and believing every mine should be organized; be it

"*Resolved*, by this ninth annual convention that the sub-district officers together with the district officers be authorized to take up the work of organizing every mine in the sub-district as quickly as it can be done."

Record, p. 414, l. 35–42.

Fourth.

In holding that the defendants have a lawful right to induce plaintiff's employees to join their Union, provided that in inducing them to join they do not use coercion, threats, intimidation or violence for the purpose, the Circuit Court of Appeals for *one ground* says:

> "If the plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment at its mines, and such conduct be sanctioned by the law, by what process of reasoning can it be held that the defendants may not adopt the same method in order to protect their interests?"
>
> Record, p. 731, l. 21–26.

IN REACHING THIS CONCLUSION, THE CIRCUIT COURT OF APPEALS ERRED AGAIN IN THE LIGHT OF THE FACTS AND IN THE LAW APPLICABLE THERETO.

The plaintiff has a right to protect itself against the United Mine Workers by refusing to employ or to keep in its employ any member of that Union.

Howard *v.* Danner, 17 T. L. R., p. 548.

That is a reasonable rule which the plaintiff finds necessary for the protection of its business.

In Howard *v.* Danner, the signed agreement was for the purpose of protecting that plaintiff against a competitor. Danner had been in the employ of the plaintiff, and in breach of a contract he had made with the plaintiff, was then working for plaintiff's competitor. The agreement, which he broke, read as follows:

> "In consideration of your retaining my services as waiter at 4s. per week under the new management, with a week's notice on either side, I hereby agree that in case I should leave your service or be dismissed, I will not, during the year 1901, enter into the service of the new restaurant shortly to be opened at 62, Regent Street, and I further agree to pay for any breach of this agreement the sum of one pound for every day I may remain in the service of the new restaurant, as liquidated damages."
>
> "A labor organization seeking to compel a manufacturer to unionize his plant is not such a competitor in the labor market as to justify it in enticing employes to leave the service of their master, or to induce persons seeking employment with him from so doing, when the enticer does not employ labor. The competition which the law upholds must be honest competition, and not a malicious attempt to injure another."
>
> Geo. Jonas Glass Company *v.* Glass Bottle Blowers' Association of United States and Canada, *et al.* (1907) N. J. Eq. 66 Atl. 953.

It is not to the point to say that the United Mine Workers have absorbed all other labor organizations for the mining of coal.

Record, p. 542, l. 13–44.

Nor that it is the largest labor organization in the world.

Record, p. 569, l. 40–43.

Nor that it aims to organize every mine on the American Continent.

Record, p. 569, l. 48–52.
Record, pp. 570, 571, l. 1–15.
Record, p. 619, l. 12–14.

"*The attempt to force all laborers to combine in unions is against the policy of the law because aiming at monopoly.*"

Berry *v.* Donovan (1905), 188 Mass. 353; 74 N. E. 603; 5 L. R. A. (N. S.) 899; 3 A. & E. Ann. Cas. 738.

THEREFORE—

THE FACT THAT THE UNITED MINE WORKERS HAVE MADE THEMSELVES AN EXCLUSIVE, AGGRESSIVE AND POWERFUL MONOPOLY CANNOT BE TURNED INTO A SHIELD TO PROTECT THEM. WRONGDOERS CANNOT PROFIT BY THEIR OWN WRONGS.

Fifth.

In holding that the defendants have a lawful right to induce plaintiff's employees to join their union provided that in inducing them to join they do not use coercion, threats, intimidation or violence for the purpose, the Circuit Court of Appeals for *another ground*, says:

> "While it is true that the plaintiff has a perfect right to refuse to employ union labor, is it not equally true that union labor, as we have stated, may by the employment of legitimate means, do that which is necessary to keep its forces together?
>
> "Surely we have not reached the point when capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law when they are attempting to assert rights that are just as important to their well-being as are the rights of those who have been more fortunate in accumulating wealth. He who 'seeks equity must do equity.'

In other words he 'must come into court with clean hands.' If the courts of this country should by injunctive relief protect the mine owner in the enjoyment of his property rights, and restrain the laboring people from organizing their forces by declaring such organization unlawful, would not the mine owner then be in a position to control the situation so that he who has to toil for his daily bread would be placed in a position where if he exists at all, he must do so at such wages, and upon such terms as organized capital may see fit to dictate."

Record, p. 731, l. 48–51.
Record, p. 732, l. 1–15.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED AGAIN, IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

The injunction in the Hitchman case does not restrain the laboring people from organizing their forces, but simply requires them in so doing to conform to the laws of the land as others are required to do.

Coppage *v.* Kansas, 236 U. S. 1.

There is no strike and this is not a strike case.

The Hitchman Company has no dispute with its employees nor have they any dispute with it.

The Hitchman Company has no contractual or other business relations with the Union.

And there is no dispute between the Hitchman Company and the defendants, except what they themselves have intentionally brought about.

THIS DISPUTE, FORGED BY THEM AS A WEAPON TO STRIKE IN ILLEGITIMATE ATTACK, CANNOT BE TURNED INTO A SCREEN TO CONCEAL THE NATURE AND OBJECT OF THEIR COMBINATION.

Long *v.* Larkin, *et als.* (1914), 2 I. R. 285, 302, 303, 306.

In Adair v. United States, quoting from Mr. Cooley in his treatise on Torts, page 278, this Court says:

> "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress."
>
> 208 U. S. 161–192 at p. 173; 52 L. Ed. 436–450, p. 442.

And again in reaffirming the Adair case, this Court says:

> "The constitutional right of the employer to discharge an employee because of his membership in a labor union being granted, can the employer be compelled to resort to this extreme measure? May he not offer to the employee an option, such as was offered in the instant case, to remain in the employment if he will retire from the union; to sever the former relationship only if he prefers the latter? Granted the equal freedom of both parties to the contract of employment, has not each party the right to stipulate upon what terms only he will consent to the inception, or to the continuance, of that relationship? And may he not insist upon an express agreement, instead of leaving the terms of the employment to be implied? Can the legislature in effect require either party at the beginning to act covertly; concealing essential terms of the employment—terms to which, perhaps, the other would not willingly consent —and revealing them only when it is proposed to insist upon them as a ground for terminating the relationship? Supposing an employer is unwilling to have in his employ one holding membership in a labor union, and has reason to suppose that the man may prefer membership in the union to the given employment without it—we ask, can the legislature

oblige the employer in such case to refrain from dealing frankly at the outset? And is not the employer entitled to insist upon equal frankness in return? Approaching the matter from a somewhat different standpoint, is the employee's right to be free to join a labor union any more sacred, or more securely founded upon the Constitution, than his right to work for whom he will, or to be idle if he will? And does not the ordinary contract of employment include an insistence by the employer that the employee shall agree, as a condition of the employment, that he will not be idle and will not work for whom he pleases, but will serve his present employer, and him only, so long as the relation between them shall continue? Can the right of making contracts be enjoyed at all, except by parties coming together in an agreement that requires each party to forego, during the time and for the purpose covered by the agreement, any inconsistent exercise of his constitutional rights?

"These queries answer themselves. The answers, as we think, lead to a single conclusion: Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if it be terminable at will."

Coppage *v.* Kansas, 236 U. S. 1, at page —.

Sixth.

In holding that the defendants have a lawful right to induce plaintiff's employees to join their Union, regardless of their contract with the plaintiff not to do so, provided that in inducing them to join defendants do not use coercion, threats, intimidation or violence for the purpose, the Circuit Court of Appeals says:

"The contract in question is in the following language:

"'I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said Company, and agree that while I am in the employ of that company that I will not make any effort amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.'

"It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employee continues to work for the plaintiff he shall not join this organization, nevertheless, there is nothing in the contract which requires such employees to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employees under this contract may, if they deem proper, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the non-union men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case it would be unreasonable to hold that the

action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the non-union miners to become members of their organization.

"Under these circumstances we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization."

Record, p. 744, l. 35–50.
Record, p. 745, l. 1–26.

IN REACHING THIS CONCLUSION THE CIRCUIT COURT OF APPEALS ERRED, AGAIN, IN THE LIGHT OF THE FACTS, AND IN THE LAW APPLICABLE THERETO.

"When a man is called upon to agree not to become or remain a member of the Union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employee.

"To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for 'it takes two to make a bargain.' Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different

situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

Coppage *v.* Kansas, 236 U. S. 1 at page —.

EMPLOYMENT AT THE WILL OF THE PARTIES DOES NOT MAKE IT EMPLOYMENT AT THE WILL OF OTHERS.

"It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. *The fact that the employment is at the will of the parties respectively, does not make it one at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority the unjustified interference of third persons is actionable although the employment is at will.* Moran *v.* Dunphy, 177 Mass. 485, 487; Berry *v.* Donovan, 188 Mass. 353; Brennan *v.* United Hatters, 73 N. J. Law, 729, 743; Perkins *v.* Pendleton, 90 Me. 166; Lucke *v.* Clothing Cutters' & T. Assembly, 77 Md. 396; London Guar. & Acc. Co. *v.* Horn, 101 Ill. App. 355, 206 Ill. 493; Chipley *v.* Atkinson, 23 Fla. 300; Blumenthal *v.* Shaw, 23 C. C. A. 290, 77 Fed. 954."

Truax, Sr., *et al. v.* Raich, No. 361, Oct. Term, 1915. —— U. S. p. ——.

"'Every person has a right under the law, as between himself and his fellow subjects, to full freedom in disposing of his own labor or his own capital, according to his own will. It follows that every person

is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right, which can be made compatible with the exercise of similar rights by others.'

"But it is equally true that the members of trade unions are bound to respect the right of other workmen to work for whom they please, on what terms and at what times they please, so long as they do nothing illegal, and are also bound to respect the right of an employer to undertake any work he pleases to undertake, and to employ what workmen he chooses, on whatever terms they both agree to, unless there is something unlawful in his action. If, therefore, any two or more members of a trade union, whatever its rules may be, wilfully and knowingly combine to injure an employer by inducing his workmen to break their contracts with him, or not to enter into contracts with him, resulting in damage to him, that is an entirely different matter. That is an invasion of the liberty of action of others, and has no analogy to the action of the defendant in the Mogul Case (1); for there, as Lord Halsbury pointed out in Quinn *v.* Leathem (2), no legal right had been interfered with, no coercion of mind or will had been effected, all were left free to trade on what terms they willed, and nothing was done except in rival trading which could be supposed to interfere with the appellant's interest.

"The fact that members of a trade union are merely acting in obedience to a rule of their union, believed by them to be for their benefit, is no defense to an action for the breach of any contracts they have entered into, Read *v.* Friendly Society of Operative Stonemasons (3); and still less is it a defense to the wilful and malicious infringement in combination of that legal right of personal freedom of action which they claim for themselves, but which others are entitled to quite as fully and as absolutely as they are."

Larkin, *et al. v.* Long [1915] A. C. 814–846, at pp. 829, 830. H. L. (I).

THERE WAS NO DUTY OF ANY KIND ON THE DEFENDANTS TO COMMIT THE ACTS CHARGED AGAINST THEM, AND IN THIS ABSENCE OF DUTY OF SOME KIND IT IS DIFFICULT TO SEE HOW JUSTIFICATION IS POSSIBLE. THE HIGHEST POINT TO WHICH THE ARGUMENT CAN BE CARRIED IN FAVOR OF THE DEFENDANTS IS THAT THE DEFENDANTS ACTED WITHOUT SINISTER MOTIVES IN THE SUPPOSED INTERESTS OF THE MEN AND WITHOUT ILL WILL TO THE PLAINTIFF, BUT THESE ARE CONSIDERATIONS WHICH DO NOT ALTER THE WRONGFUL NATURE OF THE ACTS CHARGED AGAINST THESE DEFENDANTS, AND CANNOT BE SUCCESSFULLY URGED AS AN EXCUSE OR JUSTIFICATION.

South Wales Miners' Federation *v.* Glamorgan Coal Co. [1905] A. C. 239; H. L. (E.).

Larkin, *et al. v.* Long [1915] A. C. 814–846, at p. 843; H. L. (I.).

Respectfully submitted.

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Of Counsel for Plaintiff.

WHEELING, WEST VIRGINIA, *December 31, 1915.*

Office Supreme Court, U. S.
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FEB 26 1916
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1915.

No. [redacted] 11

HITCHMAN COAL AND COKE COMPANY, a Corporation, *Appellant*,

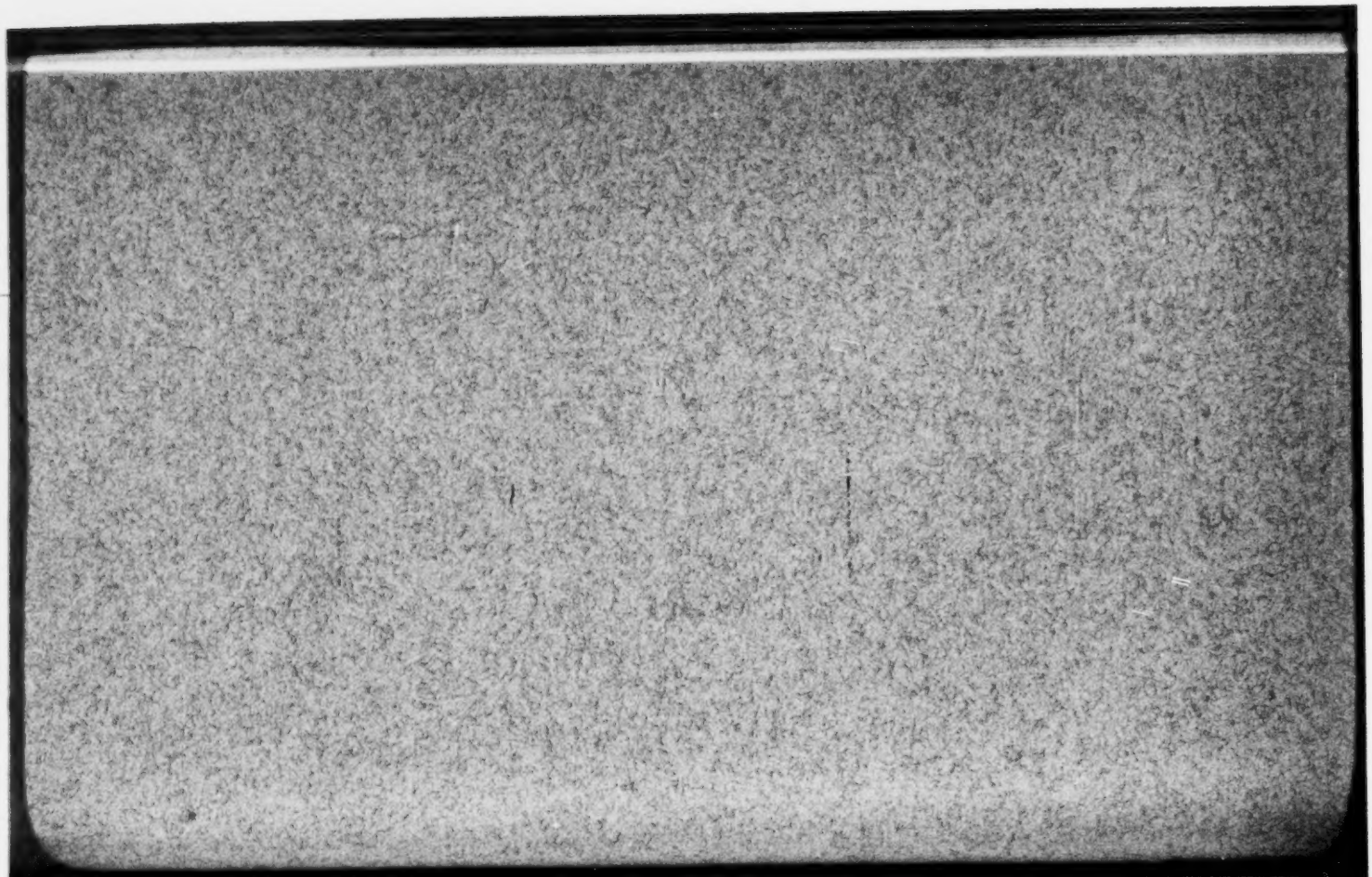
v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said Court.

Supplemental Brief of George R. E. Gilchrist and Hannis Taylor for the Hitchman Coal and Coke Company, Appellant and Petitioner.



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Supreme Court of the United States

OCTOBER TERM, 1915.

No. 241.

HITCHMAN COAL AND COKE COMPANY, a Corporation, *Appellant*,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said Court.

SUPPLEMENTAL BRIEF OF GEORGE R. E. GILCHRIST AND HANNIS TAYLOR FOR THE HITCHMAN COAL AND COKE COMPANY, APPELLANT AND PETITIONER.

In view of the fact that appellees have filed a "Notice of motion to dismiss the appeal in the above-entitled cause, No. 241, and brief in support of said motion," in which brief the contention is made that the jurisdiction of the primary court "was invoked by you on the ground of diverse citizenship, and upon no other ground whatsoever," counsel for appellant will, for the convenience of the court, file the following as a supplement to the last brief filed for appellant and petitioner in No. 241.

I.

The following memorandum brief was presented to Mr. Justice Pritchard in support of the petition for an appeal.

"UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

No. 1220.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et al.*, *Appellants*

v.

HITCHMAN COAL AND COKE COMPANY, a Corporation, *Appellee.*

PETITION FOR APPEAL PRESENTED TO MR. JUSTICE PRITCHARD IN VACATION.

MEMORANDUM BRIEF IN SUPPORT OF SAID PETITION.

Pt. §6, Act March 3, 1891, Comp. St., 1901, p. 550.

"In all cases * * * *not hereinbefore made final*, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken

or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed."

WHEN ACTION OF CIRCUIT COURT OF APPEALS NOT FINAL.

"Judgment of the circuit court of appeals can not be held final on the ground that the jurisdiction of the circuit court was dependent entirely upon diverse citizenship, *where the plaintiff's declaration claimed that the controversy turned on a construction of the laws of the United States and both courts below dealt with the case on that assumption.*"

Fla. Cent. &. P. R. Co. *v.* Bell, 176 U. S. 321.

"An appeal from a circuit court of appeals to the Federal Supreme Court will not be dismissed on the ground that the jurisdiction of the circuit court was invoked solely on the ground of diverse citizenship, *where grounds of suit and relief were also based upon Federal statutes which were necessary elements of the decision of the circuit court of appeals.*"

Henningsen *v.* U. S. Fidelity & G. Co., 208 U. S. 404.

"The issue of unfair competition must be regarded as open for consideration by the Federal Supreme Court, on an appeal from the circuit court of appeals, where there was both diversity of citizenship and the assertion of a valid trademark to give jurisdiction to the circuit court, in view of the statutory provision making the judgments of the circuit courts of appeal final only where the jurisdiction below depended entirely upon diversity of citizenship, or where the case arose under the patent revenue, criminal, or admiralty laws."

Standard Paint Co. *v.* Trinidad A. M. Co., 220 U. S. 446.

"Whether the jurisdiction of the Federal circuit court depended on diverse citizenship alone, within the meaning

of the act of March 3, 1891, §6, making the decrees of the circuit courts of appeals final in such cases, or was vested on other grounds as well, *must be determined from complainant's statement of his own cause of action as set forth in the bill, without regard to any questions that might have been brought into the suit by the answers or in the course of the subsequent proceedings.*"

Shulthis *v.* McDougal, 225 U. S. 561.

See to the same effect Northern P. R. Co. *v.* Soderberg, 188 U. S. 526; Penn. Mutual L. Ins. Co. *v.* Austin, 186 U. S. 685; Northern P. R. Co. *v.* Amato, 144 U. S. 465; Warner *v.* Searle & H. Co., 191 U. S. 195.

In Omaha E. L. & Power Co. *v.* Omaha, 230 U. S. 123, a case involving diverse citizenship, it was held that, in order to deprive the decree of the circuit court of appeals of finality, the bill must contain "*a general statement that a constitutional right was being or about to be infringed;*" that it must appear "*either in terms or by necessary intendment, that the plaintiff was asserting a right, privilege, or immunity under the constitution;*" or that the plaintiff was in some form "invoking its protection." Therefore, if a right is claimed by the plaintiff in his bill involving diverse citizenship, either under a Federal statute or under the Constitution of the United States, it is only necessary for it to appear, "either in terms or by necessary intendment" that such "a right, privilege, or immunity" is being asserted. That is in perfect accord with the rule laid down in Bridge Proprietors *v.* Hoboken Co., 1 Wall. 116, 142, in which it was held that "It would be a new rule of pleading, and altogether superfluous, to require a party to set out specially the provision of the Constitution of the United States, on which he relies for the action of the court in the protection of his rights. If the courts of this country, and especially this court, can be sup-

posed *to take judicial notice of anything without pleading it specially it is the Constitution of the United States.*"

Thus it appears that a decree of a circuit court of appeals can never be considered final in a case involving diverse citizenship, "where the plaintiff's declaration claimed that the controversy turned on a construction of the laws of the United States, and both courts below dealt with the case on that assumption." It is sufficient if it appears, "by necessary intendment, that the plaintiff was asserting a right, privilege, or immunity under the Constitution" or laws of the United States. Inherent in this case and from the beginning, and patent upon the face of the bill filed by the Hitchman Coal and Coke Company, is the fact that the contractual and property rights sought to be protected by said bill depend upon the terms of the Fifth and Fourteenth Amendments to the Federal Constitution, and upon the terms of the Sherman Anti-Trust Law, 26 Stat. L. 209. The following allegations appear on pp. 32–33 of the printed bill [Printed Record, p. 31] of the complaint:

> "Your orator further says that unless enjoined by this Court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and will compel your orator to contract with its employees through the said defendants as officers of the said associations under

such rules and regulations made and enforced by said associations and by said defendant officers as will enable the Union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and further, will compel your orator to agree that each of its future employees as members of the said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employees would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator *which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the State of West Virginia.*"

As a citizen of West Virginia the corporation in question is necessarily a citizen of the United States, and as such it is entitled to the full protection of its Constitution and laws. See Slaughter House Cases, 16 Wall, 36. No one can then deny that in this case "*the plaintiff's declaration claimed that the controversy turned on a construction of the laws of the United States, and both courts below dealt with the case on that assumption.*" Judge Dayton's opinion deals, from beginning to end, with the contractual and property rights of the corporation in question, *as protected by the terms of the Fifth and Fourteenth Amendments, and by the Sherman Anti-Trust Law.* On p. 34 of his printed opinion [Printed Record, p. 783] he refers directly to the case of Adair *v.* United States, 208 U. S. 161, with the observation that "In this latter case the Supreme Court holds such a provision 'to be an invasion of personal liberty, as well as of the right of property, guaranteed by the Fifth Amendment to the Constitution of the United States;' " and on p. 60 [Printed Record, p. 806] he says: "Such a combination is clearly a common law conspiracy,

too far reaching to be reasonable, in restraint of trade, *as well, in my judgment, a direct violation of the Sherman Anti-Trust Law.*" The Circuit Court of Appeals differed with Judge Dayton as to the construction of the Federal law, constitutional and statutory, involved in the case; and as to its application to the facts of this case. Who then will deny that the real merits of this case, as stated on the face of plaintiff's bill, have, from the beginning, depended upon the construction and application to the facts involved of the Constitution and Laws of the United States, and that "*both the courts below dealt with the case on that assumption.*" It is therefore certain that the decree rendered by said Circuit Court of Appeals on May 28, 1914, *was not final*; and that the corporation in question has "of right" an appeal to the Supreme Court of the United States. It is the province of that court to determine in the last resort whether or no a decree of a circuit court of appeals is final or not under §6 of the Act of March, 1891. That was settled in Kingman & Co., *v* Western Mfg. Co., 170 U. S. 677 where it was said: "In Aztec Mining Company *v.* Ripley, 151 U. S. 79, it was held, that this court had jurisdiction by appeal or writ of error to pass upon the jurisdiction of the Circuit Court of Appeals in cases involving the question whether their judgments were made final by Section 6 of the Act of March 3, 1891." In view of that announcement the Circuit Court of Appeals should in every case, where there is any doubt, grant the appeal so that the Supreme Court may settle the question as to the finality of its decree. If the decree is final, the appellee has a simple and inexpensive remedy by motion to dismiss for the want of jurisdiction. All of which is respectfully submitted.

(Signed) GEORGE R. E. GILCHRIST,
(Signed) HANNIS TAYLOR,
Attorneys for Appellant."

In Hull *v.* Burr, 234 U. S. 712, this court said:

> "There is a motion to dismiss the appeal, based upon the ground that the jurisdiction of the district court depended solely upon diversity of citizenship, and that therefore the decree of the circuit court of appeals is final, under § 128, Judicial Code (36 Stat. at L. 1133, chap. 231, U. S. Comp. Stat., Supp. 1911, p. 193). The motion must be granted unless the suit was one arising under the laws of the United States, within the meaning of the first subidivsion of § 24 of the Code. The rule is firmly established that a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends. And this must appear not by mere inference, but by distinct averments according to the rules of good pleading; not that matters of law must be pleaded as such, but that the essential facts averred must show, not as a matter of mere inference or argument, but clearly and distinctly, that the suit arises under some Federal Law. Hanford *v.* Davies, 163 U. S. 273, 279, 41 L. ed. 157, 159, 16 Sup. Ct. Rep. 1051; Mountain View Min. & Mill Co. *v.* McFadden, 180 U. S. 533, 535, 45 L. ed. 656, 657, 21 Sup. Ct. Rep. 488; Defiance Water Co. *v.* Defiance, 191 U. S. 184, 191, 48 L. ed. 140, 143, 24 Sup. Ct. Rep. 63; Arbuckle *v.* Blackburn, 191 U. S. 405, 413, 48 L. ed. 239, 241, 24 Sup. Ct. Rep. 148; Bankers Mut. Casualty Co. *v.* Minneapolis, St. P. & S. Ste. M. R. Co., 192 U. S. 371, 383, 48 L. ed. 484, 489, 24 Sup. Ct. Rep. 325; Shulthis *v.* McDougal, 225 U. S. 561, 569, 56 L. ed. 1205, 1210, 32 Sup. Ct. Rep. 704."

In Mallinckrodt Chemical Works *v.* Missouri, 238 U. S. 41, this court said: "There is a motion to dismiss, based upon the ground that the Federal questions here set up were not raised in the trial court, or in the Supreme Court, of the State, with sufficient definiteness to comply with

§237, Judicial Code (Act of March 3, 1911, 36 Stat. at L. 1087, 1156, chap. 231, Comp. Stat. 1913 §§968, 1214). It appears, however, from the opinion of the Supreme Court (249 Mo. 704 (8), 733), that the question of equal protection under the Fourteenth Amendment was treated as being sufficiently raised, and was specifically dealt with and used against plaintiff in error. This is sufficient to confer jurisdiction upon this court, and the motion to dismiss must be denied. North Carolina P. Co. *v.* Zackary, 232 U. S. 248, 257."

II.

CONSTITUTIONAL QUESTIONS.

Plaintiff's bill has two objects, each of which is plainly expressed:

First.—To raise the point that the United Mine Workers of America is an unlawful organization, and as a corollary that all acts done by it or its representatives in pursuit of its objects are unlawful.

Second.—That specific acts charged as committed and to be intended to be continued to be committed unless restrained, violate plaintiff's constitutional rights.

FIRST OR PRIMARY PURPOSE OF THE BILL.

The bill avers:

> Your orator says that the said United Mine Workers of America, including its said subordinate associations or branches is a secret voluntary organization having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes that the matters and things herein complained of by your orator have arisen. Record, page 6.



The bill also avers:

> Your orator says that the said United Mine Workers of America, the said International Union United Mine Workers of America, the said District No. 6, United Mine Workers of America, and the said Sub-District 5 of District 6, United Mine Workers of America, voluntary associations as aforesaid, are under their Constitutions violating the common and statutory law of the State of West Virginia as well as the Constitution of said State; especially in this, to wit; in the provisions of Section 1, Section 3 and Section 4 of Article X, Constitution International Union, U. M. W. of A.; and in the provisions of Section 1 and Section 2 of Article VIII, and Section 15 of Article IX, Constitution District No. 6, U. M. W. of A.; and in the provisions of Section 1 and Section 2 of Article VIII, and Section 15 of Article IX, Constitution District No. 6, U. M. W. of A.; and in the provisions of Section 2 and Section 3 of Article I, Section 1 of Article IV, Section 6 of Article VI, and Sections 2 and 3 of Article IX, Constitution Sub-District 5 of District 6, U. M. W. of A.; and as well in the said oath which is administered to each member of the U. M. W. of A. on his initiation. Record, page 25.

The last is a direct charge that the organization by virtue of designated provisions of its Constitutions violates the common and statutory law of the State of West Virginia as well as the Constitution of said State.

Immediately following this last averment the bill contains the following:

> The jurisdiction of this court is invoked on the ground that your orator is a resident of the Northern District of West Virginia and a citizen of said State, and that each of the said defendants is a resident of a different State; to wit, no defendant is a resident of the State of West Virginia, and that the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars. Record, page 26.

SECOND OR ULTIMATE PURPOSE OF THE BILL.

The bill avers:

> "Your orator says that it has no contractual relation whatever with any one of the defendants hereto and that each of said defendants is fully aware that your orator is operating a non-union mine and will not consent to operate a union mine; that its employees are non-union; that said employees are required by your orator at the time of entering service to agree not to become connected with the union, while employed by your orator, and that if they do join the union, their employment with your orator shall cease; that with such understanding your orator's employees enter into its employment and that they are now working for your orator under such contract and with such conditions, all of which is known to these defendants and to each of them as aforesaid." Record, page 16.

The bill also avers:

> "Your orator further says that unless enjoined by this court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the United Mine Workers of America as aforesaid, will, in pursuance of their unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's mine and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and will compel your orator to contract with its employees through the said defendants as officers of the said associations under such rules and regulations made and enforced by said association and by said defendant officers as will enable the Union to dictate the persons whom your orator shall employ

and those whom your orator shall discharge, the wages your orator shall pay, and further will compel your orator to agree that each of its future employees as members of the said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employees would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the State of West Virginia." Record, page 26.

The ultimate object of the bill is in the last analysis to rely upon broad constitutional contractual rights, and the averment last quoted expressly avoids mention of the Constitution of the State of West Virginia.

In making the allegation for jurisdictional purposes hereinbefore quoted as to the provisions of the Constitutions of the United Mine Workers of America being violative of the Constitution of the State of West Virginia, the pleader followed and applied the maxim that the expression of one thing excludes the other.

This rule was carefully adhered to when as to the acts committed and intended to be continued to be committed unless enjoined, the pleader omitted to limit the charge to the Constitution of West Virginia as had been done in the other case, and said, as appears from the language of the last quotation that the defendants by doing the acts complained of as committed and as intended to be continued to be committed

> "thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual common law, statutory and constitutional rights as a citizen of the State of West Virginia."

The last averment is that these acts complained of violate plaintiff's

(*a*) Contractual common law rights,

(*b*) Contractual statutory rights,

(*c*) Contractual constitutional rights,

and besides the allegation of the conclusion of law the facts are alleged and these facts show that plaintiff's charge is correct and that plaintiff's broad constitutional rights are involved and that they are being violated.

The contractual rights similar to those set up in plaintiff's bill have been held by this court in Coppage *v.* Kansas, 236 U. S., pages 1, 20, 21, to be constitutional rights in these words:

> "When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer, or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employee.
>
> To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for "it takes two to make a bargain." Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily

> incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

and that liability for breaching them may be enforced:

> "The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will." Truax *v.* Raich, 239 U. S. 33.

That plaintiff has relied upon its broad federal constitutional contractual rights has been understood by counsel for defendants since the beginning of this litigation. It has also been so understood by the two lower courts. In evidence of this we quote from the first answer that was filed in the case:

> "And this respondent, for further answer unto said bill, says that it is true that the said plaintiff has no contractual relations whatever with any of the defendants to said bill, and that each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine; that its men are non-union; that said employees are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed, and that if they do join the union their said employment shall cease; that with such understanding plaintiff's employees entered its employment, and are now working with

plaintiff under such contract and condition, as alleged in said bill, but this respondent avers that any condition, stipulation, contracts or agreements on the part of said plaintiff with its said employees as a condition upon which they shall enter into employment and continue in their employment with plaintiff *are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and can not be made a condition upon which to base any valid and binding contract or obligation between employer and employee.*" Record, pages 92, 93.

Separate answer of A. R. Watkins, filed May 26, 1908, Record, pages 88, *92*, *93*.

The same averment is made in:

Amended answer of A. R. Watkins filed August 20, 1908, Record, pages 150, *155*.

and in:

Separate answer of William Green, filed July 13, 1908, Record, pages 118, *123*.

and in:

Separate answer of D. H. Sullivan, filed July 13, 1908, Record, pages 133, 138, and *139*.

and in the:

Joint and several answer of T. L. Lewis, *et al.*, filed July 13, 1908, Record, pages 102, *108*.

And attention is called to the fact that the separate answer of A. R. Watkins and his amended answer are under oath (Record, pages 101, 165), and that each one of the five answers mentioned is signed by Charles E. Hogg, the same who represents appellees (Record, pages 101, 165, 133, 148, 117).

In line with the contention made in the quoted portion of the separate answer of A. R. Watkins, and in line with the same averment contained in each of the remaining answers referred to, the served defendants by their counsel, Charles E. Hogg, on December 15, 1908

> "moved the Court to dissolve the temporary injunction awarded in this case on the 26th day of May, 1908, on the face of the bill and its exhibits, in so far as the said injunction inhibits, restrains and enjoins the said defendants or any of them from the use of argument, reason and persuasion to induce the employees of the plaintiff, the Hitchman Coal and Coke Company, or any of them, to become members of the United Mine Workers of America or any of its subordinate branches; and also in so far as said injunction inhibits, restrains and enjoins the said defendants or any of them from interviewing or talking to any person or persons in the employment of the plaintiff, or about to enter the employment of the plaintiff, for the purpose of inducing such persons to become members of the United Mine Workers of America or any of its subordinate branches, in a peaceable and law-abiding manner and unaccompanied by intimidation, force, fraud, violence or coercion; and also in so far as said injunction inhibits, restrains and enjoins these defendants or any of them from visiting the homes of the plaintiff's employees or any of them, for the purpose of inducing such employees, by reason, persuasion and argument and unaccompanied by force, fraud, intimidation, violence or coercion, to become members of the United Mine Workers of America or any of its subordinate branches; and in so far as the said injunction inhibits, restrains and enjoins the defendants or any of them from going near or approaching the premises of the plaintiff for the purpose of interviewing or talking to or inducing the employees of the plaintiff or any of them to become members of the United Mine Workers of America or any of its subordinate

branches; and in so far also as said injunction inhibits, restrains and enjoins the said defendants or any of them from unionizing or attempting to unionize plaintiff's mine without its consent, if by the term "unionizing" is meant action on the part of these defendants or any of them to induce the employees of the plaintiff or any of them to become members of the United Mine Workers of America or any of its subordinate branches by the use of argument, reason and persuasion unaccompanied by force, fraud, violence, coercion or intimidation in any form whatsoever; and in so far also as said injunction inhibits, restrains and enjoins these defendants or any of them from interfering with plaintiff's employees or any of them, if by the term "interfering" is meant that these defendants or any of them shall be precluded from interviewing and visiting plaintiff's employees in a peaceable and law-abiding manner for the purpose of inducing such employees to become members of the United Mine Workers of America or any of its subordinate branches." Transcript of Record C. C. A. Fourth Circuit, No. 949, pages 142, 143, 144.

Upon deciding this motion September 21, 1909, Judge Dayton said:

"It is to be borne in mind that this motion is made only for partial dissolution and that, too, without prejudice to defendant's right to move for full dissolution upon final hearing. It is based solely upon the ground that the allegations of the bill on its face warrant, if they do not demand it. Under these circumstances, while I am entitled to construe the allegations of the bill and all of them in the light most favorable to the plaintiff as upon demurrer, I am not inclined, at this time, to consider the charges, substantially made, that the United Mine Workers of America is an unlawful organization seeking to establish a monopoly in labor contrary to the common law, or a trust therein contrary to the Sherman act.

> Such questions deserve more consideration than have had time yet to give them and may well be postponed to the final hearing after the case has been fully made up, if it then becomes necessary to decide them under the conditions at that time existing." *Ibid.*, page 148.

And after quoting from this court's opinion in the case of Adair v. United States, 208 U. S. 161, Judge Dayton added:

> "And many cases are cited in support of these principles. It necessarily follows that if the employer can discharge his employee because he belongs to a labor organization, and if the employee can quit his employment because his employer employs non-union men, they, too, having these personal and individual rights, can contract with each other as to what the status of the employment in this particular shall be. The employee on his part may require as a condition precedent to the sale of his labor, that the employer shall buy it under the terms and upon the conditions prescribed by the labor union and, moreover, shall employ his other labor upon the same terms. If the employer contracts to do this he must be held to his contract for he has accepted the labor upon those conditions. *Per contra* the employer may contract with his employee to buy his labor upon terms other than the union ones and, in order that the union ones may not be disturbing elements in the conduct of his business, may bind his employee not to become a member of the union and thereby disqualify himself, it may be by reason thereof, from continuing his employment upon the terms and conditions of the contract. These views seem to be clearly established in principle by this Adair case and the authorities cited therein. With full knowledge that such a contract has been legally consummated between employer and employee, what legal status has the union in the prem-

ises? It may regret that its advice, help and assistance was not sought by the employee in disposing of his labor but now that it is disposed of can it come forward and incite either to break the contract? Its mission it claims is to aid and uplift labor, but it could hardly fulfill this mission by persuading men to become breakers of contracts and the repudiators of their lawful promises and pledges, and if they do, their legitimate functions are prostituted into a conspiracy to destroy others vested contract rights." *Ibid.*, pages 150, 151.

The opinion of Judge Dayton overruling the motion to modify the temporary injunction of May 26, 1908, is reported in 172 Fed. 963.

From this decision an appeal was taken to the Supreme Court of Appeals for the Fourth Circuit, and that court dismissed the appeal for want of jurisdiction on the ground that an appeal did not lie from an order continuing an injunction. 100 C. C. A. 137, 176 Fed. 549.

THE DEFENDANTS DID NOT DEMUR TO THE BILL.

"Objections to proceedings in equity other than an entire absence of matter of equitable cognizance, must be reasonably interposed or they are waived. Sometimes the rule is stated that the existence of an adequate remedy at law is waived by submitting to the jurisdiction or by not seasonably raising the objection [Brown *v.* Lake Superior Iron Co., 134 U. S. 530; Kilbourn *v.* Sunderland, 130 U. S. 505]. In other cases it is said that the objection is waived if not reasonably interposed, where it is competent for a court of equity to grant the relief sought and it has jurisdiction of the subject matter [Allen *v.* Pullman's Palace Car Co., 139 U. S. 658]." Cyc. L. and P., Vol. 16, 128.

OBJECTIONS TO JURISDICTION, WHEN AND HO TAKEN, AT WHAT STAGE OF PROCEEDINGS.

"Unless the matter is wholly beyond the domain equitable cognizance, no objection to the jurisdiction equity can be made for the first time on appeal (Wylie Coxe, 15 How. 415). *Ibid.*, p. 129. * * * According it is said that an answer to the merits submits defendar to the jurisdiction, but more frequently that an answ to the merits without objection to the jurisdiction wai such objection, and in some cases it is expressly held th the objection may be removed by specially presenting in the answer." *Ibid.*, 132.

"Where in the court below the defendant did not den to the complaint as asking a form of relief inconsiste with the term of the contract alleged, but went to tr on the merits, the objection that the case made a found was different from the one alleged comes too la when urged for the first time in the appellate court."

Wasatch Mining Company *v.* Crescent Mining Compa (1893), 148 U. S. 293, syl. 5.

Defendants admitted by the answers referred to that co tractual rights under the Federal Constitution were involv but they claimed that the contractual rights plaintiff asser were to be subordinated to their rights under the same Co stitution.

While defendants admitted by the answers referred that contractual rights of both plaintiff and defendar under the Federal Constitution were involved in this ca they claimed that those contractual rights asserted plaintiff were to be subordinated to certain rights p sessed by themselves under the terms of that Constituti whereby the right of the employee to alienate, during period of his employment with plaintiff, his right to j

the defendants' union is denied on the ground that to permit such a contract would be contrary to public policy and contrary to the right of the employee to join the defendants' union. It was likewise contended that such contracts, if made and upheld, would violate defendants' right to free speech under the Federal Constitution in as much as defendants claim the right to advance the cause of their union by inducing, by peaceful means, plaintiff's employees to become members of it.

On the trial of the issue presented by the motion to modify the temporary injunction of May 26, 1908, under which the above contentions were made, Judge Dayton held, September 21, 1909, that "An employer and its employees may lawfully contract with respect to the terms of the employment, and as incidental thereto that the employees shall not join a labor union and the employer shall not employ union men; and, when such a contract has been made, a combination between officers or members of the labor union to induce either party to violate the contract, with which they have no rightful concern, constitutes an unlawful conspiracy to restrain the carrying out of which the other party is entitled to an injunction." 172 Fed. 963, syl. 2.

Plaintiff's Federal constitutional rights were litigated and passed on by Judge Dayton after a hearing was had on the merits of the bill in making the injunction of May 26, 1908, permanent.

Judge Dayton said: "I do not stop now to further consider the law declaring efforts to secure the breach of contracts unlawful. I have fully considered this question in my former opinion in this case to which I now refer." 202 Fed. 512, 557.

And those same rights under the Federal Constitution were dealt with and passed on by the Circuit Court of Appeals. 131 C. C. A. 425, 214 Fed. 685.

The claim that the bill does not invoke the protection of the court for plaintiff's contractual constitutional rights under the Federal Constitution was not made in either of the lower courts.

It is too late for defendants to raise that point in this court for the first time.

Besides, they are estopped

By failing to demur.

By their answers.

By their motion to modify the temporary injunction of May 26, 1908.

By Judge Dayton's decree overruling that motion whereby the scope of plaintiff's bill on the point now sought to be raised by their motion to dismiss this appeal is "res adjudicata."

Very respectfully submitted.

GEORGE R. E. GILCHRIST,

HANNIS TAYLOR,

Counsel for Appellant.

WASHINGTON, D. C., *February 23, 1916.*

Office Supreme Court, U. S.
FILED
FEB 29 1916
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 241 [redacted] 11

HITCHMAN COAL & COKE COMPANY, APPELLANT,

vs.

JOHN MITCHELL, INDIVIDUALLY; T. L. LEWIS, INDIVIDUALLY; W. B. WILSON, INDIVIDUALLY, ET ALS., APPELLEES.

MOTION TO DISMISS.

And now come John Mitchell and the other appellees in the above-entitled cause, No. 241, by Charles E. Hogg, their counsel, and move the court to dismiss the appeal allowed therein for want of jurisdiction of this court to hear and determine the same, specifying the following as the ground of said motion:

It appears from the bill filed by the appellant that the jurisdiction of the Circuit Court of the United States in and for the Northern District of West Virginia (now the District Court therein) was invoked by the appellant on the ground of diverse citizenship, and upon no other ground whatsoever; and it further appears from the said bill that

the appellant at the time of the filing thereof was a citizen of the State of West Virginia, and that the appellee John Mitchell was then a citizen of the State of Indiana; the appellees T. L. Lewis, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin, and Thomas Hughes were at that time respectively citizens of the State of Ohio, and that the appellee W. B. Wilson was then a citizen of the State of Pennsylvania.

CHAS. E. HOGG,
Counsel for Appellees.

Supreme Court of the United States

October Term, 1914,

NO. 617.

HITCHMAN COAL & COKE COMPANY, A CORPORATION, *Petitioner,*

versus

JOHN MITCHELL, INDIVIDUALLY; T. L. LEWIS, INDIVIDUALLY; W. B. WILSON, INDIVIDUALLY, ET ALS., *Respondents.*

PETITION AND MOTION FOR WRIT OF CERTIORARI

SUPPLEMENTAL BRIEF FOR RESPONDENTS ON THE QUESTION WHETHER THE WRIT OUGHT TO BE GRANTED

and

ORIGINAL BRIEF ON THE MERITS.

STATEMENT.

The petitioner in this case, Hitchman Coal & Coke Company, on August 15, 1914, obtained an order allowing an appeal to this court from the decree rendered by the Circuit Court of Appeals for the Fourth Circuit on May 28, 1914, which brought into this court a certified transcript of the record, testimony, exhibits, stipulations and all proceedings had in said cause. (*Petition p. 14.*) The petitioner here is the appellant in the appeal and the respondents are the appellees therein. The record of appeal was filed on September 4, 1914, and is numbered 241.

The motion for a writ of certiorari was submitted at the October term 1914, accompanied by a certified copy of the entire record in the said cause as it is in said Circuit Court of Appeals, supplemented by certain original documents which were not printed and which are described in the petition at pp. 16-18. (Petition, p. 45.)

The petition for writ of certiorari is designated as No. 617 on the docket.

The appeal No. 241 and petition for writ of certiorari No. 617, the parties being the same in both cases and involving the same questions, are docketed to be heard together under the practice approved by this court in several cases.

> Fields v. United States, 205 U. S. 292, 51 Lawyers Ed. 807.
> Security Trust Co. v. Dent, 187 U. S. 237, 239, 47 Law. Ed. 158, 159.
> Burton v. United States, 196 U. S. 284, 295, 49 Law. Ed. 483, 486.

An examination of the petition in this case discloses tnat it is intended to be read in connection with the record, as brought into this court on the appeal, as shown by the frequent references thereto made in the petition, apparently in support of several of the matters set forth in the petition. The appellees, respondents here, served a written notice under the rules of this court and in conformity thereto that they would move this honorable court to dismiss the said appeal upon the calling of the case for a hearing on the merits, because this court is without jurisdiction to hear and determine the cause by appeal, setting forth in said notice the grounds of the want of such jurisdiction, accompanying the said notice of motion with a written argument in support thereof.

The appellees have submitted their motion to dismiss this appeal and also moved the court to affirm the decree complained of in the petition for writ of certiorari, in the event this court should be of the opinion that the said petition presents a proper case to be reviewed by means of such writ.

We rely fully upon our motion to dismiss the said ap-

peal for want of jurisdiction of this court to hear and determine the same, and refer the court to our brief accompanying the notice given to the appellant of the motion to dismiss said appeal upon the calling thereof for a hearing upon the merits. Therefore, we have not submitted further written argument upon the said motion to dismiss, but rely upon the one accompanying said notice.

In the discussion of the questions arising upon the petition for writ of certiorari, attention will be called to such parts of the petition as contains a statement of facts and such corrections will be made therein as the record upon appeal may justly authorize or require.

The Questions Arising on This Petition

It clearly appears from the said petition and the record of appeal accompanying the same, that there are but two questions presented to this court for its consideration and decision upon this application for a writ of certiorari.

First. Does the petition of the Hitchman Coal & Coke Company present a proper case for this writ?

Second. If it does present such a case, ought this court to reverse or affirm the decree of which the petitioner complains?

I.

These questions arising from the case made by the petitioner in its petition and record accompanying the same must necessarily be considered in the order just stated. Their proper consideration necessarily requires an examination of the said petition and its accompanying record, to ascertain just what matters the petitioner complained of in his bill and upon which he asked the court for relief. We must know just what the issues were in said cause—just what the District Court could properly consider and decide therein, and what therefore, was properly before the Circuit Court of Appeals for its consideration and decision.

A careful reading of the bill discloses that the matters of which the petitioner complains against the respondents

concisely, but substantially and materially stated, are the following:

(a)

That petitioner is engaged in mining and shipping coal from its mine located at Benwood, West Virginia; that prior to April 1, 1906, it ran its mine with union labor; that beginning on June 12, 1906, it has since operated its mine on a non-union basis: that in the employment of its men they were informed that there was no union at the mine, that petitioner would not allow any, that no union men could remain in the employ of petitioner while recognizing and giving allegiance to the Union, and if any employee of petitioner joined the Union he could not work any longer for petitioner. (*Record pp. 4-5*)

(b)

That the United Mine Workers of America, its subordinate associations or branches by its officers, and servants have sought, and are now seeking by inducement, threats and intimidation, but without physical violence, to cause petitioner's employees to leave its service; to cause others engaged to enter its service to break their engagements of service and not work for petitioner, and all for the express and avowed purpose of compelling petitioner to recognize the Union, and force it to employ none but persons who are members of the United Mine Workers of America. (*Record pp. 5-6.*)

(c)

That said organigation, its subordinate associations and branches, is a secret one having certain expressed objects some lawful and others unlawful, and that in its endeavor to carry out its unlawful purposes the matters and things complained of have arisen. (*Record p. 6.*)

(d)

After setting forth excerpts from the international, district and sub-district constitutions of the Union (*record pp. 6-15*), it is averred that the respondents have agreed, confederated, combined and formed themselves into a conspiracy under the name of the United Mine Workers of America to unlawfully persuade, entice and procure

petitioner's employees to break, violate and disregard their several contracts with petitioner for the purpose of compelling it to unionize its plant against its consent, and to this end the respondents have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel by threats, intimidation, and other unlawful means plaintiff's employees to join the Union, and thus enable the respondents to close down petitioner's mine. That the respondents have unlawfully and maliciously agreed and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and about to finally accomplish, and that is to cause petitioner's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled until such time as petitioner shall unionize its plant. (*Record pp. 16-17.*)

(e)

That after petitioner began to run its mine non-union, that efforts were made by some one or more of these respondents to bring about by inducement, persuasion, threats, intimidation, and by various means and devices unlawfully to induce petitioner's employees to cease working for it, and by use of like means to prevent men willing to work for petitioner not to engage to work, or if having engaged to work then not to go to work for petitioner. (*Record pp. 21-22.*)

(f)

That respondents are now endeavoring to unionize petitioner's mine and threaten that they will close down petitioner's mine and keep it closed until petitioner will agree to employ none but union labor. (*Record p. 24*).

(g)

That the repondents are by their acts violating the common and statutory law of the State of West Virginia as well as the constitution of that state. (*Record p. 25*).

(h)

That unless the respondents are enjoined from the acts hereinbefore recited they will by inducement, persuasion, or coercion in one form or another bring about or shut

down the petitioner's mine and the ultimate destruction of its business, and will compel petitioner to agree that each of its future employees as members of the said organization shall owe and yield thereto an allegiance which shall in all things be paramount to that which said employees owe to petitioner, and that they will thus take charge of and dictate the management of and virtually control petitioner's business (*Record pp. 26-27*).

(i)

That respondents will, and are about to, indulge in the use of threats, intimdation, force, violent or abusive language, picketing petitioner's premises; picketing, patroling or guarding the streets and approaches to petitioner's premises and going to the homes or boarding houses of petitioner's employees for the purpose of intimidating or coercing them to leave petitioner's employment. (*Record p. 27*).

The Wrongs of Which the Petitioner Complains

As clearly indicated by the essential parts of the bill above set forth the specific wrongs complained of by the petitioner in its bill may be concisely stated:

1

That under the constitution, statutory, and common law of West Virginia the United Mine Worker of America is an unlawful labor union.

2

That under these same laws the respondents are by force, violence, intimidation and coercion intefering with and disturbing the petitioner in the exercise of its lawful property rights.

The answers of the respondents are responsive to the bill, denying all those allegations charging them with the unlawful acts imputed to them, and also denying that the labor organization of which they are members is unlawful. (*Record pp. 53-84*).

These answers were filed on September 5, 1910, upon which issue was taken by plaintiff's replication. (*Record p. 52*).

Issues raised by the Pleadings in this Cause

To determine the issues raised by the pleadings in the cause, an examination of the bill and answers is necessary, and such examination discloses the following as the material issues in the case:

(1)

Whether or not the labor organization known as "The United Mine Workers of America," is unlawful under the constitution, common and statutory laws of the State of West Virginia.

(2)

Whether this organization, at the time of the institution of this suit, was engaged in an attempt, by the use of any unlawful means, to induce petitioner's employees to become members of that organization.

(3)

Whether this organization, at the time of the institution of this suit was engaged in an attempt, by the use of unlawful means or otherwise, to induce the petitioner's employees to break their contracts with petitioner and to quit petitioner's employment.

(4)

Whether this organization, at the time of the institution of this suit, was engaged in an attempt to unionize petitioner's mine against its consent, and upon its failure to do so to close down petitioner's mine without its consent.

It is sought by petitioner to bring into the record of this case the action of the United Mine Workers of America, of which the respondent are members, consisting of the proceedings of certain joint conventions or conferences of coal miners and coal operators of Western Pennsylvania, Ohio, Indiana and Illinois. (*Petition, pp. 17-18*).

This evidence is objected to as shown by the record accompanying the said petition, on the ground that it is not material or relevant, because there was nothing in the pleadings authorizing the consideration of such testimony. The same observation applies to other parts of the petition where this same matter is brought to the attention of this court. (Petition, pp. 20, 21, 22, 29, 38).

ARGUMENT

Does the Petition and Accompanying Record Present a Proper Case for a Writ of Certiorari?

Whether or not the United Mine Workers of America is a lawful labor organization, under the common and statute law and constitution of West Virginia, is purely a local question and must be decided by the constitution and laws of that state. An examination of the pleadings in the cause clearly shows that the constitution and laws of the United States were not mentioned in petitioner's bill, nor was any dispute or controversy raised or made therein as to the application or construction of the Federal Constitution or laws upon the determination of which the result of the suit depended; nor was any title, right, privilege or immunity set up in the bill or other claim made under the Federal Constitution or laws or treaties made in pursuance thereof. (Bill, record, pp. 2-31).

The whole theory of the bill, the entire case made by it is that the wrongful acts imputed to the respondents, and the labor union of which they were members, and the national and district constitutions under which they were acting as a union, are in violation of the common and statute laws and constitution of West Virginia.

The only ground of federal jurisdiction is based upon the *diversity of the citizenship* of the parties to the suit.

Whether or not a writ of certiorari ought to be awarded in any case depends upon the *gravity* and *importance* of the question involved therein.

In considering this question the court does not concern itself with the further question as to whether or not the court whose decree is sought to be reviewed did or did not commit error.

The question whether or not the court below erred only arises when the court has concluded that the case is a proper one to review by means of this writ.

The petitioner seeks at the hands of this Honorable Court to have it construe the constitution, common and statute laws of West Virginia, and have it declare whether

or not a labor union is, under the organic, common and statute laws of that state, a lawful organization.

The court of last resort in West Virginia has not decided this question. It may be called upon at any time in the future to do so. If it had *already decided* this question, this court would feel constrained to adopt and follow the views of the State Court of West Virginia.

> Webster v Cooper, 14 How. 488, 14 Law. Ed. 510,511.
>
> Carroll v. Safford, 3 How. 441, 11 Law. Ed. 671, 680
>
> Burgess v. Seligman, 107 U. S. 20, 7 Law. Ed. 88 97.
>
> Hartford Fire Insurance Co. v. Chicago M & St. P. R. Co. 175 U. S. 91, 44 Law. Ed. 84, 89.
>
> Seffingwell v. Warren 67 U. S. 599, 17 Law. Ed. 261.

If the court should decide that the petition here presents a proper case for the review of the decree of the United States Circuit Court of Appeals, and should actually review such decree and either affirm or reverse the same, in doing so this court would necessarily be required to interpret the constitution, common and statute laws of West Virginia and declare whether this labor union in that state is lawful or unlawful, So that it would announce a principle or doctrine binding on the Circuit Court of Appeals and the District Court of the United States sitting in West Virginia, relating to the lawfulness of labor unions in such state.

If the same question should hereafter arise in the State Courts, these courts would necessarily be required to construe and apply the constitution and laws in force in their own State on this subject, and were they to reach a conclusion different from that announced by this court it would certainly present an embarrassing situation.

In considering this phase of the petition for a writ of certiorari, we do not overlook the fact that if the State Courts have *not* passed upon a question on which their decision would be treated as binding upon the Federal

Courts, the latter may properly adopt their own interpretation of the law applicable to the case.

Stanley County v Coler, 190 U. S. 437, 444, 47 L. Ed. 1126.

Burgess v. Seligman, 107 U. S. 20, 27 L. Ed. 359.

Sioux City Term. R , etc., Co. v. Trust Co., 173 U. S. 99, 107, 43 L. Ed. 628.

Nobles v. Georgia, 168 U. S. 398, 42 L. Ed. 515.

Morley v. Lake Shore, etc. R. Co., 146 U. S. 162, 36 L. Ed. 925.

Pleasant Township v Aetna Life Ins. Co , 138 U. S. 67, 73, 34, L. Ed. 864.

Aberdeen Bank v. Chehalis County, 166 U. S. 440, 41 L. Ed. 1069.

Carroll County v. Smith, 111 U. S. 556, 28 Law. Ed. 517.

Scott v. Sanford, 19 How. 303, 363, 15 L. Ed. 691.

Great Southern, etc , Hotel Co. v. Jones, 193 U. S. 532, 544, 48 L. Ed. 778.

For illustration, in interpreting a state statute the Federal Courts will form an independent judgment, as to the meaning of the state law, when there is no binding construction of such state statute by the court of last resort of that state.

Sioux City Term. R., etc., Co. v. Trust Co., 173 U. S. 99, 107, 43 L. Ed. 628.

Nobles v. Georgia, 168 U. S. 398, 42 L. Ed. 515.

Aberdeen Bank v. Chehalis County, 166 U. S. 440, 41 L. Ed. 1069.

Morley v. Lake Shore, etc., R. Co., 146 U. S. 162, 36 L. Ed. 925.

Pelton v. National Bank, 101 U. S. 143, 144, 25 L. Ed. 901.

Sohn v. Waterson, 17 Wall. 596, 21 L Ed. 737.

Coulter v. Louisville, etc., R. Co. 196 U. S. 599, 49 L. Ed. 615.

Michigan Cent. R. Co. v. Powers, 201 U. S. 245, 291. 50 L. Ed. 744.

As to the principle last announced, that in the absence of a state decision construing the constitution or statute law

of a state, the Federal Courts will adopt their own interpretation of the law applicable to the case, an examination of the authorities discloses that in most cases it is only done by this court when the case is properly before it on an appeal or writ of error, and it becomes necessary for the court to place its own interpretation upon the constitution or law of the state in order to reach a conclusion and determine the cause.

If the question now before the court had been previously decided one way by the state court of last resort and the Circuit Court of Appeals had taken an opposite view from that held by the state court and decided accordingly, then the petition here would properly present a question of such gravity and importance as to call for the issuance of the writ. In such case there would be involved the public policy of the state declared one way by the courts of the state and another way by the Federal Court, and as the Federal Courts adhere to the decisions of the State Courts on all questions of public policy of the state, a review of the action of the Circuit Court of Appeals would perhaps properly be brought before this court by means of a writ of certiorari. It must necessarily be conceded that the recognition of labor unions in any state as lawful organizations is a matter of internal public policy of that state, and with which the Federal Courts would not interfere, so long as the nature or character of these organizations did not infringe upon the Constitution of the United States or the laws and treaties made in pursuance thereof.

In *Hartford Fire Ins. Co. v. Chicago M. & St. P. R. Co.*, 175 U. S. 91, 44 Law. Ed. 84, 89, the court in its opinion uses this language citing many cases to support it:

> "Questions of public policy as affecting the liability for acts done, or upon contracts made and to be performed, within one of the states of the Union,—when not controlled by the Constitution, laws, or treaties of the United States, or by the principles of the commercial or mercantile law or of general jurisprudence, of national or universal application,—are governed by the law of the state as expressed in its own Constitution and statutes, or declared by its highest Court. Elmendorf v.

Taylor, 10 Wheat. 152, 159, 6 L. Ed. 289, 292; Bank of Augusta v Earle 13 Pet. 519, 594, 10 L. Ed. 274, 310; Vidal v. Philadelphia, 2 How. 127, 197, 11 L. Ed. 205, 233; Butcher v. Cheshire R. Co. 125 U. S. 555, 581, 584, 31 L. Ed. 795, 798, 8 Sup. Ct. Rep. 974; Detroit v. Osbourne, 135 U. S. 492, 498, 499, 34 L. Ed. 260, 262, 10 Sup. Ct. Rep. 1012; Union Nat. Bank v Bank of Kansas City, 136 U. S. 223, 235, 34 L Ed. 341, 345, 10 Sup. Ct. Rep. 1013; Etheridge v. Sperry, 139 U. S. 266, 276, 277, 35 L. Ed. 171, 176, 11 Sup. Ct. Rep. 565; Gardner v. Michigan C. R. Co. 150 U. S. 349, 357, 37 L. Ed. 1107, 1109, 14 Sup. Ct. Rep. 140; Bamberger v. Schoolfield, 160 U. S. 149, 159, 40 L. Ed. 374, 378, 16 Sup Ct. Rep. 225; Missouri, K. & T. Trust Co v. Krumseig, 172 U. S. 351, 43 L. Ed. 474, 19 Sup. Ct. Rep. 179; Sioux City Terminal R. & Warehouse Co. v. Trust Co. v. N. A. 173 U. S. 99, 43 L. Ed. 628, 19 Sup. Ct. Rep. 341."

Ground for the Issuance of a Writ of Certiorari

This court in repeated decisions has prescribed limits beyond which it will not go in the issuance of a writ of certiorari to review a final judgment or decree of the Circuit Court of Appeals. It has uniformly declared that its power on certiorari is one which should be *sparingly exercised*, and only when the circumstances of the case satisfy the court that the importance of the question involved, and the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of the state, or some matter affecting the interest of the nation in its internal or external relations, or a matter of general interest to the public, demands such exercise,

Forsyth v. Hammond, 166 U. S. 506, 41 L. Ed. 1095.

Re Lau Ow Bew, 141 U. S. 583, 587, 35 L. Ed. 868, 870, 12 Sup Ct. Rep. 43.

Lau Ow Bew v. United States, 144 U. S. 47, 58, 36 L. Ed. 340, 344, 12 Sup. Ct. Rep. 517.

American Constr. Co v. Jacksonville, T. & K. W. R. Co. 148 U. S. 373, 383, 37 L. Ed. 486, 491, 13 Sup. Ct. Rep. 758.

Fields v. United States, 205 U. S. 292, 51 L. Ed. 807, 810.

The Petitioner Asks This Court By Means of a Writ of Certiorari to Pass on the Lawfulness of a Labor Union, a Matter Already Settled by Numerous Decisions of the State and Federal Courts.

An examination of the opinion in this case delivered by the United States Circuit Court of Appeals appearing in the record at pages 727 and 728, discloses the purpose and objects of the United Mine Workers of America, and these objects are all set forth in this opinion. It will be perceived that the object of this labor union is not different from that of other labor unions operating in the different lines of industry; and that the prime and real purpose of this organization is to secure better and safer conditions under which to labor, better pay for the laborers' services, and in various other ways to promote and insure the welfare of the members of the organization, who, of course, must be mine workers. This Honorable Court, in *Gompers v. Buck's Stove & R. Co.*, 221, U. S., 418, 55 Law. Ed., 796, 805, in the course of its opinion referring to the right of working men to form themselves into an association, uses this clear strong language:

> "Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association. By virtue of this right, powerful labor unions have been organized.
>
> But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one."

Excepting a very few early cases, all of the other decis-

ions that have been rendered by the federal or state courts relating to labor unions announce in general terms that a labor organization is a lawful association; that the laborers have the right to organize in it or join a labor union which may take joint action as to the terms of their employment; that it is of benefit to them and to the public that they should unite in their common interest and for lawful purposes, that they may stand together to command better prices for their labor than when dealing singly with their employers, and take action in a lawful manner for their general improvement in other respects bearing upon their condition as laborers.

Thomas v. Cincinnati, etc., Ry. Co., 62 Fed. Rep., 817.

Ames v. Union Pac. Ry. Co., 62 Fed. 7, 9;

Attach. T. & S. Ry. Co. v. Gee, 14 Fed., 153, 154;

Allis-Chalmers Co. v. Iron Molders' Union, 150 Fed. Rep. 155, 171;

Wabash R. R. Co. v. Hannahan, 121, Fed. 563;

Beck v. Ry. Union. 118 Mich., 497, 74 Am. State, Rep. 421.

Longshore Printing Co. v. Howell, 26 Or., 527, 46 Am. St. Rep. 640.

McCauley v. Tierney, 19 R. I. 255, 61 Am. St. Rep. 770.

Wilson v. Hey, 232 Ill. 389, 85 N. E. 928, 122 Am. St. Rep. 119.

Pickett v. Walsh 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272.

Lohsey Patent Door Co. v. Fuelle, 215 Mo., 421, 114 S. W., 997, 128 Am. St. Rep 392.

State v. Stuart, 59 Vt. 273, 49 Atl. 539, 59 Am. Reps 710.

Ketton-Dekle Lumber Co. v. Mather, 53 Fla. 969, 43 So. 590.

Everett-Waddy Co. v. Richmond Typographical Union, 105 Va. 188, 53 S E. 273, 5 L. R. A. (N. S.) 792.

Illustrative of the attitude of the courts toward labor organizations, showing that *they have already passed upon and settled the question of their legality*, we submit a few excerpts from the opinion of some of the Federal judges.

In the case of *Thomas v. Cincinnati, etc., Railway Co.*, 62 Fed. 817, from the southern district of Ohio, discussing the question of the lawfulness of labor organizations, the court in the course of its opinion, by Taft, Judge, says:

> "Now, it may be conceded in the outset that the employees of the receiver had the right to organize into or join a labor union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together, they are often able to command better prices for their labor than when dealing singly with rich employers, because the necessities of the single employee may compel him to accept any terms offered to him. The accumulation of a fund for the support of those who feel that the wages offered are below market prices is one of the legitimate objects of such an organization. They have the right to appoint officers who shall advise them as to the course to be taken by them in their relations with their employer. They may unite with other unions. The officers they appoint, or any other person to whom they choose to listen, may advise them as to the proper course to be taken by them in regard to their employment, or if they choose to repose such authority in any one, may order them, on pain of expulsion from their union, peaceably to leave the employ of their employer because any of the terms of their employment are unsatisfactory."

In *Ames v. Union Pacific Railway Co.*, 62 Fed. 7 and especially at page 9, discussing the rules, etc. existing between the railway company and the men, the court says:

> "These rules, regulations and schedules were the result of free and voluntary conferences, held from time to time, between the managers of the railroad and the officers and representatives of the several labor organizations representing the men in the different subdivisions or branches of the service, viz., the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen, the Order of Railway Conductors, the Or-

der of Railway Telegraphers, the Union Pacific Employees' Association and the Brotherhood of Railway Trainmen. These labor organizations like the rules, regulations and schedules, had become established institutions on this system many years before the appointment of the receivers. Two of the ablest railroad managers ever in the service of this system, and probably as able as any this country ever produced,—Mr. S. H. Clark, and Mr. Edward Dickinson, now general manager of the road—testify that these labor organizations on this system had improved the morals and efficiency of the men, and had rendered valuable aid to the company in perfecting and putting into force rules and regulations governing the operation of the Union Pacific Railway, which, confessedly, have made it one of the best managed and conducted roads in the country. The managers of this great transcontinental line testify that it has been their policy to bring it up to the highest standard of efficiency, and to afford to passengers and property transported over it all the security and protection attainable by the exercise of the highest degree of intelligence on the part of those engaged in the operation of its trains, and they cheerfully bear testimony to the fact that their efforts in this direction have been seconded and materially aided by the labor organizations which are represented in this hearing."

And the court, in its general discussion of the right of labor to organize, says:

"In this country it is not unlawful for employees to associate, consult, and confer together with a view to maintain or increase their wages, by lawful and peaceful means, any more than it was unlawful for the receivers to counsel and confer together for the purpose of reducing their wages. A corporation is organized capital; it is capital consisting of money and property. Organized labor is organized capital; it is capital consisting of brains and muscle. What is lawful for one to do it is lawful for the other to do. If it is lawful for the stockholders and officers of a corporation to associate and confer together for the purpose of reducing the wages of its employees, or of devising other means of making their investments profitable, it is equally lawful for organized

labor to associate, consult, and confer with a view to maintain or increase wages. Both act from the prompting of enlightened selfishness, and the action of both is lawful when no illegal or criminal means are used or threatened. It is due to the receivers and to the managers of this property to say that they have not questioned the right of the labor organizations to appear and be heard in court in this matter, and that what they have said about these organizations has been in commendation of them and not in disparagement.

Men in all stations and pursuits in life have an undoubted right to join together for resisting oppression, or for mutual assistance, improvement, instruction, and pecuniary aid in time of sickness and distress. Such association commonly takes place between those pursuing the same occupation and possessing the same interests. This is particularly true of men engaged in the mechanical arts, and in all labor pursuits where skill and experience are required The legality and utility of these organizations can no longer be questioned."

In *Atchinson, T. & S. F. Railway Co. v. Gee*, 140 Fed. 153, 154, the court in the course of its opinion, with reference to the right of labor to organize and form itself into unions, says:

"I repeat what I have so often said in this case, as well as in other cases, that laboring men have a perfect right to organize themselves into unions, and have their officers, and meet in secret, and attempt thereby to better their conditions by shortening their hours, or increasing their wages, or in bringing about any other status for their own betterment."

Following an almost unbroken line of decisions, both state and federal, the United States Circuit Court of Appeals for the Fourth Circuit as shown by the opinion reported in 214 Fed. at page 685 decided in this case that

"The ancient English rule that labor unions were unlawful does not prevail in the United States in view of the changed conditions existing, the rule being now settled that labor may organize for its own protection and to further the in

terests of the laboring classes, and may strike and persuade and induce others to join them by peaceable means, being only subject to legal restraint by injunction when they resort to unlawful means to cause injury to others to whom they have no relation, contractual or otherwise."

The questions arising in this case are not of sufficient gravity for the issuance of a writ of certiorari to bring them before this court for its consideration.

1

That a labor union is a lawful organization has been repeatedly decided by the Federal and State courts. The record in this case does not therefore even present a novel question.

2

Whether the labor union here concerned is a lawful organization under the constitution and laws of West Virginia is a local question, and not of sufficient gravity and general importance to call for consideration and decision by means of a writ of certiorari.

Whether the respondents, either as individuals or as members and officers of the said labor union, threatened to disturb the petitioner in the operation of its coal mine in the mining and shipment of coal therefrom simply raises a question of purely private and local concern, and in no aspect can it be considered a matter of public importance in that sense which calls for the issuance of a writ of certiorari by this court, to review a final decree of the Circuit Court of Appeals in a case where the jurisdiction of the district court depends entirely upon diverse citizenship.

It seems clear to us, and therefore we respectfully submit, that this case presents no question of such gravity and importance as to call into exercise the power of this Court by means of a writ of certiorari, to review the decree of the Circuit Court of Appeals rendered therein on the 28th day of May, 1914, and that the prayer of the petition should not be granted.

II

MERITS OF THE CASE

The petitioner, Hitchman Coal & Coke Company, in its petition for a writ of certiorari by its counsel *assumes* that this is a case of such gravity and importance that the writ ought to be granted, and the entire record of the case now before this court on appeal, be treated as a return to the writ, (petition p. 43), and upon the said petition and record accompanying the same, counsel for the petitioner presented an extended written argument in support of their contention that the decree of the Circuit Court of Appeals should be reversed.

To argue the merits of this case is quite unnecessary, unless the court concludes that the petition presents a proper case for its review of the decree, of which complaint is made by means of certiorari.

And it is also averred in the petition for the writ of certiorari that

> "Inherent in this case from the beginning and patent upon the face of the bill filed by petitioner, is the fact, entirely apart from the question of diversity of citizenship, that the contractual and property rights sought to be protected by said bill depend upon the terms of the Fifth and Fourteenth Amendments to the Constitution of the United States, and upon the terms of the Sherman Anti-Trust Law, 26 Stat. L. 209. As a citizen of West Virginia petitioner is necessarily a citizen of the United States, and as such it is entitled to the full protection of its constitution and laws. Slaughter House Cases, 16 Wall. 36. District *Judge Dayton's opinion deals, from beginning to end, with the contractual and property rights of petitioner, as protected by the terms of the Fifth and Fourteenth Amendments and by the Sherman-Anti Trust Law.* On page 34 of his opinion (Record, p. 783) he refers directly to the case of Adair v. United States, 208 U. S. 161, with the observation that 'In this latter case the Supreme Court holds such a provision to be an invasion of personal liberty as well as of the right of property guaranteed by the Fifth Amendment to the Constitution of the United States;' 'and on page 60 (Record, p. 806) he says: Such a combination is clearly a

> common law conspiracy, too far-reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust Law.' The opinion and judgment of the Circuit Court of Appeals consists of a difference of view as to the construction and application of Federal Law, constitutional and statutory, as applied by District Judge Dayton to the facts of this case." (Petition pp. 12-13).

If, therefore, this court *should* find from the record in this case (against the contention of the respondents) that the jurisdiction of the District Court *did not depend alone upon diverse citizenship*, but that the case also involved a federal question conferring jurisdiction on this court to consider and determine the case on appeal, then the merits of the cause must be considered irrespective of the petition for a writ of certiorari.

In the event that this court should decide to consider this case upon its merits, counsel for the respondents here present the merits from their view of them as shown by the petition and the record accompanying the same.

Preliminary Statement.

Before entering upon the consideration of the merits of this case, there are some matters appearing in the petition that will be here noticed, lest they be taken as true and injustice be thereby done to the respondents.

There appears in the petition this statement:

> "Passing to the proof it is safe to say that the material allegations of the bill filed in the lower Court have been abundantly sustained. And it is also safe to say that no controversy arose in that Court over the material facts. So the issue here is rather one of law on those facts." (Petition, p. 16).

An examination of the record presented with petition the shows that this is an error; that all the material allegations of the bill imputing unlawful and wrongful acts to the respondents are denied by answer. (Record pp. 53-84).

So the allegation that the labor union known as the

United Mine Workers of America, and its National, District, and Sub-District constitutions are in violation of the constitution and laws of West Virginia is likewise denied.

As a fact to prove it it is stated that

> "The United Mine Workers of America are a secret body," (Petition p. 20)

This allegation is made in the bill and denied by the answer and the proof is overwhelming that it is not a secret organization.

It is also stated in the petition that

> "Although the United Mine Workers as an organization have to date waged an industrial war against the non-union fields, the Union operators still complain of the competition from those fields and urge the mine workers to greater efforts along the same line and to other and more desperate and unlawful acts." (Petition, p. 24),

There is no allegation of this sort, or even of a kindred character, appearing in the bill and this statement is entirely foreign to the case as made by the pleadings and evidence relevant to the issues arising in the cause.

It is futher stated in the petition as a fact

> "And being confronted with a United Mine Worker membership of more than 300,000, but now at the time of the preparation of this statement, although, of course, outside of the record, claimed to be more than 400,00, and with an income of more than $1,500,000.00 per annum, the operators must perforce and do submit." (Petition, pp. 24-25).

This averment in the petition is intended to convey the statment as a fact, that owing to the large number composing the membership of the United Mine Workers of America distributed however throughout the United States, Canada and Nova Scotia, the operators in a particular state must and do submit to the unionizing of their mines against their own consent and contrary to their wishes and desires.

This is not true, as will be shown further on in this brief.

It is also stated as a fact in the petition that the officials of this labor union claim that they are run out of the State of West Virginia, or their lives endangered if they stayed after being discovered. (Petition, p. 26).

This is not true of West Virginia as a state, although in some isolated places there appears to have been one or two acts of violence committed by thughs or irresponsible persons against an official of the Union, but such act is not imputable by the evidence to the operators.

In West Virginia there are many operators who are running their mines non union, while in other parts of the state they are employing union labor and the large accretion of the membership mentioned in the petition at pp. 24 and 25 comes largely from the State of West Virginia itself.

It is also stated as a fact in the petition that the United Mine Workers

> "have sent out men to the trade to boycott West Virginia coal. (Petition, p. 30).

There is no allegation of this sort made against the respondents anywhere in the pleadings and the evidence does not justify this statement as a fact. If some idividual member of the Union of his own accord, entirely independent of his organization and in inviolation of its constitution did things of this sort, it cannot be imputed to the Union as one of its acts on the question whether or not it is an unlawful organization.

It is also stated in the petition that

> "reports were put in circulation by the Union's officials that the mine was going to be unionized, and that unless the men joined the United Mine Workers they would soon be out of their jobs." (Petition p. 40)

There is no evidence to fix upon the officers of this labor union the fact here averred, if any such reports were put in circulation by the officers; nor is there any evidence

that these officers caused such reports to be put in circulation.

It is further stated in the petition that

> "Early in September, 1907, the defendant Thomas Hughes was sent by the officials of the United Mine Workers into the Panhandle District of West Virginia with instructions to organize the non-union mines, and compel them to recognize the Union, or else be shut down. (Petition p. 41)

There is no evidence whatever to show that Thomas Huges was sent out as a representative of the Union for the purpose of organizing a non-union mine or compelling any non-union mine to recognize the Union, or to shut down any mine.

He, the respondent Hughes, was never served with process to answer in this case, he filed no answer to the the bill, he made no appearance in the case, nor did he give his evidence therein.

The record discloses that the said Hughes was simply directed to visit the employees in the Panhandle District engaged in the coal mines, and talk with them on the subject of joining the union and to invite them to become members of the Union. He was never authorized by the United Mine Workers, or any of its officials, even to attempt to organize a mine upon a union basis, or to shut down the mine upon the refusal of any operator to recognize the Union. As we shall see in the course of this brief, there is a great difference between employees working in a mine who simply belong to the Union, and the men who are members of the Union and work under a contract with the operator who has organized his mine upon a union basis, and thereby recognizes the Union in his business of mining coal.

The foregoing preliminary statement correcting certain errors appearing in the petition, has been made by counsel for the respondents lest an omission to notice these erroneous statements of fact might be taken and treated as conceding the truth thereof. In subsequent parts of this

brief on the merits, the whole case will be taken up, which will embrace the pleadings and the issues thereby made between the parties, the evidence bearing on these issues and the law applicable thereto. We shall also endeavor to show to the court that a very great deal of the testimony introduced by the petitioner in support of his case is entirely foreign to any of the issues therein, and therefore ought not and will not be considered by this court, and was not considered by the Circuit Court of Appeals in reaching its conclusion

The case as made by petitioner's bill and the answers thereto.

The allegations of the bill define the limits of the petitioner's right to an injunction, and these allegations being controverted by answer must be proved as alleged.

Directing the attention of the court to those *material* averments upon which the claim here to relief is founded, the following is a concise statement thereof:

(1)

That petitioner is engaged in the business of mining and shipping coal; that on June 12, 1906, it began to run its mine non-union: that *every man who enters its employment agrees not to join the United Mine Workers, and if he does do so, he can no longer work for petitioner.* (Record p. 5)

(2)

That petitioner has made known to this labor union its purpose to run its mine non-union, but that *this organization is now acting by inducement, threats and intimidation,* but so far without physical violence, to cause petitioner's employes to leave its employment, and to prevent others, who are willing, to enter its service, and all for the purpose of compelling petitioner to employ only union labor. (Record p 5)

(3)

That the excerpts from the constitution of the national and subordiate branches of this *labor* union set forth in the bill indicate its character and purpose. (*Record pp. 6-15*)

(4)

That respondents as officers of the United Mine Workers and as individual members thereof *have formed a conspiracy, under the name of United Mine Workers of America, to unlawfully persuade, entice and procure* petitioner's employes to violate and disregard their several contracts with petitioner, for the purpose of compelling petitioner to Unionize its mine without its consent, and *have maliciously formed themselves into a conspiracy, to compel by threats and intimidation petitioner's employes to join the Union.* (*Record pp. 15, 16*)

(5)

That respondents were informed of petitioner's purpose to run its mine non-union and that each of its employes were under contract not to join the Union, and that if any employe joined the Union his employment would cease. (*Record, p. 16*)

(6)

That respondents *have unlawfully and maliciously formed themselves into a conspiracy,* the purpose of which they are about to accomplish, which is to *shut down petitioner's mine, to cause its plant to remain idle, its contracts to be broken and unfulfilled, until petitioner shall unionize its plant,* and submit to the demands of the Union; that the effectuating of this purpose is imminent and the damage threatened great and irreparable. (*Record pp. 16, 17*)

That petitioner pays as much as the Union scale of wages, and that respondents *have conspired to unionize petitioner's mine* and are thus seeking power to strengthen the Union in future contests with the employers of labor, to *compel all mine workers to join the Union and establish a monopoly.* (*Record p. 17*)

(8)

That in the Annual Convention of the United Mine Workers held in Janury, 1907, it was openly stated— "*Organized labor contends that as industry cannot exist without labor, labor has the right to say under what conditions it*

shall be employed, thereby directing the management of the productive end of the business." (*Record p. 17*)

(9)

That certain other matters occurring in said convention, indicative of the object and purpose of this organization are set out in the bill. (*Record pp. 17, 18*)

(10)

There are also set out in the bill certain matters occurring in sub-district conventions held in March and April, 1907, by the United Mine Workers. (*Record p. 19, 20*)

(11)

That in said convention of April, 1907, this resolution was adopted: "*Resolved, by this Ninth Annual Convention that the sub-district officers be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done.*" (*Record p. 20*)

(12)

That some one or more of the respondents *have by inducement, persuasion, threats and intimidation and various means and devices*, made effort to induce petitioner's employes to cease working for it, and *by like means have sought to induce men willing to work for petitioners not to enter its employment.* (*Record, p. 21,22*)

(13)

That respondents further proceeding to carry out this conspiracy, are *now endeavoring to unionize petitioner's mine and threaten to close down its mine and keep it closed until petitioner agrees to employ none but union labor.* (*Record p. 24*)

(14)

That while respondents have so far been unable to induce petitioner's employes to quit its service, still respondent Hughes has recently stated to one of its miners whom he was trying to induce to join the Union, that he had succeeded in having one hundred and twenty-five men at the Hitchman mine to agree to become members of the United Mine Workers and as soon as he got twenty-five

more, he would shut the Hitchman mine down. (*Record p. 25*)

(15)

That the United Mine Workers of America, the international, district and sub-district associations, *are, under their constitution, violating the common and statutory law and constitution of the State of West Virginia*, specially pointing out the unlawful parts of said constitution. (*Record p. 25*)

(16)

That unless enjoined from so doing, respondents *conspiring so to do, will by enticement, persuasion or coercion, in one form or the other, shut down petitioner's mine and destroy its business, and without its consent will compel petitioner to recognize and contract with the United Mine Workers in the further transaction of its business.* (*Record pp. 26, 27*)

(17)

Then follows the prayer of the bill for an injunction. (*Record pp. 22-31.*)

It clearly appears from the said bill, of which we have just given a synopsis, that the petition *charges this labor union to be a conspiracy*, formed for these purposes:

(*a*)

To cause by threats and intimidation petitioner's employes to quit its employment and to prevent others from entering its employment.

(*b*)

To cause as conspirators the petitioner's employes to break their several contracts with it, and to compel by threats and intimidation these same employes to join the labor union.

(*c*)

To cause petitioner's mine to be shut down, the plant to remain idle, its contracts to be broken and unfulfilled, until petitioner shall unionize its mine against its consent.

(*d*)

That proceeding to carry out their said conspiracy, the

respondents are now endeavoring to do the damage in the bill set forth, and unless enjoined from so doing they will carry into effect their purpose to injure petitioner.

Upon this bill duly verified and accompanied by certain affidavits appearing in the record, a temporary restraining order commensurate with the allegations of the bill was issued, and afterwards the court awarded a temporary injunction of the very same character. (*Record pp. 32-36.*)

An examination of the injunction discloses that it is a far-reaching and most drastic process.

After a fruitless effort on the part of these respondents to have the injunction order modified, those who had been served with process to answer the bill filed answers thereto, all of which appear in the record. (*Record pp. 53-84.*)

Three of the respondents, John Mitchell, W. B. Wilson and Thomas Hughes, never were served with process, and never appeared to the case, although the District Court decreed against them just as if they had been so served, or entered their appearance.

The sufficiency of the bill was not called in question by demurrer, as the practice in equity under the old rules then was, although the wrongful acts imputed to them were embodied in allegations of a most general character. The character of the threats, coercion and intimidation imputed to respondents was not alleged, nor how their wrongful purpose were to be effected, which were alleged to be imminent, and were about to be carried out, and that an injunction was necessary to prevent it.

But the respondents did not attack the bill because of its many general and indefinite charges of wrong and injury threatened to the business and employes of the petitioners, but met these charges by means of answers challenging their truth and putting the petitioner on proof thereof.

The joint and several answer of T. L. Lewis, William Green, D. H. Sullivan, George W. Savage, John Zelenka and Lee Rankin, six of the respondents served with process to answer the bill, appears in the record at pages 53-

68, and the answer of A. R. Watkins, the other respondent summoned to answer, at pp 68 84.

On November 5, 1910, a general replication was filed to each of these answers. (*Record p. 84*)

These answers deny positively all the allegations of the bill imputing to these respondents any unlawful or wrongful acts, and thereby put petitioner on proof of the same.

While these answers do not deny that petitioner made a separate contract with every one of the miners entering its employment agreeing not to become a member of the United Mine Workers of America while in its service, and upon doing so their employment should cease, the answers *do* deny knowledge of this fact on the part of the respondents.

The facts proved in support of the Case as made by the pleadings Therein.

The Hitchman Coal and Coke Company was organized under the laws of the State of West Virginia in the year 1901, and began operations at Benwood, Ohio County, West Virginia, in the early summer of that year. The opening up of the mine consumed some time, and the actual mining of coal did not commence until in the winter of 1902. At that time, however, the Company did not ship any coal. The Company began its operations upon a non-union basis; that is it employed its labor independently of and without relation to the organization known as the United Mine Workers of America. (E. T. Hitchman's testimony, record p. 248)

Previous to its entering upon the operation of mining coal at Benwood, the Hitchman Company entered into a contract with the Baltimore and Ohio Railroad Company for the furnishing of coal to the engines of the latter Company; and during the early part of its operations all the coal mined by the company was delivered upon the engines of the railroad company; the amount mined at first was very small; it practically commenced at nothing and gradually increased, until now this mine is a regular coaling station for the railroad Company, and is its only coal-

ing station in the vicinity of Benwood. (E. T. Hitchman's testimony, record p. 247)

The coal company continued to operate its mine upon a non-union basis until the month of April, 1903, when it entered into a contract with its employes through the officers of the United Mine Workers of America, adopting the scale of wages demanded by the members of that organization, and agreeing to observe the rules and conditions of employment. (E. T. Hitchman's testimony, record pp. 249,250).

The company continued to operate its mine upon what is known as a "union basis," for three years, or until some time in April, 1906; (Hitchman, record p. 252) the first contract or agreement expired in 1904, and was renewed for a period of two years, or until April, 1906 At that time the men refused to work longer, because no agreement could be made between the employes and the company as to the rate of wages and conditions of employment. (Hitchman, record p 252).

About June 21, 1906, after the mine had been shut down and operations suspended for a period of about fifty days, the company resumed operations upon a non-union basis, with the understanding between the officials of the company and its employes that the company would deal with each one of them individually from that time on, and the men who had formerly been in the employ of the company were informed by its president, that each man would have to seek employment for himself, and that the company would have no further relations with the organization known as the United Mine Workers of America. (E. T. Hitchman's testimony, record pp. 253, 254.)

After resuming operations in June, 1906, it was agreed between the company and its employes that the company's mine would be operated upon a non-union basis; its board of directors passed a resolution whereby a fixed policy was adopted by the company to employ none but non-union laborers; (Hitchman, record p. 254) the agreement of employment between the company and its men was verbal up to January, 1908, but about that time and since the institution of this suit the company issued employment cards, in the following words:

"I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employe of the Hitchman Coal and Coke Company; that the Hitchman Coal and Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal and Coke Co., I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said Company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employes to bring about the unionizing of tnat mine against the company's wish. I have either read the above or heard the same read."

(Petition p. 11; Cott's evidence, record pp. 264, 265).

Thereafter, each and every man who entered the company's employment was required to sign one of these cards before being accepted as an employe; and any applicant for employment who refused to sign the card, was denied employment.

(R. J. Cott's, testimony, record pp. 264, 265.)

The employment card quoted above is substantially the same as the verbal contract had with the men previous to January, 1908.

(R. J. Cott's testimony, record p. 265)

From and after June, 1906, up to and including the date of the taking of the testimony herein, the Hitchman Coal and Coke Company continued to operate its mine upon a non-union basis, with an understanding or agreement between it and its employes, that the company would employ none but men who were not members of the United Mine Workers of America; and from January 1, 1908, the men on their part agreed that they would not become members of the United Mine Workers of America so long as they continued in the employment of that Company.

During all this time from the early part of 1902 up to the time of the taking of the testimony on behalf of the plaintiff in this case, the business of the Hitchman Coal

and Coke Company has increased naturally and gradually, from a production and sale of about 17,000 tons of coal in 1902, to a production and sale of more than 281,000 tons for the first eleven months of the year 1910.

(R. J. Cotts' testimony, record pp. 260, 261.)

In the year 1902, all but about 800 tons of the coal produced by the Hitchman Company was sold to the Baltimore and Ohio Railroad Company and delivered upon its engines at Benwood, West Virginia; while in 1910 more than half of the coal produced was sold in the open market and was designated upon the books of the coal company as "commercial coal" as distinguished from "engine coal;" and nearly all of this "commercial coal" was shipped to ports on the Great Lakes for transportation by vessel to the northern country, for delivery at ports on Lake Superior.

(R. J. Cotts' testimony, record pp. 260, 261;
W. H. Koch's testimony, record pp. 295, 296.)

During all these years the price received by the coal company for both "commercial coal" and "engine coal" would average from ninety-five cents to one dollar per ton; but during the time of the strike in the anthracite fields, during the year 1903, the price for "commercial coal," prior to April 1, of that year, was about three dollars per ton.

(R. J. Cotts' testimony, record pp. 262.)

During this time, at the average price of from ninety-five cents to one dollar per ton, the average profit derived by the coal company from the mining and shipping of its coal was twenty-five cents per ton

(W. H. Koch's testimony, record p. 275.)

During the summer of 1907, the officials at that time in charge of the affairs of the United Mine Workers of America for the district in which the Hitchman Company's mine is located called upon the officers of the coal company, and discussed with them the renewal of the relations which had theretofore existed between that company and the miner's organization; at each of these meetings, at least one of which was held in the company's office, the officers of the company refused to consider the renewal of

their former relations to the union, and the representatives of the Union Mine Workers of America were informed that it was the fixed and determined policy of that company to employ none but miners who were not members of the union.

(W. H. Koch's testimony, record pp. 286, 294.)

In September, 1907, about six weeks after the visit of the officials as above stated, Thomas Hughes, a representative of the United Mine Workers, visited Benwood and its vicinity in an attempt to induce the miners employed by the Hitchman and other coal companies operating in that community, to become members of the United Mine Workers.

(W. H. Koch's testimony, record p. 297.)

In his work as organizer, of soliciting and securing miners to become members of the union, Hughes talked to the employes of the Hitchman and other companies, upon the streets of Benwood, (Wesley Corns' testimony, record p. 332), visited some of the men at their homes, (E. C. Pickett's testimony, record pp. 305) addressed the men on one occasion in an open meeting, (E. C. Pickett's testimony, record, p. 307) and talked with one or more of the officers of the coal company as to the reason why that company refused to employ any but non-union labor, (E. C. Pickett's testimony, record p. 306). In an open air meeting of the men, which was also attended by the superintendent of the coal company, Hughes simply argued to the men the advantages to be derived from membership in the United Mine Workers of America (E. C. Pickett's testimony, record p. 311). And an examination of the entire record will disclose that the conduct and methods employed by Hughes at all times were quiet, peaceable and orderly.

As a result of the efforts of Hughes, about twenty or twenty-five men employed by the Glendale Coal Company, a separate corporation but managed from the same office and by the same men in charge of the operations of the Hitchman Company, were induced to become members of the United Mine Workers of America, and the next morning they were discharged by the superintendent of the

Hitchman Company, who was also superintendent of the Glendale Company. (E. C. Pickett's testimony, record pp. 310, 311.) This was in the latter part of September or the first part of October, 1907.

(E. C. Pickett's testimony, p. 312.)

The following named respondents were never at or near the mine of petitioner, nor at any time met any of the employes of the petitioner, and the evidence fails to connect them in any manner whatsoever with the business of the petitioner after it began to run its mine non-union: John Mitchell, T. L. Lewis, W. B. Wilson, George W. Savage, D. H. Sullivan, Lee Rankin, John P. White, Franklin J. Hayes, Edwin Perry, John Moore, John Albasin, William Roy and William Applegarth.

The only persons who ever visited the plant or mine of the petitioner after it started to run non-union were the respondents Green, Watkins, Zelenka and Hughes. The other respondents are not connected in any manner with even a visit to the petitioner's place of business and no attempt was made to show such fact.

The United Mine Workers of America

is a voluntary unincorporated organization created for the purpose of uniting employes that produce or handle coal and coke in or around coal mines, and to ameliorate their conditions by methods of conciliation, arbitration or strikes. (Record pp 6, 7.) The organization is composed of International, District, Sub-District, and Local Unions. (Record p. 6.) The International Union has jurisdiction over all Districts, Sub-Districts and Local Unions. (Record p. 6.)

The officers of the International Union are a president, vice president, secretary-treasurer, and executive board, to be composed of one member from each district, and of this board the president, vice-president and secretary-treasurer are members *ex officio*. (Record p. 6.)

District No. 6 embraces the state of Ohio, (Record p. 11) and sub-District No. 5 under the jurisdiction of District 6, includes certain territory in Ohio, and the counties

of Hancock, Brooke, Ohio and Marshall in West Virginia. (Record p. 13.)

In 1906 said District 6 had a membership of 36, 372, and on March 1, 1907, the membership of Sub District 5 was 12,500, with 108 local Unions. (Record p. 15.)

Each local union is a part of the national organization; the national conventions are made up of representatives of the local unions. (Testimony of Lewis, p. 516.)

It is not now and never has been the policy of the mine worker's organization to use force or coercion or any unlawful methods to promote its jurisdiction or growth, and if such methods were employed its existence could not be maintained. (Testimony of Lewis, Record p. 516.)

The objects and methods of the organization of labor known as the United Mine Workers of America appear in the testimony of the witnesses, Savage, (Record pp. 490-495) Lewis, (Record pp. 506-516, 520-528, 531-533) and Sullivan (Record pp. 623-626.

General Purposes of This Labor Union.

In general the purpose of the organization is to secure for men who work in or about coal mines throughout the entire country, better wages, a better ventilation of mines, a better drainage of them, a more efficient system of mines inspection, a uniform price for mining coal where local conditions are practically the same, the lessening of the dangers necessarily incident to the work of the coal miner, the inhibition by proper legislation of child labor in the mines, the making of collective contracts for definite periods between the operators and his employes, and the education of ignorant immigrants who are daily finding employment in mines with reference to the great and imminent dangers that almost continually beset the employment of the coal miner, to caution him against this danger, and the care he must exercise to avoid it and how he must avoid it.

Substitution of Defendants.

When the case came on for final hearing, viz, on the 18th day of January, 1913, the petitioner on that day filed its

petition setting forth that since the institution of this suit, and during the pendency thereof, the respondents John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, A. R. Watkins, John Zelenka and Lee Rankin had ceased to be officers, as stated in the final decree appearing in the record at pages 694-701; that John P. White had then become President of the International organization, Frank J. Hayes Vice-President thereof, and Edwin Perry Secretary-Treasurer thereof; that John Moore had then become President of District 6, John Zelenka its Vice President, and John Albasin had then become President of Sub-District 5, William Roy its Vice-President, and William Applegarth its Secretary-Treasurer. Thereupon this cause was discontinued as to said Mitchell, Lewis, Wilson, Green, Sullivan, Watkins, Zelenka and Rankin in their official capacities, and the said White, Hayes, Perry, Moore, Zelenka, Albasin, Roy and Applegarth, as officers aforesaid, were substituted in lieu of the said former officers.

The motion to make this substitution, as sought by the prayer of the petition, was objected to, but the said objections were overrled and disallowed, and said substitutions made, notwithstanding said objections. (Record pages 696-698.)

After this substitution was made, and that, too, without notice or hearing, a decree was entered against these new and substituted defendants perpetuating the injunction as to them, and perpetuating the injunction also in their individual capacities, as to the said Mitchell, Lewis, Wilson, Green, Sullivan, Watkins, Zelenka and Rankin. (Record pages 698-701.)

Motion to Dismiss This Suit as to Unserved Defendants.

A motion to dismiss this suit as to the unserved defendants was made on January 14, 1908; (Record p. 216) this motion being called in the record "Motion and Plea" It is really a motion in writing to dismiss this suit as to the respondents Mitchell, Wilson and Hughes. The motion in writing of these three appellants, improperly denominated a plea, appears in the record at pages 209-216.

On the 5th day of November this motion came on to be heard, and, while, holding that said motion and plea in effect constituted a special appearance for the sole purpose of asking a dismissal of this cause on the ground of the non-service of process, nevertheless, the court refused to dismiss the suit as to these respondents on the ground that the bill charges a conspiracy between the non-served defendants and those served in the cause, and that, therefore, said Mitchell, Wilson and Hughes are proper parties before the court by representation, through service upon their co-defendants. (Record p. 208.)

Evidence in the Cause

on the part of the petitioner for writ of certiorari consists of certain documentary and oral testimony. A part of the documentary evidence offered and relied upon by the said petitioner is not printed in the record and consists in the original documents themselves transmitted to the Circuit Court of Appeals by agreement of parties, either party being at liberty to make use of these documents or any parts thereof that may be *pertinent and material to the issues.*

A large part of these unprinted documents are set forth in the opinion delivered in this case by the United States Circuit Court of Appeals as reported in 214 Federal at page 707.

Immaterial and Irrelevant Testimony.

There is a large volume of documentary evidence, part of which is referred to above and set forth in the Court's opinion, as already stated, offered by the petitioner subject to exceptions, which respondents insist is irrelevant and immaterial and not applicable, therefore, to any issue raised in this case. There is also much oral evidence on the part of the petitioner to which the same objection applies. This testimony, for convenience sake, may be divided into three classes: (a) those documents introduced before any oral evidence was offered, and which appear in the record at pages 85-221; (b) those which were offered in connection with oral evidence and not published in the

record and (c) those parts of the oral evidence designated in the exceptions taken to this immaterial and irrelevant testimony.

Exceptions to Certain Parts of the Documentary and Oral Evidence offered by the Petitioner in Support of Its Bill.

An examination of the record discloses that all testimony offered in support of plaintiff's case was received by the Court subject to exceptions to be made thereafter to any portion of such testimony that either party might deem immaterial and irrelevant or incompetent or for any other reason.

At the conclusion of the hearing of the cause respondents filed their exceptions in writing to such parts of the evidence as they regarded as incompetent, which appear in the record at pages 222-247, assigning under each exception the reason or reasons therefor.

It may be well to state that these exceptions to the evidence were taken before the evidence was reduced to narrative. The evidence taken and transcribed by the stenographer consisted of three volumes and when reduced to narrative consisted of one volume. Furthermore, the paging of the original evidence after being reduced to narrative form was different from that contained in the original transcript. Therefore, the page references in the exceptions do not correspond to the paging of the record, but this will not likely occasion the court any inconvenience, inasmuch as there is sufficient matter in each exception to bring the court's attention to the character of the evidence excepted to, and the issues already defined by the pleadings will make clear to the court what evidence is material and relevant and that which is not so.

Questions Arising upon the Record in this Cause.

It seems to us that the following questions are involved in this cause, raised by the pleadings and proofs therein and the motion made to dissolve the temporary injunction awarded therein and the final decree perpetuating the same:

(1)

If the contract between the petitioner and its various employees hereinbefore set forth (*ante p. 39.*) will be upheld in a court of equity and the respondents knew of its contents and terms at the time this suit was brought, can they be enjoined from soliciting these employees to become members of said labor organization, or from using reason argument and persuasion to induce such employees to join the same?

(2)

Is the United Mine Workers of America and its subordinate branches a lawful labor organization under the constitution, common and statutory laws of West Virginia?

(3)

If it is not a lawful organization, what part or parts of its national constitution or the district and sub-district constitutions are contrary to the laws of West Virginia, of which the petitioner can complain in this suit?

(4)

If the question can properly be considered as involved in this case, is the United Mine Workers of America a combination or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, within the meaning of the Act of Congress of April 2, 1890, 26 Stat. L. 209, generally known as the Sherman Anti-Trust Law?

(5)

Was the United Mine Workers of America, or its subordinate associations or branches, by its officers, agents, employees or servants, prior to and at the time of the institution of this suit, seeking by inducements, threats and intimidation to cause petitioner's employees to leave its service, and others who had engaged to enter its service, to break their engagements and not work for petitioner, and compel petitioner to employ none but persons who were members of said labor union?

(6)

Had the respondents, prior to and at the time of the institution of this suit, agreed, confederated, combined and formed themselves into a conspiracy under the name of the United Mine Workers of America to unlawfully persuade, induce and procure by coercion, intimidation and threats, petitioner's employees to break and disregard their several contracts with it, all with the avowed purpose of compelling petitioner to unionize its plant; and did they, to such end, unlawfully and maliciously agree, confederate, combine and form themselves into a conspiracy to compel by threats, intimidation and other unlawful means, petitioner's employees to join said union?

(7)

Did respondents unlawfully and maliciously agree together, confederate and combine and form themselves into a conspiracy prior to and at the time of the institution of this suit, the purpose of which they were proceeding to carry out, and were about to finally accomplish, viz; to cause petitioner's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled until such time as petitioner should unionize its mine and surrender the control and management of its business to the said labor union?

(8)

If the question is involved in this case by the pleadings therein, were the respondents, prior to and at the time of the institution of this suit, as members of the United Mine Workers of America, in a combination or conspiracy with the coal operators of Western Pennsylvania, Ohio, Indiana and Illinois, known as the *Central Competitive Field*, to unionize petitioner's mine without its consent?

(9)

Is there anything in this cause arising upon the record thereof, authorizing the court to hold that the respondents had not the lawful right to use reason, argument and persuasion to solicit, invite or peacably induce petitioner's employees to become members of the United Mine Workers of America?

(10)

Could the court enter a decree perpetuating the injunction awarded in this case against the respondents Mitchell, White and Hughes without the service of process upon them to answer said bill in the absence of any appearance by them to the action?

(11)

Could the court render a decree perpetuating the injunction against the respondents White, Hayes, Perry, Moore, Zelenka, Albasin, Roy and Applegarth, in their official capacities without service of process upon them to appear and be heard in this cause against the rendition of such a decree?

ARGUMENT.

The Validity of Petitioner's Contract with its Employes

presents the first question for our consideration. If the court should find this contract to be against public policy, there is really no other question open for discussion, because there is no evidence whatever in this case, as disclosed by the record, of any act imputable to the respondents or any of them, of which the petitioner can complain.

The record is wholly barren of any proof of intimidation, coercion, violence or other unlawful means used by the respondents to induce any of petitioner's employes to join the Union of the Mine Workers, or to make effort of any sort to induce petitioner's employes to quit its service.

This contract is fully set forth in the petition at page 11, and in a former part of this brief at page 39. It appears in the record, however, that the agreement between the Hitchman Coal and Coke Company and its employes when it began to run its mine non-union in June, 1906, was verbal and not exactly in substance like the one in writing, as will hereafter be shown.

It will not be overlooked, in considering this question, that the plant of the petitioner is located in the territory

embraced in Sub-District 5 of the United Mine Workers of America, which is composed of the counties of Belmont, Jefferson, Tuscarawas, Harrison, Carrol, and that part of Starke County south of Canton, in the State of Ohio, and the counties of Hancock, Brooke, Ohio and Marshall, in West Virginia. (Record p. 15.) It also appears in the bill that in this sub-district there are 108 locals, with a membership of 12,500 men. (Record p. 18.)

This contract constitutes an agreement between the petitioner and its several hundred employes, and another company which is under the same management as that of the petitioner, with its various employes, whereby not a single one of the other 12,500 miners in this sub-district can obtain employment, if this agreement is valid. The only step to bring about this result would be for the other employers of coal miners in this sub-district to adopt the same agreement, and then the 12,500 men would be without employment, and consequently without means of obtaining a livelihood for themselves and families. Can such a contract as this be upheld under the liberal doctrines of a court of equity upon the ground of public policy?

An examination of the cases discloses that there are three classes of employers of labor:

(a)

Those who employ both union and non-union men in the same plant.

(b)

Those who employ only union men.

(c)

Those who employ only non-union men.

The "open shop" applies to those plants which come under class (a) where no discrimination is made as to union or non-union employes. The "closed shop" is where one class or the other of miners or laborers is absolutely excluded. That is, where either non-union laborers are not employed, or where union laborers are not employed. The petitioner in this case has attempted to establish the policy of a "closed shop," shutting all of its

avenues of employment against persons belonging to the United Mine Workers of America.

The cases which have arisen, and they are not numerous, involving contracts applying to "closed shops," are those where the attempt has been made to employ only union laborers, and excluding non-union men. The controlling principle, however, must be the same in either case. If there cannot be by valid contract any "closed shop" policy applicable to union laborers, then it must necessarily follow that there can be no "closed shop" composed entirely of non union laborers.

A recent author has said:

> "Contracts between an employer or an association of employers and a labor union, providing for the employment of members of the union only, are of very recent origin, and the decisions in respect to their validity few in number and not altogether harmonious."
>
> Martin on The Modern Law of Labor Unions, Sec. 152.

The first case considered by this author is that of Curran v. Galen, 152 N. Y. 33, 46 N. E. 297, 57 Am. St. Rep. 496, 37 L. R. A. 802. This case was decided in 1897, and is said by the author to be the earliest case of its kind in a court of last resort. The following is the syllabus of this case as reported in 57 Am. St. Rep. at page 496:

> "An agreement between an association of brewers and an assembly of workmen that all employes of the former shall be members of the latter, and that no employe shall work more than four weeks without becoming such member, is against public policy and the interests of society, and cannot justify an action of members of such assembly in procuring a discharge of a workman because of his failure to become a member thereof."

The court, in the course of its opinion, considering the agreement involved in this case, upon the validity of which the defense of the defendants in that case depended, among other things, said:

> "If such an agreement is lawful, then it must be conceded that the defendants are entitled to

set it up as a defense to the action; forasmuch as they allege that what they did was in accordance with its terms.

In the general consideration of the subject, it must be premised that the organization, or the co-operation of the workingmen is not against any public policy. Indeed, it must be regarded as having the sanction of law, when it is for such legitimate purposes as that of obtaining an advance in the rate of wages or compensation, or of maintaining such rate; Pen Code. Sec. 170. It is proper and praise-worthy, and, perhaps, falls within that general view of human society which perceives an underlying law that men should unite to achieve that which each by himself cannot achieve, or can achieve less readily.

* * * * * * *

Every citizen is deeply interested in the strict maintenance of the constitutional right freely to pursue a lawful vocation under conditions equal as to all, and to enjoy the fruits of his labor without the imposition of any conditions not required for the general welfare of the community. The candid mind should shrink from the results of the operation of the principle contended for here; for there would certainly be a compulsion, or a fettering, of the individual, glaringly at variance with that freedom in the pursuit of happiness which is believed to be guaranteed to all by the provisions of the fundamental law of the state. The sympathies, or the fellow feeling which, as a social principle, underlies the association of workingmen for their common benefit, are not consistent with a purpose to oppress the individual who prefers by single effort to gain his livelihood."

The court then held that this contract is contrary to public policy, and that the defense predicated upon it could not be sustained.

The case of *Jacobs v. Cohen*, (decided in 1905) 183 N. Y. 207, 76 N. E. 5, 111 Am. St. Rep. 730, upheld the validity of a contract wherein an employer of labor bound himself to employ and retain only members in good standing in a single labor union, and the court enforced a note given as collateral security for the performance of the contract, to be applied as liquidated damages for its violation. But this decision was rendered by a divided court.

In *Berry* v. *Donovan*, 188 Mass. 353, 74 N. E. 603, 108 Am. St. Rep. 499, it appears that the contract was entered into between the Boot and Shoe Workers Union and the firm of Goodrich and Company, the second clause of which is as follows:

> "In consideration of the foregoing valuable privileges, the employer agrees to hire as shoe workers only members of the Boot and Shoe Workers' Union, in good standing, and further agrees not to retain any shoe worker in his employment after receiving notice from the union that such shoe worker is objectionable to the union, either on account of being in arrears for dues, or disobedience of union rules or laws, or from any other cause."

An action was brought against the defendant representing the union for inducing Goodrich and Company to discharge the plaintiff, who was objectionable to the union because of his alleged arrears for dues.

At the close of the evidence the defendant offered an instruction assuming that the contract above referred to was a valid one, and that the defendant, as the representative of the Boot and Shoe Workers' Union, was justified in insisting upon an observance of its terms. The court declined to give this instruction, to which the defendant excepted, and these exceptions were overruled by the Supreme Court of Massachusetts.

In *Breman v. United Hatters of North America*, (decided in 1906) 73 N. J. L. 729,65 Atl, 165, it was said that the lawfulness of an agreement between the union and the manufacturing hatters in all the factories throughout an extensive district, to the effect that none but members of the association should be employed in their shops, admitted of question; but no adjudication in respect thereto was made, because it was not necessary to a decision of the case.

In *Connors v. Connolly*, decided in 1913 by the Supreme Court of Errors of Connecticut, reported in 86 Atl. 600, 45 L. R. A. (N. S.) 564, 86 Conn. 641, the fourth point of the syllabus is thus stated:

> "An agreement between a labor union and employers, which provides that the latter shall not employ non-union laborers, is contrary to public policy, where the agreement embraces an entire industry of any considerable proportions in the community, so that it will operate generally in that community to prevent or to seriously deter craftsmen from working at their trade under favorable conditions without joining a union."

The eighth point in the syllabus in this case states the law with reference to contracts of the character of the one under consideration, in this language:

> "The question whether a contract or combination is contrary to public policy must be settled by a consideration of the contract or combination itself to learn what it threatens and what its evil tendencies are, and what possibilities of harm to the general welfare lie within it; and an instruction that a contract or combination must be judged by the results which come from it is erroneous."

In *A. R. Barnes & Co. v. Berry*, 156 Fed. 72, decided in 1907, the following is the language of the fourth point in the syllabus:

> "A demand by laborers for a 'closed shop', or that no person not a member of their union, be employed therein, was contrary to public policy."

It will be seen from an examination of these cases, that the courts hold that it is unlawful for a labor organization to enter into a contract with an employer whereby he is to employ no person except union laborers. This seems to be the trend of most of the decisions of the courts, so far as the subject has been before them for consideration.

Now if it is not lawful,—if it is contrary to public policy,—for members of a labor union to make a contract with an employer to engage in his service only members of such union, the same principle must obtain when non-union employes severally make contracts with an employer whereby none but non-union employes are to be engaged, and whereby the employer obligates himself only

to employ persons who are not members of a labor organization.

The theory or principle upon which the courts proceed in cases of this sort is that it has a tendency to exclude a large number of citizens seeking employment, and who must necessarily labor to sustain themselves and families, from obtaining employment, and further must necessarily tend to create a monopoly confined only to that class of emyloyes who, for personal reasons, have not connected themselves with a labor union. If contracts like the one sought to be enforced here by the petitioner are upheld, two results must necessarily follow therefrom: (a) All of the 12,500 union miners living in Sub-District 5 will be thrown out of employment by the extension of such a contract to the other counties composing the sub district, unless they remove therefrom. (b) It would result ultimately in the destruction of the organization known as the United Mine Workers of America, the purposes of which are fully expressed in the preamble of the Constitution of District 6, in which and under the jurisdiction of which Sub-District 5 is operated.

Whether a contract is contrary to public policy must not be judged by the results in the particular case, but by a consideration of the possibilities of harm that lie within it to the general public, as stated above, quoting from the decision in Connors v. Connolly, *supra*.

The upholding of the contract sought to be enforced by the petitioner in this case would not only drive out of employment the 12,500 men in Sub-District 5, but the nearly 40,000 men in the State of Ohio, and the now over 300,000, as shown by the evidence, belonging to the United Mine Workers of America throughout the United States. Under circumstances like this, can the Hitchman Coal and Coke Company come into a court of equity, and charge the United Mine Workers of America with an andeavor to create a monopoly through the agency of their organization, when they themselves are endeavoring to fix a precedent whereby no man in the whole country can be employed in the business of mining coal, if he belongs to the United Mine Workers of America? *He who comes into*

equity must come with clean hands; and he who asks equity must do equity.

Respondents Did Not Have Notice of the Contract.

Another question arising in reference to the contract is, if the said contract existing between petitioner and its employes is valid, did respondents, before and at the time of the institution of this suit, have notice of its existence and its terms?

The petitioner alleges that they did have notice of this contract, (Record p. 16) but the answers of the respondents deny that they had knowledge of this contract and its terms. (Record pp. 58, 73).

All that appears in the record, so far as we have been able to ascertain, is that which appears in the testimony of E. C. Pickett at pages 306, 307. This evidence relates to a conversation with the unserved defendant Hughes, and the witness said, in speaking of the employes of the petitioner: "That they knew the conditions under which they were working, and that they did not have to quit; that we did not force them to join the union; that we asked them not to and they agreed not to join."

On the cross-examination of the witness Pickett, being then interrogated touching his conversation with the said Hughes, the witness, in speaking of the Glendale Coal Company's employes, says: "That they were not to join the United Mine Workers. If they wanted to, though, they would have to cease their employment with the Glendale Coal Company." (Record page 310).

We have examined this record and we are unable to find any testimony bringing home to these respondents a knowledge of the alleged fact that the petitioner made a contract with each one of its employes, whereby each one agreed not to become a member of the United Mine Workers of America, and that if the petitioner's employes did become members of the United Mine Workers, then their employment with it was to cease and thereby be at an end.

It is not denied, and even admitted, in the answer of the respondents, that the petitioner is operating a non-union mine, but this is very different from the proposition that

it has contracted with each of its men uot to become members of the United Mine Workers, and upon doing so their employment ceases.

The petitioner makes knowledge of this contract and its terms an essential condition to that feature of the injunction inhibiting the respondents from doing anything to solicit or induce its employes to become members of the United Mine Workers of America. It is upon this theory that the petitioner asked the court to award an injunction prohibiting the use of persuasion or any other unlawful means to solicit or induce the employes to become members of this labor organization. This part of the bill is positively denied by the answers of all of the respondents, and there is no proof to sustain it.

It is true that the witness Koch says in his testimony (Record pp. 358, 359) that he told the officials about the contract with the men of the petitioner, but on turning to another part of the record (p. 355) we find that the conversation that he had with the district official Green and the sub-district officials Watkins and Zelenka was about July 1, 1907.

We also find from the testimony of the witness Cotts, that beginning with June 6, 1906, all contracts with the employes of petitioner up to January 1, 1908, were verbal and that the mine superintendent Pickett employed the miners that work for petitioner and that witness' (Cotts) information as to the contracts not in writing is quite general and indefinite. (Record pp. 296, 297).

Now if we turn to the testimony of the mine superintendent who did the employing of the men, we shall see just what the agreement was between the petitioner and its employees. (Record p 304).

The witness here says in his examination in chief, and which he does not modify on cross examination:

> Q. State as nearly as you can recollect just what you did and what you said when you came to employ a man?
>
> A. Any man that made application for employment, I told him personally the conditions under which we were working and explained it to him.

I told him that we were paying the price which had been demanded by the union and were paying as much as anybody else, but the mine was run non-union and it would continue to run non-union; that the company would not recognize the United Mine Workers of America, but if they (these men) wanted to work under these conditions it was perfectly satisfactory with me, and, if not, why I did not want them to accept of the position at all And every man that went to work there expressed himself saying it was satisfactory to him to work under these conditions; that all they wanted was the price; that is, that they wanted to be paid for their work the same as other people.

Q. What, if anything, was said on the subject of their membership in the union if they wanted to continue working at your mine?

A. I also told them that any man who wanted to become a member of the United Mine Workers —that that was his business—but he could not be a member of the United Mine Workers and be affiliated with the United Mine Workers and be under the employ of the Hitchman Coal and Coke Company, or be under the jurisdiction of the United Mine Workers; that the mine was run non-union so far as the United Mine Workers of America were concerned.

We now ask how the witness (Koch) could inform the respondents Green, Watkins and Zelenka on or about July 1, 1907 of a contract which did not then exist? Of course he could not give them this information. The statement taken from the testimony of the witness Pickett, as quoted above, does not show any agreement on the part of the employees not to join the United Mine Workers. It simply shows that the petitioner through its mine superintendent was only employing, and only employed, non union labor. In the terms or conditions of employment it nowhere appears, that prior to January 1, 1908, the employees agreed with the petitioner not to become members of the United Mine Workers of America; and this suit was instituted on the twenty-fourth day of October, 1907.

It was, therefore, impossible for the respondents or any of them prior to and at the time of the institution of this

suit to have knowledge of a contract and its terms which had not then been made and was not in existence.

The conclusion is irresistible, therefore, that the respondents did not know of this contract or its terms prior to or at the time this injunction was awarded. Upon what principle of law or equity can the petitioner predicate its right to an injunction restraining the respondents at the time this suit was instituted, from persuading its employes to become members of their labor organization? They knew nothing whatever of the fact upon which the petitioner based its application for an injunction with reference to this phase of the bill.

Operation of the Petitioner's Contract With its Employes.

It is a general rule of elementary law that a contract neither imposes liabilities nor confers rights on a person not a party to it. There is an exception to this rule which will be noticed further on in this brief.

The contract here is not for a definite term of employment. It is an employment at the will of either party.

The agreement in substance is that

"I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America and will not become so while an employe of the Hitchman Coal & Coke Company * * * * * * * If I want to become connected with the United Mine Workers of America I agree to withdraw from the employment of said Company."

This contract is a mere option as to the employe to work for the petitioner or not *at the will of the employe.*

If the employe *does* join the Union, the contract set forth in the bill (*Record p. 5*) provides

> "he could" (can) work no longer for the company."

This provision, just quoted, does not appear in the written contract made with the employes after the insti-

tution of the suit and which became effective on January 1, 1908.

Under either contract the petitioner can discharge its men at any time, without cause, and the men may quit its employment at any time without any reason therefor.

The employes know that under the contract set out in the bill, if they join the Union they must quit the petitioner's employment, unless the petitioner consent to their further service of it.

It is with the petitioner to continue the men in its employ, if they *do* join the Union, and if *all* the men in its employ should become members of the Union and still continue to work for petitioner, its mine could not then be a Union mine. As we shall presently see, all the men may belong to the Union, and the mine still not be a union mine.

It is *one* thing to employ union men to work in a mine and quite *another* thing to unionize the mine.

An employe under this contract is invited to join the United Mine Workers of America and the reasons and argument are presented to him on the part of the Union why it would be better for him to join. The employe is at liberty to join the Union or not as he may determine. If he does join the Union under such circumstances, does this act amount to anything more than a conclusion on his part to quit the service of the petitioner, which he may lawfully do under this contract? But even then he only ceases to work because his employer compels him to do so.

> The charge in the bill is that the repondents
> "have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the United Mine Workers of America, to unlawfully persuade, entice and procure your orator's miners or mine workers, employed by your orator and working for your orator in or around your orator's mine, to break, violate and disregard their several contracts with your orator, all with the avowed purpose of compelling your orator to unionize its plant, without your orator's consent, and to such end have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel

by threats and imtimidation and by other unlawful means your orator's said employees to join the Union."

(Record p. 16)

The bill averring a confederation and conspiracy, to unlawfully entice and procure petitioner's miners to violate their several contracts, and the answers positively denying such allegation, petitioner has taken upon itself the burden of proving such allegation, which it has wholly failed to do.

There is no evidence at all of any combination or conspiracy formed for the purpose of inducing the petitioner's employes to join the Union and thereby bring about the violation of the contracts with petitioner as alledged.

Proof must be confined to the pleadings, and evidence outside of the issues raised by the pleadings is immaterial, and will not be considered by the court.

This rule obtains both at law and in equity. Any other rule would be subversive of the administration of justice.

Byers v. Suiget, 60 U. S. 303, 15 Law. Ed. 671, in opinion 673.
Crocket v. Lee, 7 Wheat. 522, 5 Law. Ed. 513.
Carneal v. Banks, 10 Wheat. 181, 6 Law. Ed. 297.
Phelps v. Elliott, 35 Fed. 445. 461.
Washington Railroad v. The Mayor 77 U. S. 299, 19 Law. Ed. 894, 895.
Foster v. Goddard, 66 U. S 506, 17 Law. Ed. 228,
2 Street Fed. Eq. Prac. Sec 1577 and cases cited.

If the respondents knew of this contract and its terms when this suit was brought, can they be enjoined from soliciting the employes to become members of said labor organization in the absence of fraud, intimidation, violence or compulsion? It seems to us that the decision of this question is hardly necessary for the determination of this

case, but for the sake of the argument let us briefly examine it.

This contract was made between the petitioner and its employes without the privity of the United Mine Workers. It was made in utter disregard of their rights to take lawful steps to promote the growth of their organization. Indeed, it was made for the express purpose of antagonizing the United Mine Workers, and actually to prevent them from obtaining employment with the petitioner, and from any other coal operator who might choose to enter into a like contract with his miners. It was done for the further purpose of driving all members of the United Mine Workers, if possible to uphold this agreement, from mining coal in the State of West Virginia, so that the many thousands of coal miners in West Virginia who belong to this organization would be compelled to seek employment elsewhere, or else give up membership in their organization. It is, in fact, but an introduction to that open antagonism which in the last few years has so clearly manifested itself on the part of some coal operators in West Virginia against the employment of organized labor, and especially of entering into contract relations with the United Mine Workers of America as an organization, and thereby recognizing them as an organized body of workers. It is but a manifestation of the antipathy of the coal operators in some parts of West Virginia against the policy of collective contracts between them and their employes. The operator knows that if he deals with his men as individuals and not as members of an organization, that he is in a situation to dictate terms as to wages, hours of work and conditions that he would be wholly unable to do if his contracts were made collectively with the respresentatives of this class of labor organizations.

This contract does not provide for a definite term of employment at a fixed scale of wages. It has but one binding obligation in it, and that is if any employe becomes a member of the United Mine Workers, his employment thereby and at once ceases; and in consideration of that promise on the part of the employe, the operator agrees to run his mine non-union; thus making his desire

and his own policy the consideration for the miners promise.

The petitioner alleges that in June, 1906, it decided to run non-union; that is, it decided to employ no one belonging to the United Mine Workers of America, and then contract with them collectively for a definite period and upon an greed scale of wages. Then, after determining upon this policy, it contracts with each one of its coal miners that if he will not become a member of the United Mine Workers, it (petitioner) will adhere to this policy of non-unionism previously adopted by it; so that it thereby forms a combination or conspiracy with each of the employes to antagonize the members of the United Mine Workers, and the organization to which they belong. Can it be anything else than this? The contract then becomes a cunning device on the part of the managers of the Hitchman Coal & Coke Company to enlist under its banner of exclusion from its mines members of the United Mine Workers, all persons who will come into its mine and aid and assist in carrying out this policy; and if any employe refuses to continue in the conspiracy he is to quit the mine and find employment elsewhere; and if any member of the organization comes upon the premises of the petitioner or visits its co conspirators for the purpose of a friendly and peaceable conversation, or gives notice to any of these employes of his intention to discuss the policy of this labor organization, or attempts in a quiet and peaceable manner to present its advantages, he is charged with being in conspiracy with all the other members of the United Mine Workers of America, not only those composing Sub-District 5 and District 6, but of the national organization, also, to induce, persuade and entice the petitioner's employes to break this combination, which the petitioner calls a contract, and for the lawful purpose, too, of endeavoring to build up the organization by increasing its numerical strength and thereby enabling its members to more effectually promote the purposes of this labor organization.

That this so called agreement or contract, which in effect is a combination between the petitioner and its employes for the purpose of preventing members of the

United Mine Workers of America from finding employment in the mining industry of West Virginia, has for its object a mere antagonism to the union, attention is directed to the testimony of one of the principal witnesses of the petitioner at pages 361-363, wherein the witness describes the method of operating a mine under a contract between the owner and the representatives of the United Mine Workers of America, which is detailed on pages 362, 363; and after setting forth these methods, the witness is then examined as follows:

"Q. When a mine is run non-union what does that mean? What do you understand by that, Mr. Daugherty?

A. Well, I have not worked at very many non-union mines. The one I am working at now is run on the same basis that it was when the United Mine Workers were in power there.

Q. Is it a non-union mine?

A. Yes, sir.

Q. Now, you say that it was run pretty nearly on the same basis, did you say, as the others?

A. Yes, sir.

Q. What do you mean by saying 'It is run pretty nearly on the same basis as the others?'

A. I mean that we get the same price for our labor; we have the same conditions that are met in the same way; we have a committee and if we have any grievances we take it up under the same style as we did when we were in the United Mine Workers.

Q. You are practically continuing the same operations that you had when you were a part of the United Mine Workers?

A. Yes, sir.

Q. Then, is there any complaint to you people from the company on account of continuing that system?

A. Not to my knowledge.

Q. Now, if you are continuing just as you did before, what difference can you find in the matter of running non-union and running union in the conditions and methods of doing business at the Hitchman mine?

A. Well, one method is, since we have been

running non-union we have never had any trouble of any kind and the mine has never been stopped.

Q. You mean when you have been running non union you have been running continuously?

A. Yes, sir.

Q. And when you ran union you had some strikes?

A. Yes, sir.

Q Is that practically the only difference between the two conditions the one that prevailed when you had the union and the one that prevailed when you have no union?

A. Well, there may be some little difference.

Q. There may be some little difference. Now, what would you say that consists in.

A. Well, it consists in this: That whenever we run out of an agreement we have the power to make our own agreement and go ahead and work. As it was before we had to wait for the officials to make it.

Q. You meet now and among yourselves you make an agreement. Haven't you been running at practically the same price all the time?

A. Yes, sir.

Q. Then you have had no agreement to make as to your scale of wages since you started to run non-union? Is that right?

A. Yes, sir; there have been agreements made since then.

Q. Was the scale lowered or raised?

A. Well, the scale was—whatever the United Mine Workers' scale paid that is what we got.

Q. Then it was consented to by the operator and he was just conforming to the scale of the United Mine Workers?

A. He was just to pay the scale, yes, sir; whatever it was.

Q. And then also as to the conditions prescribed by the United Mine Workers?

A. Yes, sir.

Q. About the only difference now and when you ran union is that you don't have the advice of the officers of the United Mine Workers, whereas before you did have it. Is that right?

A. That is right."

(Record pp. 363, 346).

Thus, we perceive from this testimony, that after this combination between the petitioner and its employes was entered into to drive out union labor, that the petitioner continued to pay the same price for labor, conditions were met in the same way, grievances were adjusted in the same way, and it was practically continuing the same operations that existed at its mine when it operated on a union basis When the scale of wages was lowered or raised by the United Mine Workers, it paid the same scale, and it made contracts with its employes at all times so as to conform its prices to that paid to members of the United Mine Workers under the scale adopted by this organization. What, then, could be the object of this combination between the petitioner and its men, if it were not for the purpose of fighting the union, driving it out of the State of West Virginia, if possible, and doing all in its power to make it impossible, by the law of this State, for union labor to exist in it, and at the same time work in its coal mines?

The petitioner, after determining to drive from its mines every member of organized labor, then addressed itself to each individual, who must not belong to a labor organization, and by its artful agreement or combination which it denominates a contract, took each employe into this agreement or combination for the purpose of co-operating with and aiding it in keeping any part of the United Mine Workers of America from finding employment in its mines, entered into the same agreement or combination with every other mine over which it had any control, to do the same thing, and then when it was endeavoring to carry into effect this agreement or combination for the overthrow of every union employe and the organization to which he belongs, appeals to a court of equity and prays the court to protect it and its co-conspirators in the destruction of organized labor, and further asks that the labor organization which it is antaganizing may be declared illegal and void, on the ground that it is in violation of the constitution and common and statutory law of the state.

Will the court by its decree, sanction and uphold an agreement or combination to destroy organized labor, and

then in the furtherance of this purpose actually enter a decree declaring another organization, which all the courts practically hold to be lawful, to be unlawful and contrary to the constitution and common and statutory law of West Virginia? To ask this question is to answer it in the negative.

We insist, and we will be able clearly to show, that the United Mine Workers are a lawful labor organization. But while this is true, if we concede for argument's sake that it is not lawful, even then, will the court lend its aid to uphold the petitioner in its combination with hundreds of other men to drive out of employment members of this organization simply because they *are* members? It seems to us to ask this question, is also to answer it in the negative.

May we not, therefore, justly conclude, that even if the respondents did know (though, as we have shown, they did not know) of the existence of this agreement or combination called a contract, they have the same right to seek to have their members work in the mines of the petitioner as it has to call hundreds of others to its aid as parties to this agreement or combination to keep them from obtaining this employment; provided, however, that they do not use fraud, force, intimidation or violence to attain this purpose?

The Circuit Court of Appeals in holding that the respondents cannot be enjoined from using lawful methods to invite or induce petitioner's employes to become members of the United Mine Workers, and after quoting this contract, said:

> "It will be observed that by the terms of this contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employe continues to work for the plaintiff he shall not join this organization, nevertheless there is nothing in the contract which requires such employes to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damges for a breach of the same. In other words, the employes under

this contract, if they deem proper may, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the non union men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case, it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the nonunion miners to become members of this organization.

Under these circumstances, we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization.

This is an age of co-operation through organization. In fact, organization is the only means by which united effort can be secured in any branch of human endeavor. The doctors, dentists, school teachers, wholesale and retail merchants, bankers and manufacturers and in fact every branch of industry in this country, are organized for the purpose of the mutual protection of the respective parties interested. Such being the case, it is just as essential, and perhaps more important, that the laboring people should organize for their advancement and protection, than it is for any of the vocations we have mentioned."

214 Fed. 714, 715.

The petitioner relies greatly upon the

Case of Flaccus v. Smith 199 Pa. 128,

and in the argument of counsel accompanying its petition considerable space is devoted to this case, to show its application as an authority to the case now before this court.

(Petition pp. 123-127)

The facts in *Flaccus v. Smith* are very different from those proved in the case how before the court. The facts

in that case, as found by White, P. J., before whom the case was tried, as reported in 7 Am. & Eng. Dec. in Eq. 557, et. seq. as far as pertains to the inquiry here, were in substance as follows:

1. That in September, 1909, the plaintiff had in its factory eighteen or twenty apprentices; that they were all on written indentures, signed by them or their parents; that by this indenture the apprentices were bound to serve for four years, the plaintiff to teach them the art, occupation or mystery of glass blowing, at the prices stipulated in the indentures and at the times and upon the conditions therein set forth.

2. That on the 13th day of September, 1899, the officer and agent of the American Flint Glass Workers Union called at plaintiff's factory and asked permission to go through the works, falsely representing that he was going to start a glass and bottling works. This request was refused. Afterwards he had gatherings of the workmen and apprentices of the plaintiffs in his own rooms at the hotel over night and persuaded them to join the Union which he represented Among those joining were eleven apprentices, to each of whom was administered an oath and they were then declared to be members of the Union.

3. This officer of the union knew that plaintiff's works were an independent factory, that members of the union were not employed, that its apprentices were bound, in their indentures not to join or become subject to the rules and regulations of any such organizations as the officer represented.

4. The object of the officer representing the union was to break down the plaintiff's factory, and as a part of his scheme there was a written notice served on the plaintiff September 19, signed by sixteen of its employes, eight of whom were apprentices, inspired by the union agent which commenced as follows: "On behalf of the Glass Workers, employes of your bottling works, the undersigned do respectfully submit the following demand." These demands were that on and after Monday, September 25, the prices to be paid for the various kinds of bot-

tles "shall be the same as paid by union houses," that all of the present employes be retained and permitted to join the union; and that all who had been discharged for having joined the union be reinstated.

5. The conduct and actions of this agent of the union were very injurious to the plaintiff in his business and if repeated and persisted in as found by the court would in all probability ruin his business.

It will thus be seen that in the case of *Flaccus vs. Smith supra*, so much relied upon by counsel for the petitioner, the facts were widely different from those in the case now before this court. There the representative of the union secretly and surreptitiously brought the employes of the plaintiff who were bound to service for a definite term of years into his own room and while there persuaded them to actually join the union, and then and there administered an oath to them and they declared that they were members of the union; that this representative not only knew that they were apprentices but were bound for a definite term of service with certain conditions and specifications as to their compensation and the time and manner of payment, and this representative was endeavoring to have these apprentices violate their articles of apprenticeship; that this agent thereafter inspired these employes to act as union men demanding from their employer that they should be paid union prices, that all the present employes be retained and permitted to join the union and that all that had been discharged for having joined the union be reinstated. Thus actually showing that the agent of the union, with the aid of the plaintiff's employes, were actually attempting to interfere with plaintiff's business and to employ none but members of the union at his works and to even take back those employes whom he had discharged because they had joined the union.

The whole record in the case now before the court is absolutely barren of any overt acts attributable to the United Mine Workers of America in any manner comparable to the acts of the representative of the union in the case under review. That case is not an authority applicable to the case now before the court.

The United Mine Workers of America is a Lawful Labor Union.

The next question pressed by the petitioner for consideration is that of the legality of the United Mine Workers of America as a labor Union.

It is charged in the bill to be an unlawful organization (record pp 6, 24, 25) and denied in the answers. (Record pp. 57, 65, 66, 72, 81.) The constitutions of the national and subordinate organizations are in evidence in this case and, though not copied in full into the record, they are treated as part of the record by the court's decree settling the contents thereof. (Record pp. 704, 707.) These constitutions are designated as "Plaintiff's Documentary Exhibits Nos. 1, 2 and 3," and constitute items numbered 11, 12 and 13 of the said decree settling the contents of the record in this case, (record pp. 705, 706;) and under "Stipulation of Counsel as to Record," (record p. 712) these constitutions were transmitted to the Circuit Court of Appeals and are now before this court. Extended excerpts from them appear in the bill of complaint (record pp. 6 15) and several of their parts are quoted in the opinion of the District Court. (Record pp. 681, 687.)

The learned District Court, in the introductory part of its opinion, proceeds upon the theory that at common law labor combinations or associations, having for their object an advance in wages, a change or decrease of the hours of work, and the many other purposes of these organizations, were unlawful, and that the common law declared such combinations to be conspiracies in restraint of trade. (Record pp. 644-647.) The Court says in its opinion that "for common law conspiracy a number of the members of trades unions were prosecuted for combining to raise wages, and for other declared purposes, and convictions were had." (Record pp. 545, 646.) Preceding this statement in its opinion, at page 645 the court declares that "such parts of the common law and of the State of Virginia as are in force within the boundaries of the State of West Virginia when this constitution" (referring to the first constitution adopted by the state prior to its admission into the union) "goes into operation, and are not re-

pugnant thereto, shall be and continue the law of this state until altered or repealed by the legislature." (Record page 645.) The District Court then states that the same provision was incorporated into the second constitution of the state adopted in 1872.

The same Court, as one of the premises for the conclusion that the United Mine Workers, as a labor organization, is contrary to the constitution and laws of West Virginia, proceeds upon the theory that they were unlawful at common law, and that where the common law has not been altered in West Virginia, that, therefore, labor organizations in that State are unlawful unless permitted and authorized by modification or abrogation of the common law by the statutory law of the state.

Labor Unions Not Unlawful at Common Law.

A careful examination of the subject satisfies us that labor unions at common law were not unlawful, and were only made so in England by virtue of acts of Parliament.

A recent author of recognized standing, writing on the subject of combinations, discussing the English cases, says:

> "There seems to have been no rule of the common law against combinations of working-men, except where such combinations were either of a criminal character or directly against some statutory provision.
>
> There are some *dicta* to the effect that such combinations would be unlawful, and 'some traces may be found in the ancient books of a doctrine that it is criminal for one man, independently of a combination, to oblige another, by bond or otherwise, to abstain from the exercise of his proper craft or employment. 'But even such bond has no direct relation to a combination; its legality or illegality rests upon considerations entirely foreign to those which control the validity of a combination.
>
> It is stated by an eminent authority that no case was ever cited prior to the year 1825, in which any person was convicted for a conspiracy in re-

straint of trade at common law for having combined with others for the raising of wages."
1 Eddy on Combinations, §§ 404, 405.

This same author, quoting from Wright, Crim. Consp. p. 43, appends the following note to the text under §404:

"The text-books, down to at least 1800, appear to be silent as to the existence of any doctrine of the criminality at common law of combinations of masters or workmen. Neither in the earlier editions of Hawkins nor in East does the doctrine in question appear to be stated. So in the edition of Burn's Justice of 1810, it is not mentioned under the title 'Conspiracy' and under the title 'Servants' there are several statements of the statutes against combination, but there is no reference to common law. The various acts against combinations for controlling masters or workmen which were passed in the eighteenth century, (1725, 12 Geo. 1, ch. 34, extended by 1729, 22 Geo. 2, ch. 27, 12; 1799, 39 Geo. 3, ch. 81; 1800. 39 & 40 Geo. 3, ch. 106, etc.) commence by declaring or enacting agreements for such purposes theretofore made to be 'illegal, null and void,' which would not have been necessary if they had been thought to be criminal at common law; and they then proceed by independent enactments to make it punishable in the future to engage in them.

The result of the whole appears to be that there is not sufficient authority for concluding that before the close of the eighteenth century there was supposed to be any rule of common law that combinations for controlling masters or workmen were criminal, except where the combination was for some purpose punishable under a statute expressly directed against such combinations, or was for conduct punishable independently of combination."

To that part of the text of this author in which he says "There are some dicta to the effect that such combinations would be unlawful" (at common law), the following note is appended:

"The most important of these is the dictum of Grosse, J., in R. v. Wawbey, 6 T. R.: 'In

many cases an agreement to do a certain thing has been considered as the subject of an indictment for a conspiracy, though the same act, if done separately by each individual, without any agreement among themselves, would not have been illegal. As in the case of journey-men conspiring to raise their wages, each may insist on raising his wages, if he can; but if several meet for the same purpose it is illegal, and the parties may be indicted for a conspiracy.' 'This dictum is an illustration not necessary to the decision of R. v. Mawbey, and founded, as it seems to me, upon the case of the 'Cambridge tailors.'

Justice Stephens, speaking of the common law, further says: 'I must add that I am quite unable to understand why, if all combinations to raise wages were at common law indictable conspira cies, it should have been considered necessary to pass the long series of acts already referred to. These acts are not in their form declaratory, nor do they even assume that contracts between workmen for the purpose of raising their wages are illegal in the sense of being void and so incapable of being enforced by law. On the contrary they enact that they shall be void. Sir W. Erle observes that whilst the ancient statutes (p. 37) 'were in force they tended to prevent a resort to the common law remedy for conspiracy ' The inference from the existence of the statutes appears to me to be that until they were passed the conduct which they punished was not criminal."

This same author, Eddy on Combinations, cites as authority for the statement that no case was ever cited prior to the year 1825, in which any person was convicted for a conspiracy in restraint of trade at common law, Stephen, Hist Crim Law, vol. III, page 209. If this be true, it almost irresistibly follows that this subject in England was regulated by Act of Parliament, dating from the middle of the fourteenth century.

The Court is referred to what is said in the opinion of the Court of Appeals of New York in National Protective Association v. Cumming, 170 N Y., 315, 63 N. E. 369, 88 Am. St. Rep. 648, and especially at page 658. This case necessarily involved the legality of a labor union, and in upholding its legality, the court makes this observation in the course of its opinion:

"But it seems not out of place to suggest that the decisions of the English courts upon questions affecting the rights of workman ought, at least, to be received with caution, in view of the fact that the later ones are largely supported by early precedents which are entirely consistent with the policy of the statute law of England, but are hostile not only to the statute law of this country, but to the spirit of our institutions. In support of this view reference to a few early statutes of England will be made."

The court mentions particularly the early statutes of England, beginning with the ones passed in 1349 and 1350, (23 Edw. III and 25 Edw. III, st.) requiring laborers to serve employers when demanded by the latter to do so, inflicting punishment for a refusal, regulating their wages, and requiring that they swear to obey the provisions of the statutes. Reference is then made to another statute passed in 1548, forbidding all conspiracies and covenants of artificers or laborers to refuse to work at the price fixed by statute, and imposing heavy penalties and punishments. Then the statute of 1563 is noticed, which compels all persons able to work, not possessed of independent means, upon demand so to do. This statute fixes the hours of work; lays down elaborate rules as to apprenticeship; and was not repealed until 1875. The court also refers to the act passed in 1720, declaring all agreements between journeymen tailors for advancing their wages, or for lessening their hours of work, to be null and void, and subjecting them to heavy penalties and punishments for disobeying this statute. The opinion also states that similar acts were passed as to employes in other manufactures and trades. Another act passed in 1800 (40 Geo. III, c. 60,) is referred to in the opinion, providing a penalty of three months imprisonment without hard labor, or two months imprisonment with hard labor, for every journeyman workman or other person "who enters into any combination to obtain an advance of wages or lessen or alter the hours of work."

The court concludes this part of its opinion by declaring: "This statute" (referring to the last named statute) "as well as the others referred to, have at last been swept

away, but necessarily their influence has been not inconsiderable in shaping the decisions of the courts of England."

Another author, writing on the Modern Law of Labor Unions, after giving a summary of early English legislation relating to laborers, and reviewing some of the early English decisions, concludes his observations with this statement:

> "The fact should not be overlooked, however, that these combinations were indictable at common law, because the thing conspired to be done was in violation of a general statute fixing the rate of wages for laborers and of a large branch of trade affecting the comfort and interest of the public. In a recent article in the Cyclopedia of Law and Procedure it is said, (and the proposition is supported by ample authority,) that it is elementary law that a conspiracy to commit a crime, whether the grade be that of a felony or misdemeanor, is an indictable offense, *and that this is true whether the act agreed to be done is an offense at common law or is made so by statute.* It is essential to bear this principle in mind in determining what the common law rule as to combinations of workmen is in the United States, for unless the statutes mentioned were adopted as a part of the common law, any claim that the common law of a particular state makes it an indictable offense for workmen to combine to raise wages is altogether without foundation."

Martin, Modern Law of Labor Unions, §3.

It will thus be observed that the common law of England does not throw much light on the legal phase of labor unions, because of the early legislation introduced into that country absolutely restrictive of the rights and freedom of labor, incident to a social condition of which we have no practical knowledge or experience. In the formation or evolution of the doctrines of the common law, there were no conditions calling into existence labor unions. Social conditions were such that their creation would have been next to the impossible, and had they been formed, would have been absolutely useless.

To show that a "labor union" or "trade union" was un-

known to the early common law, it need only be observed that no mention of such an association is made in "Pollock and Maitland's History of English Law, prior to the reign of Edward I, 1272-1307."

No mention of such an institution is made in all the voluminous works of Edmund Burke.

The influence of legislation with reference to this subject must have been all powerful in moulding the decisions of the courts involving questions of labor.

Speaking of the English Acts of Parliament passed in 1349 and 1350 (23 Edw. III and 25 Edw. III, st. 1), Hume, in his History of England, volume 2, page 275, says:

> "The parliament attempted the impractical scheme of reducing the price of labor after the pestilence, and also that of poultry. A reaper, in the first week of August, was not allowed above twopence a day, or near sixpence of our present money; and in the second week, a third more. A master carpenter was limited through the whole year to threepence a day, a common carpenter to twopence, money of that age. It is remarkable that, in the same reign, the pay of a common soldier, an archer, was sixpence a day; which, by the change both in denomination and value, would be equivalent to near five shillings of our present money. Soldiers were then listed only for a short time; they lived idle all the rest of the year, and commonly all the rest of their lives; one successful campaign, was supposed to be a small fortune to a man; which was a great allurement to enter the service."

The great industrial changes which have taken place in England, this country and elsewhere, have given rise to problems with reference to labor which were utterly unknown and unimagined a few generations ago. These problems have resulted from what is commonly called the "Industrial Revolution," but this is only one of the revolutions which we have noticed in the world's history.

> "Organizations of wage earners are instrumentalities which have arisen out of the complexity and confusion incidental to the industrial changes of the nineteenth century. * * * As

long as the workers owned the tools with which they worked, or owned both the tools and the product of their labor, the worker was not a wage earner. Before the modern trade union could arise, the cleavage between employer and em ployee, between capitalist and wage earner, must become quite distinct. The rise of unionism is coincident with a horizontal cleavage within what had been one industrial class. With the growth of the factory system the cost of the tools and machinery and of the workshop increased; and, consequently, the line of demarkation between employer and employed grew more distinct. Unions appeared before the factory became an important industrial factor; but the factory is primarily responsible for the wide-spread and coherent form of modern labor organizations. The increasing use of machinery and of natural forces in maufacturing and transportation multiplied the amount of capital necessary to efficiently carry on any industrial enterprise. This circumstance still further widened the breach between the employer and his employee, and reduced the capillarity of the wage-earning class."

Carlton, History and Problems of Organized Labor.

The modern English statutes extending the rights and the privileges of Trades Unions is only a reflex of the liberal and progressive spirit which has developed in that country, and which only followed that which existed with reference to labor organizations in this country.

The trade union in England, in the furtherance of its objects may do everything to accomplish these objects which does not amount to force, fraud or coercion It is gratifying to know that a great government like the British Empire has caught the modern progressive spirit relating to the rights of the laboring man and has breathed it into her laws and that the judges, whose duty it is to consider and administer these laws, are imbued, in the discharge of their high duties, with the same spirit. Can the American people and the American judges fall below this high plane and do nothing in the promotion, in so liberal a government as ours, of the rights and interests of the laboring-man in his commendable struggle to achieve better conditions for himself, and thus raise the standard

of his citizenship and that of his family dependent upon him? We are now passing through a great social and industrial revolution—a struggle between employes and employer—a man who is dependent and him who is independent—and in this struggle the courts may do much to settle these affiairs upon a just and permanent basis—a basis which must be reached if we expect to achieve the true ends of government and to make our people generally prosperous and happy—the only thing that can allay their discontent and unrest now abroad in the land—and in this work the court must take, in the very nature of things, a prominent and fixed part.

The Common Law of West Virginia

is only that part of this great body of the law applicable to the habits and conditions of society and in harmony with the genius, spirit and objects of our institutions.

Reno Smelting Works v. Stephenson, 20 Nev. 269, 19 Am. St. Reps., 364.
Shively V. Bowlby, 152 U. S., at page 52, 38 Law. Ed. at page 350, opinion of the Court.
Powell v. Simms, 5 W. Va., 4, 13 Am. Reps.; 629.
Cunningham v. Dorsey, 3 W. Va., pp. 293, 304-308
Tunstall v. Christian, 80 Va., 1, 4.
Baylor v. B. & O. R. R. Co., 9 W. Va., 270, 282, etc., 3 Enc. Dig. (Va & W. Va;) Reps. pp. 19, 20.
VanNess v. Pacard, 2 Peters (U. S.), 137, 7 Law. Ed. 374.
Simpson v. State, 59 Ala., 1, 31 Am. St. Rep. 1, and especially at page 7.

An examination of the many cases, Federal and State, will disclose that where the common law has been recognized or adopted as a part of the law of a State it is only so much and such parts thereof as are applicable to the condition of our people and in harmony with their genius and progress.

"Although by the terms of the ordinance of 1776, the common law was adopted generally and without a qualification similar to that annexed to

> the adoption of the British statutes, yet it has always been considered that the same principle governs the adoption of the common law, such of its doctrines and principles as are repugnant to the nature and character of our political system, or which the different and varied circumstances of our country render inapplicable to us, are either not in force here, or must be so modified in their application as to adapt them to our condition. It is a reasonable and substantial compliance with the common law, 'whose peculiar beauty is that it adapts itself to the rights of parties under every change of circumstances, rather than a literal one, which is exacted by its adoption."

3 Va. & W. Va. Enc. Dig 19, 20 citing Coleman v. Moody, 4 Hen. & M. 20, 21; Findlay v. Smith, 6 Munf. 148; Sout v. Jackson, 2 Rand. 147; Stokes v. Upper Appomattox Co., 3 Leigh 337; Foster v. Com., 96 Va. 309, 31 S. E. 503; Lightfoot v. Colgin, 5 Munf. 42; Thornton v. Smith, 1 Wash. 83.

The books abound in many illustrations of this principle, among which may be noticed the following: Thus what constituted waste at common law does not constitute waste in this State, as the law of waste in its application here must be accommodated to the circumstances of our own country.

Findlay v. Smith, 6 Munf. (Va.) 134: McDodrill v. Pardee & Curtin Lumber Co., 40 W. Va. at page 579, citing approvingly Findlay v. Smith.

So the common law doctrine of ancient lights is inapplicable to the condition of a growing country such as ours, and is not in force here.

Cunningham v. Dorsey, 3 W. Va., 293;
Tunstall v. Christian, 80 Va. at page 4.

So the common law rule that the occupant of lands may set spring guns or other mischievous weapons on his premises, and if the same cause death to a trespasser, the owner of the land is not guilty of an offence, is not law in this country.

Sampson v. State, 31 Am. Rep. 1, and especially at page 7.

In this case the Supreme Court of Alabama after citing approvingly Van Ness v. Pacard, 2 Pet. 144, says,

> "This court has frequently said that (in speaking of the common law) in this State, only its general principles, which are adapted to our situation, and not inconsistent with our policy, legislation and institutions are of force and approved."

In *Reno Smelting Works v. Stephenson*, 20 Nev. 269, 19 Am. State Reports, 364, it is held that the common law doctrine of riparian rights is inapplicable to the physical condition of the Pacific States. The court in the course of its opinion, referring to the statute of Nevada adopting the common law, says:

> "The statute is as follows: 'The common law of England, so far as it is not repugnant to or in conflict with the constitution and laws of the United States, or the constitution and laws of this state, shall be the rule of decision in all the courts of this state:' Gen. Stats. 3021. This was substantially the statute when Nansuckle v. Haines, 7 Nev. 249, was decided. The statute is silent upon the subject of the applicability of the common law, but we think the term 'common law of England' was employed in the sense in which it is generally understood in this country, and that the intention of the legislature was to adopt only so much of it as was applicable to our conditions. An examination of the authorities will render this apparent.
>
> In Curtis's Commentaries, section 16, the author says: 'It is to be observed that the common law of England was adopted by the founders of the American colonies to a limited extent only. The emigrants from England brought with them the general principles of the common law of that country, and adopted and put them in practice, so far as they were applicable to their situation; and as the people of each colony acted independently of the rest in this respect, it has resulted that the common law of each of the states differs in some particulars from that of the others, and that in none of them is it wholly identical with the common law of England.' Professor Washburn in his treatise upon the law of real property (vol. 1, 36,) says: 'It may be well to understand how far

> the common and statute law of England have been adopted as the law of this country. As a general proposition, so much of these as was suited to the condition of a people like that of the earlier settlers of this country was adopted by common consent as the original common law of the colonies. They brought it with them as they did their language, and regarded it as a heritage of inestimable value, by which their rights of person and property were to be regulated and secured. Especially was this true in regard to the law of real property.' 'The common law of England,' said Judge Story, 'is not to be taken in all respect to be that of America. Our ancestors brought with them its general principles, and claimed it as their birthright, but they brought with them, and adopted, only that portion which was applicable to their situation:' Van Ness v. Pacard, 2 Pet. 144."

The Supreme Court of Mississippi in *Vicksburg and Jackson R. R. Co. v. Patton*, 31 Miss. 166, 66 Am. Dec. 552, holding that the rule of the common law that the owner of cattle is bound to keep them within his enclosures is not applicable to the condition and circumstances of the people of Mississippi, in the course of its opinion at page 561 of 66 Am. Dec. uses this language:

> "It cannot be denied that the common law of England is the law of this State only so far as it is adapted to our institutions and the circumstances of the people and it is not repealed by statutes or varied by usages which by long custom have superseded it; and that where the reason of it ceases the rule itself is inapplicable."

So in *Martin v. Bigelow*, 16 Am. Dec. (Vt.) 696, the court held that the common law rule as to water rights as to each owner of the land through which a stream of water flows, being entitled to have it flow in its natural course without any diversion of it whatever or use of it by another, is inapplicable to our circumstances and not of binding force.

In *Shiveley v. Bowlby*, 152 U. S., 52, 38 Law. Ed. at page 350, the Supreme Court of the United States, speaking of

the extent of the adoption of the common law in this country, says:

> "The settlers of Oregon, like the colonies of the Atlantic States, going from a country in which the common law prevails to one that had no organized government, took with them as their birthright the principles of the common law, as far as suited to their condition in their new home."

The court then stating that the jurisprudence of Oregon is based on the common law cites several cases in support of the principle contained in the quotations above made.

The learned Circuit Court of Appeals that decided this case, after considering the question whether labor unions were unlawful at common law, concluding the whole matter, speaking through Pritchard, Circuit J., quoting from high authority, said:

> "The result of the whole appears to be that there is not sufficient authority for concluding that before the close of the eighteenth century there was supposed to be any rule of common law that combinations for controlling masters or workmen were criminal, except where the combination was for some purpose punishable under a statute expressly directed against such combinations, or was for conduct punishable independently of combination.'
>
> "However, assuming it to be true that at the time the common law was incorporated as a part of the law of West Virginia, labor unions formed for the purpose of securing a higher rate of wages were held at common law by the English Courts to be a criminal conspiracy, yet we do not consider the same as now binding upon our courts, in view of the changed conditions in this, as well as other countries, incident to industrial development."

And the same learned Court in the course of its opinion said:

> " * * * And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or

classes of men, or work under a certain price, or without certain conditions. Commonwealth v. Hunt, 4 Met., 111; Boston Glass Manufactory v. Binney, 4 Pick., 425; Bowen v. Matheson, 14 Allen, 499.

"This freedom of labor and business has not always existed. When our ancestors came here, many branches of labor and business were hampered by legal restrictions created by English statutes, and it was a long time before the community fully understood the importance of freedom in this respect Some of our early legislation is of this character. One of the colonial acts, entitled 'An act against oppression punished by fine and imprisonment such indisposed persons as may take the liberty to oppress and wrong their neighbors by taking excessive wages for their work, or unreasonable prices for merchandise or other necessary commodity as may pass from man to man. Anc. Chart., 172. Another required artificers, or handcraftmen to meet to labor, to work by the day for their neighbors, in mowing, reaping of corn and the—inning thereof. Id., 210. Another act regulated the price of bread, Id., 752. Some of our town records show, that under the power to make by-laws the towns fixed the prices of labor, provisions and several articles of merchandise, as late as the time of the revolutionary war. But experience and increasing intelligence led to the abolition of all such restrictions, and to the establishment of freedom for all branches of labor and business, and all persons who have been born and educated here, and are obliged to begin life without property, know that freedom to choose their own occupation and to make their own contracts not only elevates their condition, but secures to skill and industry and economy their appropriate advantages.'

"The growth and development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little if any concert of action on the part of the laboring people, owing to their helpless condition, due in the main to their ignorance. Their domination by the land owner and capitalist was absolute in most respects. and as a result they were as helpless as those held in slavery before our great war. Under such circumstances it is no wonder that we have many decisions in the past at common law, as well as the en-

actment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish, by organized effort, those things necessary to elevate them to a plane where they could assert those rights so essential to their welfare.

"The industrial development of the world within the last half century has been such as to render it necessary for the courts to take a broader and more comprehensive view than formerly of questions pertaining to the relation that capital sustains to labor.

"The first syllabus in the case of Powell v. Sims (5 W. Va., 1,) is in the following language:

'The common law of England is in force in this State only so far as it is in harmony with its institutions, and its principles applicable to the State of the country and the condition of society.'

The following cases are to the same effect: Baylor v. Baltimore & Ohio Railroad Company, 9 W. Va., 270; Shively v. Bowlby, 152 U. S., 1; Tunstall v. Christian, 80 Va., 1."

It necessarily follows not only from authority but as a practical and reasonable proposition that while the common law is in force in West Virginia, it is only those parts of it that are applicable to our condition as a State and not inconsistent with our principles of government and, of course, when not abrogated by statutory or constitutional provision.

In fact, West Virginia, like most of the other states in the union, has taken the common law as the basis of its system of jurisprudence.

As we have already seen, it is highly problematical whether a labor organization or combination was unlawful at common law. So far as our own investigations go, we are inclined to think that the common law was silent on this subject, as the social condition of the people of England was such that they knew nothing of labor organizations.

But suppose it was the common law of England that a labor organization for the purpose of increasing wages and securing more favorable conditions under which a laborer might work, *was* unlawful, does it follow that that part of the common law is applicable to the habits and

conditions of society in this country and in harmony with the spirit and object of our institutions? Must not this principle of the common law, if it ever existed, be received with great modification?

The learned District Court has pronounced this organization unlawful at the common law and is, therefore, an organization forbidden by the constitution and laws of West Virginia. The learned court reaches this conclusion after a very thorough examination and review of the English cases.

He also announces the proposition that the legality of a labor organization must be determined by the laws peculiar to each State. This is true where a particular statute in any state is applicable to the subject; but where the many decisions that have been rendered in the state and federal courts were made they did not depend upon the construction and application of statutes but upon the doctrines of general or common law. If a statute controlled, the only matter for the decision of the court would be its construction and application, but the cases to which we shall refer the court in this brief relating to labor organizations did not involve the construction or application of a statute but only the legality of labor organizations under the common law, in the absence of a statute controlling the matter.

West Virginia by Her Own Statute Law Has Recognized The Legality of Labor Unions.

It seems to us that it does not admit of question that in this state, under its statute law, labor organizations are recognized and treated as lawful associations.

The first statute applicable here is that found in the Code of 1913 first enacted in 1890 (Acts. 1890, ch. 9 sec. 14,) Code, 1913, ch. 15H, sec. 28, serial section 87, as amended in 1907. (Acts. 1907, ch. 78, sec. 19.)

This statute, among other things, provides:

> "Nor shall any person or persons, or combination of persons, by force, threats, menaces, or intimidation of any kind, prevent or attempt to pre-

vent from working in or about any mine, any person or persons who have the lawful right to work about the same, and who desires so to work; but this provision shall not be so construed as to prevent any two or more persons from associating together under the name of knights of labor, or any other name they may desire, for any lawful purpose, or for using moral suasion or lawful argument to induce any one not to work in or about any mine."

The section of this statute concludes with the prescribing of a penalty for its violation.

Code, W. Va. 1913 Serial Sec. 87.

As amended it went into effect May 22nd, 1907, and this suit was brought the latter part of the October following. The part of the statute above cited was in the Act of 1890, the year in which the United Mine Workers of America were organized.

The insertion in this statute of the proviso therein contained indicates that the legislature of West Virginia recognizing the existing right of working men to organize into an association or combination, did not intend to disturb or interfere with this right by the enactment of this section of the statute; or, it was designed to operate as an independent enactment. If it were designed to act as an independent enactment, and not merely as a proviso, it was simply declaratory of the common law and in aid thereof, as thereby recognized as in force in this state.

If it were designed to simply act as a proviso, it conclusively demonstrates the recognition by the legislature of the common law right of laborers to organize in this state, for all legitimate purposes of such organizations.

"A provision or exception as a general rule relates only to the paragraph or distinct portion of the enactment which immediately precedes it, and is to be confined by construction to the subject-matter of the section of which it is a part. This rule is, however, not absolute, and if the context requires, the proviso may be construed as extending to and qualifying other sections or even as being tantamount to an independent enactment."

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26 Am. & Eng. Enc. Law, 679, 680.
See Wartensleben v. Haithcock, 80 Ala. 565, 1 South, 38, 41.
United States v. Babbit, 1 Black, 55.
Georgia R. & Banking Co. v. Smith, 128 U. S. 174, 32 Law. Ed. 377.

There is also another statute recognizing working men's unions in West Virginia first enacted in 1901 appearing in the Code of 1913, as sec. 1, ch. 62E, serial sec. 3578. This section provides as follows:

> "Whenever any person, firm or corporation, or any association or union of working men, has heretofore adopted or used, or shall hereafter adopt or use any label, trademark, term, design, device or form of advertisement, for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale, by such person, firm, corporntion, or association or union of working men, or by a member or members of such association or union, and shall register the same as provided in section three of this act, it shall be unlawful to knowingly counterfeit or imitate such label, trademark, term, design, device or form of advertisement, or to knowingly use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term, design, device or form of advertisement."

> Another section of this statute provides a heavy penalty for counterfeiting or imitating any label, trademark, term, design, etc. adopted by any person * * * or any association or union of workingmen.

Another section of this statute provides for the registration of the label, trademark, etc.

In fact the whole statute provides for a complete protection of the label or trademark which may be adopted by any association or union of working men.

Can it be possible that a labor organization in West Virginia is regarded as unlawful, when the positive law of the state provides that it may adopt a label or trademark, and then in the same statute provides for its registration

and likewise protects the use of that label or trademark under heavy penalties for counterfeiting or imitating it?

As this court knows, a trademark is one of the practical means of advertising articles of merchandise and the manufacture of such articles.

Is it not a strange inconsistency to declare that under the common law of West Virginia a labor union is unlawful, when the legislature for nearly a quarter of a century has guaranteed by its statutes the full effect and protection of all labels and trademarks adopted by any and all labor unions?

As stated by an able jurist, delivering the opinion of the Massachusetts supreme court in Tracy v. Banker, 170 Mass. 266, 39 L. R. A. 508, 509.

> "The label is part of the well known machinery of trade unions, and the use of it is found, if a finding is necessary, to be of value to the union and its members. It would not be traveling too far from the record, perhaps, if we should assume that the use of the label is in fact, as certainly it might be, of far more economic importance to the union than are many or most of the trademarks, strictly so called, which are protected by the courts. * * *
>
> "It is impossible to believe that, when the statute mentions unincorporated unions, it does not refer to trade unions It authorizes such to adopt, as well as to record, a label. Therefore it creates a right, if the court is unable to recognize one without its aid. If it applies to trade unions, it must be taken to apply to them as they ordinarily are; that is, as associations of workmen, not as manufacturers or vendors goods. It contemplates that the labels will be applied to merchandise, as of course they must be, and as these labels are." * * *
>
> "If, as we think, the statute expressly creates or recognizes the right of trade unions to be protected in the use of labels for trade union purposes, the suggestion that the association represented by the plaintiff is an unlawful association falls of itself. It is too late to make such a contention as to trade unions generally, even apart from the statute under which this suit is brought. But the general purposes of this union are similar,

so far as we know to the general purposes of other unions."

The subject of union labels is thoroughly considered by Mr. Martin, the author of "The Modern Law of Labor Unions," §§356-380; and from this author we quote as follows:

> "Statutes of this character (labor union labels and trademarks) are not against public policy as unjustly discriminating in favor of the labor members of associations or unions as against that of non union workmen. * * * * A contention that the passage of acts of this character are procured for the purpose of enabling union labor organizations to boycott non-union laborers and deprive them of the legitimate fruits of their labor cannot be sustained. The court will not assume that such was the purpose and intent of the legislature, or that the labor organizations will resort to acts which are unlawful and criminal. The statutes allow the members of the union to send the product of their labors, into the markets of the country, marked in such a way as to indicate the character of their workmanship. This is a right which the law accords to every manufacturer. The court must assume therefore that the legislature, in passing statutes of this character, had in view the legitimate purpose and that it did not contemplate that the provisions thereof might be used for illegitimate purposes."

It seems to us a just conclsion from these statutes that labor unions are lawful organizations under the laws of West Virginia and that their legality is by these statutes placed beyond question—that not even a doubt can be raised as to their lawfulness.

Authorities on the General Proposition that Labor Unions are Lawful.

We have already in a former part of this brief (pp. 13-18) directed the Court's attention to many cases which hold that labor unions formed for the purposes for which this Union was organized are lawful. The general purposes of this organization are stated in this brief at page 35.

What the decisions already hold as to the purposes for

which labor unions may be formed appears in this brief at page 13.

In Mogul S. S. Co. vs. McGregor, 23 Q. B. Div. 598, Id. (1892) App. Cas. 25, the facts were that the owners of certain steamships, for the purpose of securing all the freight which was shipped at certain ports, and doing a profitable business, had formed an association, and issued a circular to shippers at said ports, agreeing to allow them a certain rebate on freight bills, provided they gave their patronage exclusively to ships belonging to members of the association. The association also prohibited its soliciting agents from acting as agents for other competing lines. A suit having been brought against the members of the association, by a competing shipowner, to recover damages which had been sustained in consequence of the formation and action of the association, it was held that the acts complained of were lawful, the same having been done simply for the purpose of enabling the members of the association to hold and extend their trade; in other words, that the acts complained of amounted to no more than lawful competition in trade.

Continental Insurance Co. v. Board of Fire Underwriters, 67 Fed. 310, was a case of the same character as the last one considered, and involved an application of the same doctrine. It was held, in substance, that an association of fire underwriters which had been formed under an agreement that provided, among other things for the regulation of premium rates, the prevention of rebates, compensation of agents, and nonintercourse with companies that were not members of the association, was not an illegal conspiracy, and that the accomplishment of its purpose by lawful means would not be enjoined at the suit of a competing insurance company which was not a member of the association.

In *Meier v. Speer*,—Ark.—, 132 S. W. 988, the third point of the syllabus is as follows:

> "Labor unions are lawful, and laborers may organize to promote their common welfare, elevate their standard of skill, advance and maintain their wages, fix the hours of labor and rate of wages, and secure control of the work connected with

> their trade, and the efforts of a labor union by any lawful means to attain these objects will not make it or their members liable in damages to those who may be directly or indirectly injured thereby."

In a recent work of high standing with the courts and members of the bar throughout the United States, the following principles are laid down, supported by a very wilderness of cases:

> "Legislatures as well as the courts now recognize the right of laboring people to organize for the purposes of promoting their common welfare, elevating their standard of skill, advancing and maintaining their wages, fixing the hours of labor and the rate of wages, obtaining employment for their members, securing control of the work connected with their trade, or favorable terms to their employers in the purchase of material, and contracts for such persons as employ members of their society. And others may combine with them for the accomplishment of these purposes."
>
> 24 Cyc. 819, 820, and notes.

The Supreme Court of Arkansas, in the case of *Maier v. Speer*, from which we have above quoted, after quoting with approval the principles laid down in 24 Cyc. 819, which are set forth above, says:

> "The efforts of labor unions by any lawful means to attain these legitimate and commendable objects will not make them or their members liable in damages to those who may be directly or indirectly injured by such efforts. For the purpose and the means used to obtain it both being lawful there could not be any conspiracy or boycott. And if any injury resulted to any one it would be merely incidental, and damnum absque injuria. The conservation of the chief asset of the laboring man, namely, his labor, through combination with his fellows and by their organized efforts, is to be commended rather than condemned. For in that way his well-being may be best promoted and the interest of society thereby advanced."

The court, after making this statement in its opinion, quotes with approval what is said by Judge Taft in Thomas v. Cincinnati, etc., Railroad Co., 62 Fed. 803, 817.

In *Allis-Chalmers Co. v. Iron Molders' Union*, 150 Fed. 155, 171, the court in the course of its opinion says:

> "The right of workmen to combine in trades unions, in order to secure the economic advancement of their members, is also unquestioned; and such unions are generally regarded as beneficial institutions for bettering the conditions of labor, and the relations between employer and employee"; citing Wabash Railroad Co. v. Hannahan, 121 Fed. 563.

In *Wabash Railroad Co. v. Hannahan*, 121 Fed. 563, in the course of the opinion the right of laborers to organize is quite fully discussed, and the court, after citing many authorities, says:

> "I might continue at length in the citation of cases stating or illustrating the foregoing propositions, but enough has been said to clearly indicate that the general rule may be briefly summarized as follows: An employee has an unquestionable right to place a price and impose conditions upon his labor at the outset of his employment, or, unless restrained by contractual obligation, upon the continuance of his labor at any time thereafter; and if the terms and conditions are not complied with by the employer, he has a clear right either not to engage, or having engaged in his service to cease from work. What one may do all may do. They may seek and obtain counsel and advice concerning their rights, duties and obligations in relation to their employer, and persons interested in their welfare may advise, aid and assist them in securing such terms and conditions of service as will best subserve their interests; and what they may lawfully do singly or together, they may organize and combine to accomplish."

In *Everett Waddy Co. v. Typographical Union*, 105 Va. 188, 53 S. E 275, 8 Am. & Eng. Ann. Cas. 798, the court in the course of its opinion said:

> "It is now well settled by the decisions of the courts of the United States and of the highest courts of a majority of the states in the Union that labor may organize as capital does for its own protection and to further the interests of the laboring class. They may 'strike' and persuade

and induce others to join them, but when they resort to unlawful means to cause injury to others to whom they have no relation, contractual or otherwise, the limit permitted by law is passed and they may be restrained. Gray v. Trades Council (Minn.), 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. 477, and cases there cited; Murdock v. Walker, 152 Pa. 195, 25 Atl. 492, 34 Am. St. 678; Otis Steel Co. v. Local Union No 218, 110 Fed. 700; Consol S. & W. Co. v. Murray, 80 Fed. 810; Union Pac. R. Co. v. Reuff, 120 Fed. 102; Allis-Chalmers Co. v. Loge, 111 Fed. 264; Beck v. Railway Union (Mich.), 77 N. W. 13, 42. L R A. 407, 74 Am. St. 421; Plant v. Woods, 176 Mass. 492, 57 N. E. 1011, 51 L. R. A. 339, 79 Am. St. 330; Eddy on Comb., vol. 2, §§1031, 1035; Beech on Mono. and Indus. Trusts, §§98, 100, 102; Tiedman on St. and Fed. Control of Persons and property, vol. 1, §114.

In many of the states of the Union there are statutes which provide for the incorporation of trades unions and other labor organizations, and in all of them one of the permissible objects of incorporation is declared to be the securement of better terms of employment; while at common law, as interpreted by the English decisions and a few of the earliest decisions of the courts in this country, labors combination formed for the purpose of controlling the rate of wages were regarded as a criminal conspiracy. But these early decisions of the courts of this country were soon departed from by other cases, notably in Massachusetts, New York and Pennsylvania, which placed labor combinations upon a plane of legal equality with capitalistic combinations, by holding that it was not a criminal conspiracy for workmen to combine for the purpose of enhancing the rate of wages, or for improving in any other way their relations with employers."

In the case of *Carew v. Rutherford*, 106 Mass. 1, 8 Am. Rep. 295, the court in the course of its opinion says:

"And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions. Commonwealth v. Hunt, 4

Met. 111; Boston Glass Manufactory v. Binney, 4 Pick, 425; Bowen v. Matheson, 14 Allen 499.

This freedom of labor and business has not always existed. When our ancestors came here, many branches of labor and business were hampered by legal restrictions created by English statutes, and it was a long time before the community understood the importance of freedom in this respect. Some of our early legislation is of this character. One of the colonial acts, entitled 'And act against oppression,' punished by fine and imprisonment such indisposed persons as may take the liberty to oppress and wrong their neighbors by taking excessive wages for their work, or unreasonable prices for merchandise or other necessary commodity as may pass from man to man. Anc. Chart. 172. Another requires artificers, or handcraftmen to meet to labor, to work by the day for their neighbors, in mowing, reaping of corn and the inning thereof. Id. 120. Another act regulated the price of bread. Id. 752. Some of our town records show, that under the power to make by laws the towns fixed the prices of labor, provisions and several articles of merchandise, as late as the time of the revolutionary war. But experience and increasing intelligence led to the abolition of all such restrictions, and to the establishment of freedom for all branches of labor and business, and all persons who have been born and educated here, and are obliged to begin life without property, know that freedom to choose their own occupation and to make their own contracts not only elevates their condition, but secures to skill and industry and economy their appropriate advantages."

In *Beck v. Railway Union*, 118 Mich. 497, 74 Am. St. 421, the second point in the syllabus is as follows:

"Laborers have the right to combine and to fix a price upon their labor and refuse to work unless that price is obtained. They may use persuasion in order to induce men to join their organization, or to refuse to work except for an established wage, and they may present their cause to the public in newspapers or circulars, in a peaceable way, and with no attempt at coercion, but the law does not permit them to use force, violence, or threats thereof, or intimidation or coercion."

In *Longshore Printing Co. v. Howell*, 26 Ore. 527, 46 Am. St. 640, the second point of the syllabus is as follows:

> "It is no crime for any number of persons, without an unlawful object in view, to associate themselves together, and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions."

So in *McCauley v. Tierney*, 19 R. I. 255, 61 Am. St. 770, we find in the syllabus the following:

> "What a person may lawfully do, a number of persons may unite with him in doing, without rendering themselves liable to the charge of conspiracy, provided the means employed are not unlawful."

In *Wilson v. Hoy*, 232 Ill. 389, 85 N. E. 928, 122 Am. St. 119, point 1 of the syllabus, as appearing in the latter report, reads as follows:

> "The right of laboring people to organize for the purpose of promoting their common welfare is fully recognized. They may refuse to work for any particular employer and may obtain employment for their members by solicitation and promises of support in trade or otherwise, but in the accomplishment of this purpose they may proceed only by lawful and peaceable means, and they have no right to make war on other persons."

In *Pickett v. Walsh*, 192 Mass. 572, 78, N. E. 753, 116 Am. St. 272, the first point of the syllabus, as given in 116 Am. St. 272, reads as follows:

> "Laborers have the right to organize into labor unions to promote their welfare, and a labor union has a general right to strike."

In *Lohse Patent Door Co. v. Fuelle*, 215 Mo. 421, 114 S. W. 997, 128 Am. St. 492, the first point of the syllabus reads as follows:

> "At the common law personal services could not be the subject of a monopoly. Unless there is property to be affected by a public interest, there is no basis for a charge of monopoly."

The second point of the syllabus reads as follows:

> "Individuals have a perfect legal right to form labor organizations for the protection and promotion of the interests of the laboring classes."

In the course of its opinion, in this case just cited, the court said:

> "While it might be conceded that labor organizations might be proper subjects for legislative control and regulation yet the legislature has not in its wisdom seen proper to do so; and at common law personal services—an occupation—could not be the subject of monopoly. In discussing that question, in the case of State v. Associated Press, 159 Mo. 410, 81 Am. St. 368, 60 S. W. 91, 51 L. R. A. 156, this court used this language: 'But there is nothing here on which a monopoly can attach. The business is one of mere personal service; an occupation. Unless there is "Property" to be "affected with a public interest" there is no basis laid for the fact or the charge of monopoly.'"

In *Post v. Bucks Stove & R. Co.*, 200 Fed. 918, 43 L. R. A. (N. S.) at page 502, the court in the course of its opinion says:

> "Organized labor has become an important factor in modern industrial life where its influence is widely recognized, and its rightful status under the law should not be denied because of excesses committed in its name."

In *Kemp v. Division No. 241, Amal. Ass'n St. & Elec. Ry. Employes of America*, 255 Ill. 213, 99 N. E. 389, 29 Am. & Eng. Ann. Cas. 347, the second point of the syllabus is as follows:

> "Labor unions, which are associations to enable their members to negotiate matters arising between them and their employers through the intermediation of officers of the union, and to accomplish their ends through concerted action, are valid."

The subject of labor organizations is thoroughly and exhaustively considered in this case, and the authorities bearing on the matter reviewed.

In *Parkinson v. Building Trades Council*, 154 Cal. 581 16 Am. & Eng. Ann. Cas. 1165, one of the points of the syllabus, as reported in 16 Am. & Eng. Ann. Cas., is as follows:

> "Where individual laborers or labor organizations combine for the purpose of 'securing higher wages, shorter hours, and more favorable conditions generally than employers of labor would otherwise be willing to concede, their purpose cannot be said to be unlawful or criminal, and hence the question whether their combination constitutes a conspiracy depends upon the lawfulness of the means employed by them to effect their purpose."

The Purposes in General for Which a Labor Organization is Permissible.

We have shown by the authorities that a labor union is not unlawful, and does not of itself constitute a conspiracy. Let us now notice in general the purposes for which such a combination is permissible.

As to this, we shall content ourselves with quoting from a modern writer, who cites many authorities for the doctrine laid down in his text:

> "Broadly speaking workmen may combine to obtain any legitimate advantage. They may combine for the purpose of raising their intellectual, moral and social condition, for social enjoyment, to afford members assistance in times of poverty, sickness, and distress, for the advancement and development of the intelligence of the members, to redress grievances of members, to improve or regulate their relations with their employers to secure employment for their members, and, according to some decisions, to secure the employment of members in preference to and to the exclusion of other workmen, or to secure control of the work connected with their trade, although as will be subsequently shown, there is authority which denies the correctness of these last two propositions."
>
> Martin, Mod. Law. Labor Unions, §9.

The Particular Lawful Purposes for Which Labor May Organize.

We have just stated in general terms the purposes for which a labor combination is permissible. Again referring to the author just quoted from, whose examination of the subject appears to have been thorough and careful, we find that there are several specific things which labor unions may do, and that labor organizations formed for these purposes have repeatedly received the sanction of the courts, among which are the following: Maintain or advance the rate of wages; obtain reduction of hours of employment; secure careful and competent fellow-workmen; accumulate strike fund, or fund for unemployed members.

Martin, Modern Law of Labor Unions, §§ 10-13.

> "One of the foremost purposes of organization among workmen is to secure the best wages obtainable, and whatever views may have been formerly entertained on the subject, it is no longer open to question, that a combination of workmen formed for the purpose of maintaining or advancing the rate of wages, is a perfectly legitimate one."
>
> *Idem*, §10, citing a very wilderness of cases from many different states of the union, and the Federal and English courts.

The author just quoted from also lays down the doctrine, supported by the decisions, that the members of these organizations are entitled to the highest wages and the best conditions they can command; that they may fix the price of labor and refuse to work unless it is obtained, and that this right is possessed by them as individuals and in combination; that it is for the benefit of them and the public to unite in a common interest, and for lawful purposes; that if they stand together they are often able to command better prices for their labor than when dealing singly with rich employers, as the necessities of a single laborer may compel him to accept any terms offered him.

Idem.

Upon the authority of Caldwell, Judge, in *Ames. v. Union Pac. R. Co.*, 62 Fed.," 14, the author says, that if it is

lawful for the stockholders and officers of a corporation to associate together for the purpose of reducing the wages of its employes, or of advancing their means for making their investment profitable, it is equally lawful for organized labor to associate, consult and confer with a view to maintain or increase wages.

Idem.

The same author, upon the authority of many cases, states that workmen may lawfully combine to obtain a reduction of the hours of employment for the same reason that authorizes such combination to advance or maintain the rate of wages.

Idem, § 11.

Another purpose laid down by this author, well supported by authority, permissible on the part of a labor union, is the securing of careful and competent fellow servants, that the risk incident to the employment may be diminished. Of course, the reason for this is obvious. If injury results from the negligence of a fellow servant, except where a statute otherwise provides, the consequences would have to be borne by the injured servant, without compensation by the employer, and with no financial responsibility, as a general rule, on the part of those causing the injury.

Idem, § 12.

Another purpose of such an organization treated as lawful, is the accumulation of a strike fund, or a fund for unemployed members.

Idem, §13.

We have thus mentioned some of the speceific legitimate purposes for which labor unions may be organized, in order to examine into the lawfulness of the constitutions of the national and subordinate organizations of the United Mine Workers of America. And this subject we will now consider.

The Constitution and Purposes of the United Mine Workers.

Having shown the lawfulness of labor organizations, and some of the specific purposes for which they are per-

missible, let us now examine the constitutions of the national and subordinate organizations of the United Mine Workers of America, and the purposes of this organization, to determine whether or not this specific organization is an unlawful one, as decided and held by the District Court. This brings us to a further consideration of the fourth question arising upon the record in this case, and also to the consideration of the fifth one, which is, that if this is not a lawful organization, what part or parts of its national constitution, or district or subdistrict constitutions are contrary to the laws of West Virginia?

As we have seen, this organization is composed of three branches, the national, district and sub-district The learned District Judge declared them all illegal for the reasons set forth in his opinion at page 815 &c. To determine whether an association or combinatlon constitutes a conspiracy, it is necessary to ascertain its purposes and if these are lawful, the association itself cannot be treated as illegal if its powers are abused by those who have the management of it.

> Com V. Hunt, 4 Metc. (Mass.) 111, 38 Am. Dec 346, which is a leading and one of the early cases upon the subject of combinations of laboring men. This case is referred to and quoted from in 1 Eddy on Combinations, § 434.

As to the objects or purposes of the labor union we here quote from the opinion of the Circuit Court of Appeals delivered in this case.

> "In this connection it is pertinent to consider the purposes of the United Mine Workers of America, which is composed of three branches, to-wit: National, District and Sub-District, all of which were declared to be unlawful by the lower court. In the preamble of the National Constitu tion of the organization is to be found a declaration of the purposes for which it was established, which is as follows:
>
> 'There is no fact more generlly known, or more widely believed, than that without coal there would not have been any such grand achievements, privileges and blessings as those which characterize the twentieth century civilization, and believing as we do, that those whose lot it is to daily toil

in the recesses of the earth, mining and putting out coal which makes these blessings possible, are entitled to a fair and equitable share of the same; therefore we have formed "The United Mine Workers of America," for the purpose of the more readily securing the object sought by educating all mine workers in America to realize the necessity of union of action and purpose, in demanding and securing by lawful means the just fruits of our toil. And we hereby declare to the world that our objects are:

'First—To secure an earning fully compatible with the dangers of our calling and the labor performed.

'Second. To establish as speedily as possible, and forever, our right to receive pay, for labor performed, in lawful money, and to rid ourselves of the iniquitous system of spending our money wherever our employers see fit to designate.

'Third. To secure the introduction of any and all well defined and established appliances for the preservation of life, health and limbs of all mine employes.

'Fourth. To reduce to the lowest possible minimum the awful catastrophes which have been sweeping our fellow-craftsmen to untimely graves by the thousands; by securing legislation looking to the most perfect system of ventilation, drainage, etc.

'Fifth. To enforce existing laws; and where none exist, enact and enforce them; calling for a plentiful supply of suitable timber for supporting the roofs, pillars, etc., and to have all working places rendered as free from water and impure air and poisonous gases as possible.

'Sixth. To uncompromisingly demand that eight hours shall constitute a day's work, and not more than eight hours shall be worked in any one day by any mine worker. The very nature of our employment, shut out from the sunlight and impure air, working by the aid of artificial light (in no instance to exceed one candle power), would in itself, strongly indicate that, of all men, a coal miner has the most righteous claim to an eight-hour day.

'Seventh. To provide for the education of our children by laws prohibiting their employment until they have attained a reasonably satisfactory

education, and in every case until they have attained fourteen years of age.

'Eighth. To abrogate all laws which enable coal operators to cheat the miners, and to substitute laws which will enable the miner, under the protection and majesty of the State, to have his coal properly weighed or measured, as the case may be.

'Ninth. To secure by legislation, weekly payments in lawful money.

'Tenth. To render it impossible, by legislative enactment in every State, for coal operators or corporations to employ Pinkerton detectives or guards, or other forces (except the ordinary forces of the State) to take armed possession of the mines in case of strikes or lockouts.

'Eleventh. To use all honorable means to maintain peace between ourselves and employers: adjusting all differences, so far as possible by arbitration and conciliation, that strikes may become unnecessary.'

"The constitution of District 6 contains the same declaration of purposes, with the following added:

"Twelfth. And to use all honorable means to elect members of our organization to legislate and enforce laws in State and National legislative assemblies that will bear equally upon all citizens of the United States, its territories and other dominions.

'And we further declare it to be the purpose of District 6, United Mine Workers of America, to give moral and material aid to all its members in good standing and to those who may be dependent upon them, and to render such assistance as may be possible to all our members socially and financiily, and to create a relief fund for members in distress, subject to the discretion of the officers and Executive Board of District 6, United Mine Workers of America, as hereinafter provided.' "

(Record pp. 727, 728; 214 Fed. at pp 699, 700.)

The constitution of Sub-District 5 of District 6, contains the same declaration of purposes as that appearing in the constitution of the international organization.

An examination of these purposes, as disclosed in each of these constitutions, shows nothing unlawful, but on the

contrary, every purpose expressed therein is commendable. Take, for illustration, the *first* purpose, designed to secure wages compatible with the dangers incident to mining.

An examination of the statistics as to the casualties and fatalities attendant upon the business of mining coal, discloses that it is one of the most dangerous occupations in which any one may be engaged. In West Virginia alone, during the first eleven months of the year 1913, over three hundred were killed in the mines, and it is matter of comment over the state that this shows a decrease in the fatalties as compared with former years; while a very large number were seriously injured, many times more than the number killed, some of these injuries being permanent, and disabling the parties from pursuing their vocation of mining; and others disabled to a less extent, lessening their capacity for earning a livelihood. The uncontradicted evidence of the witness, T. L. Lewis, (record pp. 507, 506) shows that from evidence produced from time to time, mining is known to be the most dangerous occupation in this country outside of that of the powder mills; and the witness further states that to secure an earning fully commensurate with the dangers of this occupation, the miner should receive for his labor the highest standard of wages; but until the union was organized the men only got the standard of wages paid to ordinary, common every-day labor that required no skill.

Can it be possible that there is anything at all unlawful in reference to this object? It seems clear to us that this is a laudable purpose, and one in which the State itself is deeply interested.

As to the *second* clause in the preamble, the witness Lewis, then President of the national organization, shows the wisdom and policy thereof. If this object be accomplished it would greatly redound to the benefit of the miners as well as the State. (Record pp. 508, 509.)

As to the *third* clause, relating to the introduction of any and all well-defined and established appliances for the preservation of life, health and limb of all mine employes, the State itself has been stimulated as a result of this or-

ganization, in putting into effect better legislation designed to accomplish these purposes. A full explanation of the reason for this clause is show by the testimony of the same witness, which is uncontradicted, at pages 509, 510, of the record.

As to clause *fourth*, designed to reduce to the lowest possible minimum the catastrophes incident to mining, the same witness at page 601 shows the necessity for action of this sort, and completely justifies it, if any defense were needed other than the reading of the clause itself. (Record p. 510.)

The *fifth* clause is also self-explanatory, wherein one of the objects of this organization is declared to be the enforcement of laws, and where none exist, their enactment and enforcement calling for a plentiful supply of suitable timber for supporting the roof, chambers, etc., and to have all working places rendered as free from water, and impure air and poisonous gases as possible. This clause must be read in connection with the former clause, having for its purpose, as already stated, the reduction to the lowest possible minimum of the awful catastrophes incident to mining.

The *sixth* clause of this preamble is also explained by the witness Lewis in his evidence at pages 510 and 511. The purpose of this clause is to secure eight hours as a day's work, the reason for which is set forth in the clause itself. It is not unlawful on the part of an organization whose members are engaged in underground mining, to insist that eight hours is long enough for a day's work in such an occupation.

The Supreme Court of the United States, upholding a statute of Utah making eight hours a day's work for workmen in all underground mines, except in cases of emergency where life or property is in imminent danger, in the course of its opinion, says:

> "This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to

an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employees as to demand special precaution for their well being and protection, or the safety of adjacent property.

* * * * *

While the business of mining coal and manufacturing iron began in Pennsylvania as early as 1716, and in Virginia, North Carolina and Massachusetts even earlier than this, both mining and manufacturing were carried on in such a limited way and by such primitive methods that no special laws were considered necessary, prior to the adoption of the Constitution, for the protection of the operative, but, in the vast proportions which these industries have since assumed, it has been found that they can no longer be carried on with due regard to the safety and health of those engaged in them, without special protection against the dangers necessarily incident to these employments. In consequence of this, laws have been enacted in most of the States designed to meet these exigencies and to secure the safety of persons peculiarly exposed to these dangers."

Holden v. Hardy, 169 U S. 391, 42 L. ed. at bot. p. 791.

And in the course of this opinion, the court further says:

"Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the state. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in the underground mines, or in the smelting, reduction, or refining of ores or metals These employments when too long pursued the legislature has judged to be detrimental to the health of the employees, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts.

While the general experience of mankind may justify us in believing that men may be engaged in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of

> the earth, when the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases, generated by the processes of refining or smelting."

From this decision it is quite apparent that the laborer who is engaged in mining coal beneath the surface of the earth, ought not to be required to labor in such a place longer than eight hours a day, and it cannot certainly be unlawful to be inserted as one of the purposes of the organization to secure this limit of hours. But, as we have already seen in this brief from the authorities, an association may lawfully have for one of its purposes the securing of eight hours as a day's work.

The *seventh* clause of this preamble was also explained by the witness Lewis, and his evidence is uncontradicted, and it cannot be contradicted, and appears in the record at pages 511, 512.

The *eighth* clause is designed to secure legislation to prevent wrong being perpetrated against the miner in the measurement of his coal. It is simply a demand that he be justly compensated for the dangerous and arduous work of mining coal This is also explained by the testimony of the witness Lewis, appearing in the record at pages 512 and 513, and shows that when a mine is operated under contract between the operator and the United Mine Workers, that a check weighman is provided by the miners themselves, and that to this there is no objection, because it appears in the record that the check weighman is paid by the miners and not by the operator.

The *ninth* clause of the preamble is designed to secure weekly payments in lawful money. The purpose of this is explained by the witness Lewis, and clearly establishes the good sense and fairness of such purpose; although the witness shows that the semi-monthly pay is satisfactory, as a general rule, and it does not seem that any effort is being made now to carry out the purpose of a weekly payment, since the semi-monthly payment has been obtained. The evidence of the witness as to this clause appears in the record at pages 512 514.

The *tenth* clause has for its object legislation to prevent the importation of mine guards belonging to detective agencies, and who have done so much to create disturbances, strife and bloodshed in the communities into which they have gone.

The reason for inserting this clause in the preamble as one of the objects of the association, is given by Lewis, then the president of the association, in his testimony appearing at pages 514, 515.

The evidence here shows that such conditions prevailed in the state of Ohio before this organization was created, largely produced by the presence of armed guards belonging to what is called Pinkerton's detectives, as to make it a matter of grave concern to the mine workers as to what they could do to prevent it. The results of this organization along this line are stated in the testimony of the witness, whose evidence has just been referred to.

The soundness and legality, as well as the good sense and fairness of the eleventh clause of the purposes of the organization, are self evident. The purpose is to avoid strikes by means of arbitration and conciliation. The purpose of this clause is set out in the testimony of Lewis, and appears therein at pages 515 and 516. In speaking of this clause, the witness says:

> "In negotiating with a mine owner to employ union labor, 'the policy of the organization has always been to get the consent of the mine owner rather than to coerce him, and I might add to that, that coercion may be susceptible of many constructions. For instance, we have had cases where a number of men that were organized at a mine have said to the employer, 'You can employ whoever you see fit, union or non union, but if you want our services we reserve the right to say whether or not we will work there while that man is working there.' Some people say that is coercion. If it is, everything in life is coercion."

It will be observed that the witness here in speaking of coercion, says that it may be susceptible of many constructions. Giving an illustration, he speaks of members of the organization reserving the right to quit the services

of an employer if he engages non-union labor. This is a right which not only one employe would have as a member of the union, to quit at his option for any cause seeming to him sufficient, but any number of persons members of an organization would have the same right.

Kemp v. Division No. 241, 255, Ill, 213, 99 N. E. 389, 29 Am. & Eng. Ann. Cases 347.

In the course of the opinion in this case the court says:

> "If the members of the union honestly believed that it was to their best interests to be engaged in the same employment with union men only, and that it was a detriment to their organization to associate in the same employment with non-members, it was their right to inform the common employer that they would withdraw from his service and strike, unless members of the organization only were employed, even though an acquiescence in their demands would incidentally result in the loss of employment on the part of the non-union men. It was only incumbent upon them to act in a peaceful and lawful manner in carrying out their plans."
>
> The court cites Jersey City Printing Co. v. Cassidy, 63 N. J. Eq 759, 53 Atl. 230, and Booth v. Burgess, 72 N. J. Eq. 181, 65 Atl. 226.

In the preamble to the constitution of District 6, of which Sub-District 5 is a part, there are two *other* purposes set forth, one numbered as the twelfth and the other not numbered.

As to the *twelfth*, the object expressed is the use of honorable means to secure legislation that will bear equally upon all citizens of the United States and its territories. This purpose seems wholly unnecessary, as each member of the union would have the right to vote for whom he pleases as a representative in any legislative body where the right to vote exists, and that too without any reference to his membership in the union. While this purpose seems to be superfluous, yet it shows the spirit with which this organization is animatad. Evidently it is an effort on their part to secure legislation which will make

tion. This method is only used when conciliation has not been effectual in the particular instances in which its aid has been invoked. It is scarcely necessary to discuss this agency of settling disputes, and we content ourselves by referring to the writings of eminent political economists.

Carleton, History and Problems of Organized Labor, pp. 235-238 Palgreave, Dictionary of Polit ical Economy, Vol. I, p. 51.

Perhaps the most important and spectacular example of arbitration in the case of a labor dispute in this country was the settlement of the anthracite coal strike in 1902.

The mine operators and the miners agreed in advance to abide by the decision of the Commission. The miners went back to work and the Commission made a very careful study of the labor situation in the anthracite region.

The miners were granted an increase in wages of 10 per cent above the rate previously paid. Various controverted matters, such as the employment of check weighmen and the distribution of mine cars were considered in the award of the Commission.

A method of conciliation was provided in order to settle questions of interpretation of the terms of the award.

Carleton, History and Problems of Organized Labor, p. 235, etc.

Strikes.

Another and last method of promoting the purpose of the organization is by means of a strike. It is well settled by judicial decisions that a strike is lawful. It only becomes unlawful when the means employed to carry it out are unlawful, or when it is maliciously originated to attain an unlawful end.

In support of this statement of the law the court is referred to the following authorities:

State vs. Stockford, 77 Conn. 227, 58 Atl. 769, 107 Am. St. Rep. 28, 31.
Karges Furn. Co. v. Amalgamated Woodwork-

ers' Union, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. (N. S.) 788, 789.

Kemp v. Division No. 241, etc., 255 Ill. 213, 99 N. E. 389, 29 Am. & Eng. Anno Cas. 347, 348.

Kelley v. Robinson, 187 Fed. 415, 109 C. C. A. 247.

Iron Moulders' Union v. Allis-Chalmers Co. 166 Fed. 45, 91 C. C. A., 631, 20 L. R. A. (N. S.) 315.

Wabash R. Co v. Hannahan, 121 Fed. 563.

Goldfield Cons. Mines Co. v. Goldfield Miners Union, 159 Fed. 300.

We lay down the abstract doctrine here that a strike is lawful under the state and federal decisions; but in order to understand just what a strike is, let us ascertain how the courts define it. On this subject we refer the court to a recent treatise (1910) by Mr. W. A. Martin, reviewing editor of Cyc., in a work entitled, "The Modern Law of Labor Unions," in which the subject of strikes is exhaustively considered: In section 25 he gives various definitions, citing several authorities in support thereof, and from this section we here copy the following;

"Strikes have been variously defined as follows:

'A combination among laborers, or those employed by others, to compel an increase of wages, change in hours of labor, a change in manner of conducting the business of the principal, or to enforce some particular policy in the character or the number of men employed, or the like."

'The act of a party of workmen employed by the same master, in stopping work all together at a preconcerted time, and refusing to continue until higher wages or shorter time, or some other concession is granted to them by the employer."

'A combined effort of workmen to obtain higher wages, or other concessions from their employers by stopping work at a preconcerted time.'

'To press a claim or demand by coercive or threatening action of some kind; in common usage to quit work along with others, in order to compel an employer to accede to some demand, as for increase of pay, or to protest against something as a reduction of wages; as to strike for higher pay, or shorter hours of work."

'To quit work in order to compel an increase or prevent a reduction of wages.'

'To quit work in a body or by combination, in

order to compel their employer to raise their wages.

"The act of workmen in any trade or branch of industry when they leave their work with the object of compelling the master to concede certain demands made by them—as an advance of wages, a shortening of hours of work, the withdrawal of any obnoxious rule or regulation, or the like."

'A combined effort among workmen to compel the master to the concession of a certain demand, by preventing the conduct of his business until compliance with the demand. The concerted cessation of work is but one of, and the least effective of, the means to the end; the intimidation of others from engaging in the service, the interference with, and the disabling and destruction of property, and resort to actual force and violence, when requisite to the accomplishment of the end, being the other and more effective means employed.'

"To cease from work in order to extort higher wages as workmen.'

'A simultaneous cessation of work on the part of the workmen.'

'To cease working in a body and by prearrangement until a grievance is redressed.'

'A cessation of work by employes in an effort to get better terms of employment.'

It will be observed that one of these definitions makes strikes unlawful. The error in this defination consists in including the means to be used in rendering the strike effective and in enumerating only those means which are unlawful. Some of the other definations herein set out are defective and misleading in that they attempt to enumerate the specific objects which the combination is designed to effect instead of being confined to a statement of the general object, — i. e., the enforcement of compliance by the employer with a demand of the combination. A careful study of labor disputes will show that these objects are so varied and numerous that any attempt to enumerate them within the narrow compass of a definition is an impossibility and can only result in confusion and error. The better way to define a strike is to exclude from consideration the specific objects which it is designed to effect, and the means to render it effective,

which taken singly or in conjunction determine the legality or illegality of the strike. In accordance with this view, a strike may be defined as a simultaneous cessation of work, by workmen acting in combination to compel their common employer to accede to demands made on him by such combination."

The authority cited in support of the above definitions which holds all strikes unlawful is *Farmers Loan & Trust Co. v. Pacific Railway Co.*, 60 Fed. 803, 821. This decision is against all the authorities, so far as we have been able to examine them, except possibly another case inconsiderately and inadvertently decided in the state court of Nebraska, which we have seen, but are unable at this time to refer the court to it.

This same author, in discussing the general right of workmen to strike in section 30 of the treatise just quoted from, says:

> "While, as will be subsequently shown, it is by no means true that all strikes are lawful, there is no question as to the general right of workmen to strike. Their right to organize and to utilize their organization by instituting a strike is an exercise of the common law right of every man to pursue his calling, whether of labor or business, as he in his judgment sees fit. And while they are under no obligation to do so, they may if so inclined state their reasons for striking, and notice thereof may be given by the strikers themselves, or through the agency of the organization to which they belong. Expressions are sometimes found in opinions, not necessary to a decision of the case, to the effect that workmen not under contract for a definite time, acting in concert, *have an absolute right to quit work*. But this proposition tested by the rules relating to torts and conspiracies stated in a preceding section is clearly incorrect. The lawfulness of a strike depends not only on the means to render it effective, but also upon its object. A combination to quit work is lawful only where its purpose is to obtain a benefit for the parties which they can legally claim. If the primary object is to injure others in their business or calling, or to compel them to do some criminal or unlawful injury to others, or to deprive them of their liberty of action without just

> cause, and not to advance the interests of the union, except perhaps in some remote or indirect way, the combination is unlawful. The law which allows a combination for the purpose of obtaining a lawful benefit gives no sanction to combinations which have for their immediate purpose the injury or hurt of another. While members of a union may, in their efforts to improve their condition inflict more or less damage or injury on others, these results shall be incidental damage and inconvenience consequent on the operation of general rules lawful in themselves, rather than those which follow a specific intent and immediate purpose of injury to others in order that good may come to themselves."

In support of the principles announced in this section the author cites a very large number of cases from many states in the Union, as well as a like number from the federal courts.

In section 31 of this work the author states, citing both state and federal courts in support of the proposition, that unless restrained by contractual relations, workmen may, in order to maintain or advance the wages or procure shorter hours of employment, or to obtain any other legitimate object, agree to and quit in a body provided it is done in a peaceable and quiet manner and without violence or destruction of property. A strike for the purpose mentioned is just and praiseworthy, and is not a combination for the purpose of doing harm malevelently for the sake of the harm as an end in itself and not merely as a means to some further end legitimately desired. So long as the strike is for a legitimate purpose, the fact that injury results to the employer does not alter the character of the act and render it unlawful. If ruin to the employer results from the peaceable assertion by workmen of their rights, it is a damage without a remedy. Indeed, it is readily seen that if the quitting of the employment resulted in no injury to the employer the object of the combination would necessarily fail. The right to strike for the purpose mentioned is so far absolute that the courts have as yet discovered no right to which it must yield.

In section 33 of this work, citing an abundance of auth-

ority in support of the proposition, we find the following doctrine announced:

> "So it has been declared by no less an authority than the Supreme Court of the United States that the right is not affected by the Sherman Anti-Trust Act, although the exercise of the right would enhance the cost of transporting interstate freight and by the lower federal courts that a strike for the purposes under consideration is not in violation of the Interstate Commerce Act, though it may incidentally result in interference with the interchange of traffic with connecting lines, not in violation of section 3995 of the Revised Statutes of the United States making it an offense to retard the mails, even though the strike may incidentally retard the mails."

In section 34 of this treatise, citing the authorities to uphold the doctrine, we find it laid down that strikes are lawful, instituted to redress the grievances of individual members. This section reads as follows:

> "There is nothing unlawful in a strike to redress grievances of individual members. Thus it would seem that members of a union may lawfully strike to secure the re-employment of a member they regard as having been improperly discharged. 'The very object of labor organizations,' it has been said, 'is to impart to every laborer the strength of all.' A great nation will go to war to maintain the rights of its humblest citizens. * * * The cause of one laborer is the cause of all laborers. * * * It was also said in another decision that 'it is right that all members of a union should unite for the protection of the interests of every individual member. If the feeblest of its members has a just grievance as an employee against their common employer, it is proper that the whole combination should act together to obtain redress of the wrong. The most effective way of enforcing the right of every member to just treatment from his employer, in reference to wages, hours of labor and other things affecting his interests, is by withholding the labor of the union until justice shall be done."

Upon a review of all the authorities bearing on the sub-

ject, in section 35 of this same work, we find the following doctrine announced:

> "According to the great weight of authority, so long as they act from a proper motive,—i. e., where the immediate purpose is not to injure others, but to advance their own legitimate interests, and improve their own condition, members of a union, who are not bound by a service contract for a definite time, may without rendering themselves liable either civilly or criminally refuse to work in company with men who do not belong to their union, and may strike or threaten to strike to procure their discharge from employment, or to prevent their being employed in shops where members of the union are at work, and notification of the intention to strike may be given by the members themselves or through the agency of their organization."

In section 36 the author discusses strikes where the purpose is to secure the employment of efficient and careful fellow workmen, and the following doctrine, abundantly supported by reason and authority, is announced:

> "In a number of cases it has been held that the refusal of members of a union to work with those who do not belong to their union and strikes or threats of strikes to procure their discharge is lawful, when the motive of their acts is to secure careful and skilled fellow workmen, and imposes no liability on those joining in such acts either to a civil action for damages or to an injunction or to a criminal prosecution. And when it can be seen from the facts found by the trial court that such motive or other motives of advantage to themselves may have prompted the action of the organization and its members, a reviewing court, which can review only upon the law, will not presume that another and an unlawful motive, and one not stated in the finding of fact, prompted their action. That the rule announced in these cases, is correct, is too plain for argument. Acts of the character under consideration find ample justification in the facts that the fellow-servant doctrine except where changed by statute exempts the master from liability for injuries to a servant caused by the negligence of a fellow-servant, and that the only recourse of the injured

servant is an action to recover his damages from the servant whose negligence caused the injury and who is usually 'law proof'. As was said by Chief Justice Parker of the New York Court of Appeals; "So long as the law compels the employee to bear the burden of the injury in such cases, it cannot be open to question but that a legitimate and necessary object of labor unions would be to assure the lives and limbs of their members against the negligent acts of a reckless co-employee; it is well known that some men, even in the presence of danger, are perfectly reckless of themselves and careless of the rights of others, with the result that accidents are occurring almost constantly which snuff out the lives of workmen as if they were candles or leave them to struggle through life maimed and helpless. These careless, reckless men are known to their associates, who not only have the right to protect themselves from such men, but, in the present state of the law, it is their duty, through their organization, to attempt to do it, as to the trades affording special opportunities for mischief arising from recklessness. Hence it is clearly within the right of an organization to provide such method of examination and such tests as will secure a careful and competent membership, and to insist that protection of life and limb requires that they shall not be compelled to work with men whom they have not seen fit to admit into their organization.' Every workman assumes many risks arising from the incompetency or negligence of his fellow workman. It would be an anamalous doctrine to hold that after his fellows have concluded that he was not a safe or desirable companion, they must continue to work with him under the penalty of paying damages if by their refusal to do so, the works are for a time stopped and he thrown out of employment."

So, in section 37, where the object of the strike is to secure the employment of fellow workmen of good character and conduct, the author says:

"Expressions are found in some opinions which amont to an extension of the rule laid down in the preceding section. Thus it was said by Chief Justice Cockburn in an English decision that if several persons in the employment of a master

> considered others in that employment obnoxious, either personally or on account of their character or conduct, they have a perfect right to put to their employer the alternative whether he will discharge the obnoxious person or persons and retain their services, or lose them and retain the obnoxious persons; and in a Massachusetts case, where the gravamen of the action was the execution of a conspiracy by a combination of union men to procure the discharge of a fellow-servant for refusing to join the union, it was said: 'If the plaintiff's habits, or conduct or character had been such as to render him an unfit associate in the shop for ordinary workmen of good character, that would have been a sufficient reason for interference in behalf of his shopmates. * * * But the evidence tended to show that the only reason for procuring his discharge was his refusal to join the union.'"

So, where the purpose of the strike is to secure the employment of members of the union in preference to non-union men or members of another union, the same author in section 38, supporting his statements of the law with a long citation of the authorities, says:

> "The refusal of members of a union to work with men who do not belong to their union, and strikes or threats of strikes to cause their discharge, or to prevent their obtaining employment, is perfectly lawful where the motive for so doing is to secure employment of members of the union in preference to those who do not belong to it, whether non-union men or members of another union. Neither the employes whose discharge has been caused nor the employer coerced into discharging his employees have any ground of complaint, and such acts will not be enjoined at the suit of the workmen, injured thereby. So such acts not being unlawful would not furnish any foundation for an action for damages or a criminal prosectuon for conspiracyy. This doctrine has been applied both in cases where the acts complained of, though restricting the opportunities of workmen not belonging to the union for finding employment at their trade, did not al together deprive them thereof, and in cases where the effect of such acts was to deprive them absolutely of any chance to work at their trade,

and render it necessary for them to seek employment of a different character. It has been said—and no valid reason can be given for limiting or denying the statement— 'that competition in labor is in all essentials analogous to competition in trade and the same principles apply to each.' The decisions on the question under consideration proceed upon the theory that such acts are justifiable as legitimate competition; that free competition is worth more than it costs, and that on this ground the infliction of damage is privileged. Within all the authorities upholding the principles of competition, if the motive be to destroy another person's business, in order to secure business for one's self, the motive is good and the resulting damage, *damnum absque injuria*. Competition, whether between individuals, or between combinations of men, carried on for the purpose of gain, even to the extent of intending to and actually accomplishing the result of driving out of business one of the individuals or combinations, is not actionable unless there was malice. Such action on both sides is the exercise by competing persons of equal conflicting rights, and when equal rights clash the law can not interfere. There is a manifest discrimination, well-recognized, between a combination of workmen, to secure the exclusive employment of its members, and a combination whose primary object is to procure the discharge of an outsider and his deprivation of employment. In the first case the action of the combination is primarily for the betterment of its fellow members. In the second case, such action is primarily to impoverish and crush another by making it immpossible for him to work there, or so far as possible anywhere."

We have not quoted all of section 38, as it is largely devoted to a consideration of the distinction stated in the section quoted, and therefore is not of interest to us here, and is foreign to our purpose; that is, the consideration of the lawfulness of the purpose of a strike.

The author, in discussing the question whether a strike to compel workmen outside of the union to join the union is lawful in section 39 of his work, says:

"The decisions are not in accord as to whether

strikes or threats of strikes by members of a union to compel the discharge from employment of other workmen unless they join the union are lawful. In some decisions, it is distinctly held that such acts are lawful and that the discharge of such workmen in consequence thereof furnishes no ground for an action for damages, a suit for injunction, or a criminal prosecution. This right, it is believed, is also sustained by an early Massachusetts case in which Chief Justice Shaw wrote the opinion of the court. In this case he said that the indictment alleged in substance 'that the defendant and others formed themselves into a society and agreed not to work for any person who should employ any journeyman or other person not a member of such society, after notice given him to discharge such workman.' 'The manifest intent of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes or for dangerous and pernicious ones. * * * Nor can we perceive that the objects of this association, whatever they may have been, were to be obtained by criminal means. The means which they proposed to employ * * * were that they would not work for a person who, after due notice, should employ a journeyman not a member of their society. * * * As the object would be lawful and the means not unlawful, such an agree could not be pronounced a criminal conspiracy.' The exact language of the opinion is set out here to enable the investigator to form his own opinion as to what was actually held in that case, in as much as a recent Massachusetts case, in which this case is cited, and which is considered in the following section, denies the right under discussion."

In section 40 the author takes up the contrary view as given by different courts, and makes a statement of the rule and of the reasons on which it is based.

It is well settled that members of a union will not be enjoined from striking; and in considering this subject Mr. Martin, section 52 of the treatise already quoted, says:

"It is a rule of long settled standing that courts of equity will not by injunction prevent one individual from quitting the personal service of another. No matter how inadequate the remedy at law, the arm of a court of equity can not be extended by mandatory injunction to compel the enforcement of personal service as against either the employer or his employee. It would be impracticable to enforce the relation of master and servant against the will of either, and an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. With the exception of one decision which was subsequently modified on appeal, and which provoked a great deal of adverse criticism both in this country and England, it has been uniformly held in accordance with the elementary doctrine enunciated that courts have no power to enjoin workmen from withdrawing from the service of their employer in a body, and it is immaterial that such withdrawal involves a breach of contract to work for a definite period of time rendering those withdrawing liable in damages to the party injured, or to a criminal prosecution. Nor is a departure from the rule justified by the fact that the employees sought to be enjoined are in the service of a receiver of a quasi public corporation, or that they may quit under circumstances that would show bad faith upon their part or a reckless disregard of their contract or of the convenience and interests of both employer and the public. In the celebrated case of Arthur v. Oakes, which arose in the great railroad strike of 1894, it was contended that the doctrine was inapplicable, or should not be applied, in the case of employees of a railroad company, which under legislative sanction constructs and maintains a public highway primarily for the convenience of the people, and in the regular operation of which the public are vitally interested Justice Harlan disposed of this contention as follows: 'Undoubtedly, the simultaneous cessation of work by any considerable number of the employes of a railroad corporation without previous notice will have an injurious effect and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employees and employers, both equally indifferent to the general welfare, are to be met and remedied by legislation restraining alike em-

ployees and employers, so far as necessary adequately to guard the rights of the public as involved in the existence, maintenance and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi-public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such corporation to discharge an employee from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him, against his will, to remain in such service or actully to perform the personal acts required in such employments or compel such managers against their will to keep a particular employee in their service.'"

The author also, in section 54, considers the principles as announced by the various courts forbidding injunctions to restrain officers of unions from inducing or consenting to strikes, and says:

"While it is well settled that courts of equity are without power to enjoin workmen individually or collectively from stopping work, the question frequently arises whether the courts have power to grant an injunction restraining officers of a union from calling or consenting to strikes, and if so under what circumstances such injunctions will issue. Now it may be stated at the outset that according to well settled principles, members of a union have the right to appoint officers who shall advise them as to the course to be taken by them in regard to their relations with their employers. This right of choosing leaders is no greater pretention than that which is recognized in every other department of industry, and the officers so appointed may if such authority has been vested in them, order the members to strike because the terms of the employment are unsatisfactory. The rule deducible from all the authorities—and no other is possible from any point of view—is that courts have no power to enjoin officers vested with the requisite authority and acting in good faith from calling a lawful strike by the members of the union which they represent, that is to say, a strike the object of which the law regards as lawful, and which involves no breach of contract on the part of those called out. This rule is in no way restricted or limited by the fact

that the strike might incidentally interrupt the passage of the mails, or the transportation of inter-state commerce, or by the fact that the employer is a receiver managing property under the direction of the court. And according to the weight of authority and reason also, the rule applies with full force and effect, though such coercion and compulsion as is incidental to the imposition of or threats, express, or implied, to impose penalties is made use of for the purpose of compelling recalcitrant members to join the strike. Especially should the rule not be denied or restricted where it is shown that the members have voted to strike and that under the constitution and by-laws of the union no strike can be declared without the sanction of the officers. To enjoin them from ordering or otherwise causing a strike these circumstances would be, in substance and effect, an injunction against resort to a atrike by employees who are members of the order for the redress of asserted grievances, and this under the well settled rules of law cannot be done. In applying these principles, it has been held that if no breach of contract on the part of the members of the union is involved by a strike, its officers will not be enjoined from ordering them to strike where the object is to restore to its original status a scale of wages which has been reduced, or to secure an increase of wages and change in the rules of work, or to secure terms of employment the maintenance of which has become the established policy of the union, or to secure the discharge from employment of persons not members and to secure the places so vacated for members of the union, or to secure the employment of efficient and careful fellow workmen."

In support of the principle announced here as laid down in section 54 of this work, the author cites a long list of cases, both state and federal.

If the object of the strike be to better the condition of those belonging to the union, and the purpose of it be not unlawful, nor the method of its pursuit illegal, there can be no question about the right of the members of a labor organization to institute a strike, nor the authority of its officers to direct or call a strike. If, however, on the other hand, the object and methods of conducting it be not law-

ful, or its purpose be to injure others without any benefit to the organization, then the right to strike does not exist.

The law will not presume that the members will institute or conduct an unlawful strike; but the presumption is that every man will conduct himself in a law abiding manner; and hence, the settlement of disputes and the furtherance of the object of the organization by means of strikes is not unlawful.

The Learned District Court Held the Organization Unlawful.

The court below, after setting out in its opinion the obligation of the members of this labor organization, and certain parts of the international, district and sub-district constitutions. (*record pp.* 807-815) then states at pages 815 and 816 of the record—

> "It is not to be assumed that because I have not discussed other of the rules and purposes of this organization that I have ignored their meritorious and beneficient character; nor that I have not considered the very natural and human instinct inspiring the officers and members of this union, resident in other states and laboring under physical disadvantage in mining conditions, to regard their personal interests as paramount. Most of its officers have testified in open court before me and have fully convinced me that they are men sincere in the conviction of the integrity of their action, perfectly frank and truthful in their testimony, self educated and who have by their own effort rightly acquired the leadership in their life work. So far as I am concerned, the law requires me to consider these rules of the organization and ascertain whether any of them are unlawful in character. If so, whether the unlawful ones dominate the actions and purposes of the organization, or whether the purposes contemplated by the unlawful ones are so intermingled with those designed by the lawful ones as to render separation impracticable."

Evidently those parts of these constitutions set forth in the opinion of the learned district judge (record 808-

815) together with the obligation, are the ones treated by him as unlawful, and because of the interdependence of these with the other parts of the constitutions, the instruments are unlawful as a whole.

This conclusion is based on the English cases of *Chamberlain's Wharf, Limited, v. Smith*, (1900) 2 Ch. 605 (record p. 773); *Cullen v. Edwin*, (1903) 88 L. T. 686, (record pp. 774, 775); *Gosney v. Bristol, etc., Trade and Provident Society*, (1909 1 K. B. 901 (record p. 775); *Russell v. Amalgamated Society of Carpenters and Joiners*, (1910) 1 K. B. 501; and 81 L. J. K. B. 619 (record p. 776); *Mudd v. General Union of Operative Carpenters and Joiners*, (1910) 103 L. J. 45; *Thomas v. Portsmouth (A) Branch of the Ship Constructive, etc., Society*, reported in the Times Law Reports May 3, 1912.

An examination of these English cases discloses that they were predicated upon English statutes, and upon the courts' conception also of the rights of labor unions at common law in England.

In these cases it clearly appeared that the purposes of the organizations were not within the purview of the English statutes authorizing their existence and operation. That being the case, the question arises as to whether or not they could be sustained at common law, and the courts held, of course, that they could not be, because that was against the conceptions of the English courts as to the rights of labor organizations at common law.

It will be observed with reference to the first case, *Chamberlain's Wharf, Limited, v. Smith*, (record p. 773,) that a contest between the members of the association was involved. The court held that the association was a trade union within the meaning of section 16 of the Trade Union Act, Amendment Act, 1876; that its objects were illegal independently of the Trade Union Act, 1871, and that s. 4 of that Act prevented the court from directly enforcing the agreement between the members. How can this decision be applicable to this case?

In the case of *Cullen v. Edwin*, (record p. 774) the court was dealing with the subject of labor organizations and the Trade Union Acts, and of course, it could not exist at

common law, because it was treated as in restraint o
trade according to the views of the English courts. Hov
could that case apply to the case at bar? The same re
marks apply to all the other cases relied upon by th
learned District Judge to overthrow the legality of th
association of the mine workers.

This court will examine these cases, and will necessaril
conclude that the premises of the District Court upo
which he bases his conclusion, founded as they are upo
these English decisions, can find no place in our courts
because the principles underlying the conclusions reache
by the English court were controlled by the consideratio
of the rights of labor organizations at common law an
the Acts of Parliament. At common law they could no
exist at all, according to the English courts, and if the
existed under Act of Parliament, it was necessary for th
organizations to bring themselves clearly within the pu
view of these acts.

But, as we have seen, our courts refuse to declare tha
at common law these labor organizations were illega
And they further hold that if this was the doctrine of th
common law of England, that that part of it is not adapte
to our conditions here and not in harmony with the geniu
of our institutions.

The court clearly bases his conclusions stated at pag
687 of the record upon the obligation (record p. 68
which the member takes upon joining the organizatio
and those parts of the constitution set out in the opinio
and already referred to. There are six different reason
appearing in the courts opinion for holding this labo
union unlawful, and these we shall consider in their orde

(a)

**The Rules Undertake to Require Members of the Organization t
Surrender Their Individual Freedom.**

This is assumed because of the provision found in th
obligation that the member promises to cease work at an
time he is called upon by the organization to do so. It i
a *non sequitur* from this, that the member surrenders hi

freedom of action. If it were not for this promise on the part of all, there could be no concert or unity of action, and the organization itself would be absolutely useless. This properly construed is merely a promise to conform his action to the requirements of the organization so far as the constitution is concerned.

It will be borne in mind that this is a voluntary association of persons employed in and around the mines, formed without capital and to which nothing of general pecuniary value was contributed as a consideration for anything done or to be done by any member or members. Its very existence is founded on the well recognized principle, that an association of persons for any purpose is more apt to be successful in its endeavor than a single person or any number of persons acting singly and independently. Realizing at the outset that without unity of action an association is no more efficient than a number of individuals, the founders of this association engaged in mutual solemn promises to each other, whereby they agreed to be bound by the rules which they themselves formulated, and from that time to the present each new member makes the same solemn promise to observe the provisions of the constitution, in consideration of the promises which have already been made by those who preceded him. And it is by virtue of these mutual promises, and these alone, that the structure of The United Mine Workers of America has been enabled to grow and to withstand the assaults that have been made upon it at various stages of its history, by various operators and associations of operators throughout the United States.

True it is, that upon becoming a member of this association and taking the obligation which all of the other members have taken, a man assents to certain restrictions upon his absolute freedom of contract in disposing of his labor, just as all the other more than three hundred thousand members have done. But is it within the province of a court to say that the benefits secured by this organization in the past to its members, and those which it may obtain for them in the future, do not constitute a sufficient reason why a laborer employed in and around

> fails to show on its face anything unlawful, while on the other hand common experience teaches us that a rule of this character is essential for the preservation of labor organizations. Without a provision of this kind, there would be no power of securing concert of action; no means by which united effort could be secured for the accomplishment of the aims and purposes of the organization. In the absence of proof to the contrary, it must be assumed that this power would be exercised wisely, and only when necessary to promote the interest of the organization in a legitimate manner. It would be inconsistent with reason to assume that this power would be exercised so as to prevent the operation of a mine, which would necessarily defeat the very object for which this organization was established, to-wit: the procurement of steady employment at remunerative wages."

(Record p. 728; 214 Fed. at pp. 700, 701)

(b)

Coercing Non-Union Miners to Join the Union

is made the *second* ground or reason by the learned District Court for its conclusion that the United Mine Workers of America is an unlawful organization. We are wholly at a loss to know upon what part of the record the learned District Court founds this reason. It is alleged in the bill that the United Mine Workers is a secret voluntary organization. (*Record p. 6*) But it is denied that it is a secret organization, and the evidence shows it not to be a secret organization. Every one of the defendants who have testified in this case show by their evidence that it is not a secret organization (testimony of Savage, 491; Lewis 531; Sullivan, 624.) These men who testified in this case have been members of this association from its organization; were officers of it and show themselves to be familiar with its organization and its workings. We are at a loss to find any evidence in the record which shows that it is the purpose of this organization to coerce non-union miners to join the union, whether they wish to do so or not.

On the subject of coercing non-union miners to join the union, the witness Savage, who has been connected with the organization since its creation, and whose evidence stands uncontradicted, says: "Knows of no one who was authorized to coerce or intimidate men to quit their employment, or anything of that kind, did not know of anybody that was representing the United Mine Workers in 1907 or any other time, going to the Hitchman mine or premises for the purpose of intimidating the men or coercing them or doing any other unlawful thing to compel the men to become members of the United Mine Workers of America; * * * they are not acting for the union if they use anything beyond reasonable persuasion." (Record p. 501.)

The witness Lewis, who has been a member of the United Mine Workers since it was founded, and who was the national President at the time he testified in this case, says: "It is not now and never has been the policy of the United Mine Workers' organization to use force or coercion or any unlawful methods to promote its jurisdiction or the growth of the organization; the moment they attempt to extend their power or usefulness by that means they will go out of existence." (Record p. 516) This same witness further says: "As to the statement of the witness, J. C. McKinley that he thinks probably the first method of promoting the growth of the United Mine Workers is to ask the operater to compel the men to join the union, Mr. Lewis says he never heard of that before; that the organization has never in its history sought to compel men to join it; that its policy is to go into a community where there is a mine and get acquainted with some of the men who work there, and talk to them about the organization and get them interested in joining; and after a sufficient number could be gotten together to agree that it was a good thing to join the union, a meeting would be called to organize those men, just the same as any other fraternal society; and if ten are gotten—it requires ten to form a union—they elect a president, vice-president, secretary and treasurer, and they would be obligated—the obligation is an open book, because anybody can get it that wants it—they would be obligated to conform to the

principles of the union. Then they would go ahead and endeavor to induce other men working in that mine to join the union, until they got all the men, if possible." (Record page 528.)

As to this matter the Circuit Court of Appeals in its opinion delivered in this case, said:

> "The court below was also of the opinion that under the rules of the organization a member could be held as a slave, and thus prevented from exercising his own free will. We fail to find any provision preventing one from ceasing to work at any time he may desire, and if he should do so, he would no longer be a member of the organization. One could also cease to be a member of the union by failing to pay his dues. Under these circumstances there is no possibility of one's being held as a member of the union contrary to his wishes."

(c)

To Abrogate the Right of the Employer to Contract With His Employes Independently of the Organization.

The language of the opinion is that the rules of the organization undertake "to control or rather abrogate and destroy the right of the employer to contract with the men independent of the organization"

It is not really clear what is meant by this statement, but we believe that the learned judge means by this language that one of the purposes of the Union is to make it impossible for an operator to employ coal miners who are non-union men. This conclusion is probably reached from what is said by J. C. McKinley, one of the witnesses of petitioner, in his evidence, wherein appears the following:

> "Q. You were asked on your examination in chief the following question: 'Now, with regard to the general purpose of this union; I believe you said that as a result of your observations and experience in these joint conventions, you had found that it was the idea of the United Mine Workers organization as a national body to become su-

preme throughout the land in the coal mining industry?' To this question you answered as follows: 'There is no question about it; that is their desire and ambition.' What are we to understand by the expression used there that it is the idea of the United Mine Workers' organization, as a national body, to become supreme throughout the land in the coal mining industry and especially the word 'supreme' as used in that connection?

A. Their desire, as I understand it, is to have every employe in and about the bituminous coal mines of the United States and Canada, as well as the anthracite mines, a member of the United Mine Workers of America, and that they will be in position to absolutely dictate a minimum wage for which their members will work.

Q. That is your understanding?

A. Yes, sir."

(Record p. 421)

This shows that the witness understands that one of the purposes of the union is to have all persons who work in and around coal mines to become members of the union. What is unlawful in this? It is in evidence that in Ohio, Indiana, and Illinois nearly all miners are members of this organization, and in many parts of several other states. If the members pursue peaceable and lawful methods of promoting the growth of the organization, will the courts interpose to prevent it? If the association is lawful, can the court limit its numbers by means of an injunction? If so, to what extent will the court permit its number to go with respect to membership? Clearly the court will not interfere in such a case.

But under the rules of the association, it matters not how large it may be, it can never dictate a minimum wage for all of its members. This is shown by the methods of forming its contracts, to which the operators must be parties, and it is only with their consent that contracts can be made with the union.

Furthermore, the different conditions incident to coal mining in the several states renders such a thing plysically impossible. This is all fully explained by the witness

Lewis. (*Record pp.* 515-517, *and especially at pages* 619-621)

It may be that the conclusion (c) of the learned district judge is reached in part by a statement appearing in the evidence of McKinley at pages 397 and 398, of the record, wherein he speaks of carpenters, engineers, firemen, machinists and blacksmiths being required to join the United Mine Workers. This is all explained by the witness Lewis and this explanation has not been called in question. (*Record pp.* 525-528, *and* 621-622)

This feature of the Union is considered by the Circuit Court of Appeals in its opinion in this case, at pages 729, 730 of the record.

(d)

To Exclude the Operator's Right to Employ Non-Union Men if He Desires.

This is the *fourth* reason assigned by the learned judge of the district court for holding this labor organization unlawful. If it is meant by this that one of the purposes of the United Mine Workers is to exclude the right of the operator to employ non union men by the use of coercion, threats, intimidation or violence, then such a purpose would be unlawful. It would be unlawful independent of the union. Not even a single individual could employ such methods to prevent an operator from employing non-union men.

There is no evidence in the record of this case, even tending to show that the respondents have used any such method to prevent the petitioner from employing non-union men. The petitioner is asserting his right to employ non-union men, and declares he will not employ union labor. It has formed an agreement with its men not to employ union labor, and they have united with the petitioner in an agreement not to join the United Mine Workers. Now, cannot the United Mine Workers use peaceable and lawful methods to induce the petitioner to

employ only union labor? That is all that has been done with reference to the business of petitioner.

(e)

To Limit the Right of the Employer, in the Absence of Contract, to Discharge Whom he Pleases, When he Pleases, and for What he Sees Fit.

is stated in the opinion as one of the purposes of this organization as appears to the learned judge of the District Court from a study of its rules, and as one of the grounds upon which he holds it to be an unlawful association. (*Record* p. 687)

We have examined the constitutions of the international, district and sub-district organization and find no provisions in them justifying such a conclusion. It must arise from what is said by the witness McKinley.

This witness is a coal operator in West Virginia and Ohio, (record pp. 388, 387) a member of the Coal Operators' Association, (*record* p. 395) and its vice-president, (*same page*) is President of the Richland Coal Company, a majority stockholder, and the Richland Coal Company has a suit against the same persons who are defendants in the Hitchman Coal and Coke Company case, (Record p. 420). So this witness is in effect testifying in his own case.

Now, let us see what his testimony is on this phase of the case. This appears in the record at pp. 394, 398, 402, 403, 407 (*cross-ex.*) 496.

It will be seen from an examination of the evidence of this witness at the pages referred to, that it was the purpose of the United Mine Workers of America in 1907, to unionize the men working in and around the mines of the Panhandle district of West Virginia—that is, to get the men who were employed at these mines to become members of this labor organization. Did this organization, in the use of moral suasion and argument or any other lawful means, have the right to induce these employes to join

this labor union, or in a lawful manner try to induce these employes to join this union?

All the authorities say they *do* have this right.

In My Maryland Lodge v. Adt, (Md.) 68 L. R. A. at page 757, the court, speaking of labor unions, says:

> "They may even use persuasion to have others join their organization. They have an unquestionable right to present their cause to the public in newspapers or circulars in a peaceable way, but with no attempt at coercion. If ruin to the employer results from their peaceable assertion of these rights, it is a damage without remedy."

In *Beck v. Railway, etc., Union*, 48 Mich. 497, 74 Am. St. Rep. 421, (pt. 2. syl.) and in its opinion at p. 424, the court says:

> "The law protects them (employers) in the right to employ whom they please, at prices they and their employes can agree upon, and to discharge them at the expiration of their term of service or for violation of their contracts. This right must be maintained, or personal liberty is a sham. So, also, the laborers have the right to fix a price upon their labor, and to refuse to work unless that price is obtained. Singly, or in combination, they have this right. They may organize in order to improve their condition and secure better wages. They may use persuasion to induce men to join their organization, or to refuse to work except for an established wage. They may present their cause to the public in newspapers or circulars, in a peaceable way, and with no attempt at coercion. If the effect in such case is ruin to the employer, it is *damnum absque injuria*, for they have only exercised their legal rights. The law does not permit either party to use force, violence, threats of force or violence, intimidation, or coercion."

And there are a large number of other cases holding that labor organizations, have this right, and may lawfully exercise it; that is, they must do so without coercion, intimidation, threats or violence, among which are the following:

Everett Waddy Co. v. Typographical Union, 105 Va. 188, 53 S. E. 273, Am. & Eng. Ann Cas. 793; United States v. Weber, 114 Fed. 950; Longshore Printing & Publishing Co. v. Howell, (Or.) 28 L. R. A. 464, in opinion at p. 472; Kolley v. Robinson, 187 Fed. 415, 109 C. C. A. 247.

Now, if labor unions have this right, why does the petitioner seek to have this organization enjoined from the use of peaceful and lawful methods to induce its employees to join the union?

To this it submits two answers:

(a) If enough of the men are induced to join the union, these men will organize as a local union at our mines and will ultimately refuse to work with the non-union men, and upon our refusal to recognize the union, the men will strike, thus causing our mines to be shut down, because we will not contract with union labor.

Now, on this theory they have been lawfully organized as a union, without the use of violence, coercion, threats or intimidation, and are at work as union men. After this fact has been peacefully accomplished they requst or demand, as a condition, that the mine be run as a union mine, else they will quit work, as they will not work with non-union men. Have the members of a labor organization this right?

The answer must be in the affirmative because the decisions so hold.

Gray v. Building Trades Council et al., 91 Minn. 171, 1 Am. & Eng. Ann. Cas. 172, 177; Kemp. v. Division No 241, etc., 255 Ill 213, 29 Am. & Eng. Ann. Cas. 347, citing Jersey City Printing Co. v. Cassidy, 63 N. J. Eq. 759, 53 Atl. 230 and Booth v. Burgess, 72 N. J. Eq. 181, 65 Atl. 226.

But the petitioner cannot show or anticipate now that the effort of the union to get the employes of petitioners to become members of the United Mine Workers, is for the sole purpose of compelling it to recognize the union, and upon failing to do so the union employes will go upon a strike and thus interfere with the business of the petitioner.

Such fact is too remote upon which to predicate an allegation of imminent and threatened injury authorizing an injunction to inhibit the respondents from using lawful methods to persuade the employes of the petitioner to become members of the United Mine Workers of America.

To attain this end the court must prohibit the use of lawful methods by the union to increase its membership and thus strengthen it as a labor union. This no court has ever done, or will ever do in this country

(b) But the petitioner says further, in answer to our contention that we have a right to use reasonable argument and persuasion with its non-union employes, to induce them to become members of the United Mine Workers, that these employes have, by agreement with petitioner,—united with it—to keep out of its mine workmen who belong to this union. Petitioner says it is a *contract*, and that the respondents by the use of argument and persuation are thus endeavoring to induce petitioner's employes to break it. The reply to this argument appears in this brief at pp. 54-62, and the fact that the respondents prior to and at the time of the institution of this suit, had no knowledge of this contract and its terms and that this contract did not then exist is alone a sufficient answer to this contention of petitioner.

(f)

To assume the right on the part of the Organization, through its officers, (1) to control the Employer's business, (2) to shut down his mine by calling out the men in obedience to their obligation, whenever it is deemed to the interest of the Union regardless of the employer's interests, or the effect that such act may have upon him as regards loss, damage or necessary violations, on account thereof, of his existing contracts with others.

(*Record p. 687.*)

This is the *last* ground specified by the learned District Court upon which the conclusion is based that the constitutions of the international, district and sub-district associations make this labor organization unlawful

Analyzing this statement we find that it embraces two

matters attributable to the rules or principles of the organization, which must be found in its constitution.

These matters are:

(1) The control of the employer's business by the organization.

(2) The shutting down of his mine by calling out his employees in obedience to the obligation of the members of the organization whenever deemed to the interests of the union to do so.

(3) The loss to the employer incident to the doing of the acts mentioned in numbers (1) and (2).

Let us examine the record to ascertain whether there can be found in any part of these constitutions, a rule or provision authorizing the control of the employer's business by the organization. It may be fairly assumed that the district court in its opinion has set forth the objectionable parts of the constitutions enumerated in the opinion at pp. 681-687. of the record.

Examining these parts of the different constitutions, there is nothing disclosed that indicates that it is a part of the policy of the organization to control the business of the employer. So from an examination of the parts of the constitutions set forth in this opinion, it is perceived that they do not disclose it to be the policy or purpose of the union to shut down the mine of an employer whenever the organization believes that it is to its interests to do so.

The conclusion of the learned district court set forth under sub-division (f) must have been reached from some parts of the record relating to the personal experience of Hitchman Coal and Coke Company, while it ran its mine union, and that of the witness McKinley with the Richland mine, and possibly some other mines with which he was connected.

Now, as to the control of the employer's business. The only thing complained of by the president and general manager of the petitioner is that incident to some strikes which arose during the time petitioner was carrying on its business under a contract with the United Mine Workers of America.

An examination of the testimony of the witness, Hitchman, the president of the Company, disloses that before the scale of wages adopted by the national organization could be adjusted and signed by the petitioner, that the men ceased to work awaiting adjustment and signing of the scale by it. It appears that when this scale expired, which was on the 31st day of March, 1906, the petitioner through its president, Mr. Hitchman, and its superintendent, Mr. Koch, were desirous of continuing in the union, and endeavoring to make temporary arrangements to that end, but by reason of difficulties and some obstacles in the way of an earlier adjustment, they were unable to do so, and early in June determined to run non-union. That the officers of the petitioner were satisfied and were willing to continue to run union, it is only necessary to refer to their evidence, especially at pages 250, 253, 287.

It would seem from this testimony a little singular that the petitioner was willing to continue on the union basis at the expiration of the scale on March 31, 1906, if mining coal under union rules was so objectionable as is now sought to be made to appear. Furthermore, as we have already seen in the brief, (ante p. 56), the petitioner continued to pay the same price that the union scale called for, and to work pratically under the same conditions. If the petitioner had no control of its employes under union conditions, it is strange that it was willing to remain under those conditions from 1903 to 1906, and then pay the same wages when it began work again by running non-union, and continue to take upon itself practically the same conditions that existed while running union.

From the standpoint of the petitioner itself there is certainly no well founded claim or ground for saying that the union was controlling its employes. Turning to the testimony of the witness McKinley at pages 465, 474-482, this witness says on page 465, speaking of the United Mine Workers, that "They term a union mine as one over which they have absolute control, and a non-union mine one which is worked open shop, or in which the

United Mine Workers are not recognized." This is the strongest language that is found in the testimony of the witness McKinley, but taken with the qualification that appears in it, it does not bear out the deduction found under (f) in this brief.

The Court's attention is directed to the testimony of the witness Savage appearing at page 587, relative to this matter, and the testimony of Lewis at pages 607, 614, 616, and and Sullivan, page 740.

A careful examination of the evidence fails to disclose that it is the policy of the United Mine Workers of America, either in the rules of its organization or the means employed to make them effectual, to control the business of the employer.

An examination of the record further discloses that one of the main purposes of the organization is to fix a fair scale of wages that shall be uniform, so far as possible, taking into consideration the varied conditions that exist in the different sections of the coal mining territory, and have this scale fixed by agreement, of course, between the operators and the coal miners, the latter acting through the medium of their representatives, being an officer of the United Mine Workers of America. The contract to be made, of course, for all men engaged in mining coal, according to the labor being performed in and around the mine; of course, the price depends upon local conditions, but so far as possible to make it uniform, that is one of the objects of the organization. (Record pp. 732, 733.) If differences arise between the employer and his men or any of them, the policy of the organization is to adjust them by an impartial hearing between the operator and the employe or employes affected, the work of mining still going on pending such investigation. If it turns out that the employe is in fault, then of course he is discharged by the management of the mine. If not, he is reinstated. It will be remembered that this is all done by agreement between the operator and the miner. All other matters, as for instance, insufficient ventilation, the presence of noxious gases in the mine, incompetent fellow workmen, when these are made the subject of complaint or disagreement, are disposed of in the same way. This

is one of the benefits to be derived from the organization. On the other hand, if the operator has made his contract not collectively, but individually with each employe and the employe makes any complaint, and this complaint is treated with indifference, the miner is helpless, so that he must either work on under conditions that ought not to exist, or he must quit his employment and find work elsewhere. He is then confronted with a difficulty that is hard to meet. If he be a man of family, he must find another place to work. He must then remove his family to that place or be separated from them. He must raise the money for that purpose, and thus take the bread perhaps, and shelter and comfort from his family, in an endeavor to find a place where he can toil at his daily labor. The matter of having this condition looked after collectively by his organization instead of individually is of prime importance to the miner, and if the operator is dealing with his men collectively it is of importance to him, because he must conform to his agreement with them, comply with the law requiring him to use proper appliances, and all other means for making the mine sanitary and free from danger, and this is one of the main reasons why some of the operators in West Virginia are fighting against recognizing organized labor.

The West Virginia Reports contain a number of cases where miners have been killed or maimed for life by reason of conditions existing in and about the mines, wherein suit was brought for damages, and the administrator representing of course the surviving widow and children, or the poor maimed miner himself suing, were turned out of court, as it appeared that the operator had employed a competent mine boss, and therefore he was relieved from all liability, and the complaint, just though it was from the standpoint of the widow and children of the party killed, or of the maimed miner, did not avail to relieve their wants and in some measure repair the injury. And, furthermore, there are even cases where the party injured had made complaint prior to the injury, of defective timbers and other omissions upon the part of the operator, to the mine boss, and no attention paid to it until it was too late for the unfortunate miner to save himself.

The answer to all this by the operator is, that he did not have to work in a bad or dangerous mine, forgetting that the expense of finding any other working place for a miner and his family is a matter of grave concern to him, and being dependent upon his daily labor, he is unable to do what a man of means would otherwise do. This organization looks after these matters in the interests of its members, and this is one of the wise and humane purposes of this organization. The state itself is interested in this sort of an organization, and as has already been said and shown in this brief, labor organizations are lawful in West Virginia.

Now, as to the *second* matter,—shutting down the mine by calling out the men in obedience to their obligation—this simply means a strike; it can mean nothing else. There are no circumstances under which men may not quit work in a body if they so desire. If they are under a specific agreement not to quit until a certain time, and they break the contract by quitting, they do not commit a tort but simply a breach of contract. They cannot be enjoined from quitting, even under such circumstances; but if they quit without reason or sufficient ground, they are civilly liable. If they are not under any definite term of employment then they are at liberty to quit at any time, and the employer is at liberty to discharge them at any time. Of course, when a local union of organized men, which is one of the units of the national organization of the United Mine Workers of America, makes an agreement with the operator it is their duty to live up to it, and this is what was meant by Mr. Koch, a witness in this case for the petitioner, and the general superintendent of the petitioner, when he said that when he discovered that his men in 1903 desired to join the union he told them he had no objection but wanted them to live up to its rules. Witness evidently referred to the agreement proposed by the United Mine Workers of America to the operators in Sub-District 5, in the territory in which the Hitchman Coal and Coke Company's plant is located, when he made this statement.

In answer to some of the reasons assigned by the learned district judge for the illegality of this union,

wherein it is stated that its rules limit the right of the employer to discharge whom he pleases, to control his business and requires him to shut down his mine by calling out the men whenever the union feels so inclined, the Court here is referred to a copy or substantially a copy of the agreement used between the operator and the association, known as "The Official Mining Scale Between Operators and United Mine Workers of America for the Panhandle District of West Virginia. A copy of this as changed and adopted by the petitioner as its mining scale, appears in the record as "Koch's Exhibit No. 7", and this exhibit is handed to the witness and he is asked to state what it is, and the witness replies: "The printed part of it was an old scale that we changed the figures on, with an advance of 5.55 per cent, and struck out the part pertaining to the U. M. W. of A. and the men were paid by it for the two years, or the part of the two years, that we worked." (Record p. 330). Now turning to page 338 of the record, we find that Rule No. 10, which is stricken out by the petitioner in its contract with its men, reads as follows:

> "Rule No. 10. No strikes shall take place at any time under the jurisdiction of Sub District 5 of District 6, except for specific violation of agreement. That is, screens irregular; failure to pay on payday without explanations; violation of mining laws by operators, or reductions from scale wages until the grievances of the mine affected have been thoroughly investigated by the officers of Districts 6, U. M. W. of A. and operators interested. Any man or men that cause a stoppage of work at any mime in violation of this rule, shall be subject to dismissal of the company."

Under this agreement, it will be perceived, the causes for strikes, or the grounds which will authorize strikes are set forth.

With reference to this feature of the case, the Circuit Court of Appeals in its opinion most aptly said:

> "Another ground relied upon by the court below is that the organization assumes the right

through its officers, (1) to control the employers business, (2) to shut down his mine by calling out men in obedience to their obligation whenever it is deemed to be to the interest of the union, regardless of the employer's interest, or the effect that such act may have upon him as regards loss, damage or necessary violation, on account thereof, of his existing contracts with others.

Relative to this question the witness, McKinley, a member of the plaintiff organization, testified, among other things, that it was a desire of the union, as he understood it, to have every employe in and about the bituminous coal mines of the United States and Canada, as well as the Anthracite mines, a member of the United Mine Workers of America. It is admitted to be the purpose of this organization to induce all miners to join the union, and until the contrary is shown, it must be assumed that only lawful methods are to be employed by it for that purpose.

Witness Lewis also testified that "it is not now, and never has been the policy of the United Mine Workers' organization to use force or coercion or any unlawful methods to promote its jurisdiction or the growth of the organization, and the moment they attempt to extend their power or usefulness by that means instantly they will go out of existence." The witness further testifying says: "As to the statement of the witness, J. C. McKinley, that he thinks probably the first method of promoting the growth of the United Mine Workers is to ask the operators to compel the men to join the union," says he "never heard of that before; that its policy is to go into a community where there is a mine and get acquainted with some of the men who work there and talk to them about the organization and get them interested in joining; and after a sufficient number could be gotten together to agree that it was a good thing to join the union, a meeting would be called to organize those men, just the same as any other fraternal society."

In this connection, it should be borne in mind that the defendants as members of this organization cannot secure employment in any mine without first entering into an agreement with operators as to the terms upon which they are to work. In other words, it is optional with the operators as to whether they shall operate their mines, and

further as to whether they shall employ union labor.

It is also insisted by the court below that under these rules the operator has no right to employ non-union men even if he should desire to do so.

If the United Mine Workers of America in pursuance of this rule should resort to coercion, threats, intimidation or violence for the purpose of preventing the mine owners from employing non union men, such conduct would be unlawful, and the courts would promptly restrain any one who might be a party ts such transaction. Indeed it would be unlawful for an individual to undertake, by coercion, intimidation, or threats to prevent a mine owner from exercising his own free will as to the employment of non-union laborers, or as to any other thing which he might deem necessary to be done in order to protect his property rights.

However, in this instance, the plaintiff has adopted a policy by which only non-union men may be employed. If the plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment at its mines, and such conduct be sanctioned by the law, by what process of reasoning can it be held that the defendants may not adopt the same method in order to protect their interests. If the plaintiff is to be protected in the use of such methods, and the defendants are to be restrained from using lawful methods for the purpose of successfully meeting the issue thus raised by the plaintiff, then indeed it may be truthfully said that capital receives greater protection at the hands of the courts than those through whose efforts capital in the first instance was created. But such is not the law, and when we consider the testimony as respects the conduct of the defendants, at and before the institution of this suit, we are of the opinion that the plaintiff has not by a preponderance of the evidence, shown that these defendants employed unlawful methods as alleged in the bill.

At one time this identical mine employed union labor, and in all probability would have continued to do so, had it not been for a controversy which arose as to certain adjustments and the

parties failing to reach an agreement the plaintiff decided to employ only non-union labor.

It further appears that the plaintiff is paying the non-union men the same wages that are to be paid union men. Therefore, under these cimcumstances, is it not as reasonable to infer that the plaintiff is endeavoring to place the laborers of that section in a position where it would be master of the situation, as it is to infer that the defendants are seeking to destroy the business of the plaintiff?

While it is true that the plaintiff has a perfect right to refuse to employ union labor is it not equally true that union labor, as we have stated, may by the employment of legitimate means, do that which is necessary to keep its forces together?

Surely we have not reached the point when capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law when they are attempting to assert rights that are just as important to their well-being as are the rights of those who have been more fortunate, in accumalating wealth. He who "seeks equity must do equity." In other words he "must come into court with clean hands" If the courts of this country should by injunctive relief protect the mine owner in the enjoyment of his property rights, and restrain the laboring people from organizing their forces by declaring such organizations unlawful, would not the mine owner then be in a position to control the situation so that he who has to toil for his daily bread would be placed in a position where if he exists at all, he must do so at such wages, and upon such terms as organized capital may see fit to dictate? However, we do not wish to be understood as intimating that the plaintiff or a majority of those who employ labor in this country would take advantage of a situation of this kind for the purpose of oppressing those who are at their mercy. The instances where such a course is pursued are exceptional. Thousands of manufacturing plants all over the country, as well as railroad companies and mining companies are today of their own accord employing union labor, realizing as they do that such a policy on their part is to the advantage of the employer as

well as the employee. In fact, under our constitution and laws, no undue advantages are given to either capital or labor, nor will the courts even permit individuals or labor organizations by force, fraud or intimidation to prevent the mine owner from lawfully protecting his rights, but while this is true, equal protection should be guaranteed to labor and capital.

It was further held by the court below that under the rules of the organization the power is given to limit the right of the employer in the absence of contract to discharge whom he pleases, when he pleases, and for what he pleases. A careful examination of the constitution of the National, District and Sub-District organizations fails to disclose anything to justify this conclusion.

We have carefully examined the constitution to ascertain whether there can be found therein a rule or provision which authorizes the control of the employer's business by the organization, but find nothing to sustain this view, unless it be based on certain incidents in connection with the Hitchman Coal & Coke Company while it ran its mines union."

(Record pp. 730 732; 214 Fed. pp. 702-704.)

The United Mine Workers of America do not Constitute a Monopoly.

It is argued that the United Mine Workers of America are an unlawful organization *because they have not been confined within proper bounds.* It is said their sphere is national; that they aim to be and are a monopoly. Does not the same argument apply to the United Brotherhood of carpenters and Joiners, the Brotherhood of Locomotive Engineers and Firemen, and every other labor union throughout this country, and which have been decided to be lawful whenever and wherever their legality as associations has been called in question?

This argument assumes that the national organization dictates the prices, terms and conditions upon which coal shall be mined throughout the entire conntry.

The Constitution or By-Laws of the United Mine Workers of America.

The constitution of the national and subordinate branches of the United Mine Workers of America containing a statement of its purposes and the rules for their regulation and government, are the by-laws of the Union.

It is well settled by the courts and law writers that a labor union has the right to make, and enforce by penalties, rules and by-laws for the government of its members.

Rhodes Bros. Co. v Musicians' Protective Union, (R. I.) 92 Atl. 641, L. R. A. 1915 E 1037, 1041;

Jetton-Deukle Lumber Co. v. Mather, 53 Fla. 969, 43 So. 599;

Wabash R. Co. v. Hannahan, 121 Fed. at pp. 563, 571;

Purvis v. Local No. 5 U. B. C. & J., 214 Pa. 348, 12 L. R. A. (N. S.) 642, 112 Am. St. Rep. 757, 3 Atl. 585, 6 Am. & Eng. Anno Cas. 275;

L. D. Willcutt & Sons Co. v. Driscoll, 200 Mass. 110, 85 N. E. 897, 23 L. R. A. (N. S.) 1236, 1243;

Longshore Printing Co. v. Howell, 26 Or. 517, 28 L. R. A. 464, 46 Am. St. Rep. 640, 38 Pac. 547;

Martin, Modern Law of Labor Unions, §150, pp. 206, 207, §§280-293, pp. 357-368.

"Now the general rule is well settled that a labor union or other voluntary association, has the right to make rules and by-laws for the government of its members and the regulation of their conduct in respect of matters affecting the common welfare, and to punish its members, by fine, suspension or expulsion, according to the gravity of the offense, for disobedience of such rules and by-laws, or orders made in accordance therewith by officers vested with the requisite authority, or for conduct in violation of the fundamental objects of the union, the right being subject to the limitation that it cannot make and enforce, rules and by-laws which are in contravention of the laws or of public policy. And the constitution, rules and by-laws of a union constitute a contract between the union and its members. The right to make and enforce rules and by-laws for the government of its members is essential to the existence of any union or association, for if each member may determine his own line of conduct for himself without responsibility of any character to the organi-

> zation to which he belongs, and owes his allegiance, then, it is, in a large measure, shorn of its power to accomplish the objects for which it was formed."
>
> Martin, Modern Law of Labor Unions, §150, pp. 206, 207.

In *Jetton-Denkle Lumber Co. v. Mather*, 53 Fla. 969, 43 So. 590, a temporary injunction was issued against certain striking employes inhibiting them from preventing non-union men from entering the complainant's employ, and thereafter the injunction was modified, and one paragraph of the order modifying the injunction was in the following words:

> "It is ordered and decreed that the temporary injunction issued herein on May 5th, ult., be modified as follows: That the said defendants, and each of them, their members, officers, agents, and representatives, and each and every one of them, be, and they are hereby, restrained and enjoined,
>
> "(1) From using any means, methods, or devices whatever to intimidate or to prevent, by any kind of threats, violence, or coercion, any person or persons, whether members of any labor union or not, from accepting employment from the complainant in any capacity."

The case with its modifications was, upon appeal, affirmed, and in disposing of appellant's objection to the modification of the injunction order as made by the court below, the Supreme Court of Florida said:

> "But, says the appellant, these labor unions, under the modification, can use moral suasion, moral coercion, upon their respective members by fines and threats of expulsion. This was a risk voluntarily assumed by the members entering the unions, and if no longer willing to pay the price, if the advantages derived are not equal to the burdens assumed, each member has a perfect right to withdraw from the union, to seek to get back his former employment, and to be protected therein by the injunction still in force."

The law as to the duties of members to obey the rules and regulations of the association to which they belong is

well set forth by the Supreme Judicial Court of Massachusetts in *L. D. Willcutt & Sons Co. v. Driscoll*, 200 Mass. 110, 23 L. R. A. (N. S.) 1236, 85 N. E. 897, in the opinion of that court:

> "When one chooses voluntarily to unite with others of the same craft in forming an organization for the purpose of bringing about by the united action of all its members more favorable conditions of employment, he is bound, so long as he desires to remain a member of that organization, to submit within certain limits his own freedom alike of judgment and of action to the judgment of his associates, and to conform his conduct to that standard which they shall have agreed to be for the best interest of all and of each. Unity of action would be impossible upon any other terms."

In *Wabash R. Co. v. Hannahan*, 121 Fed. Rep. 563, the court said:

> "It is contended that the threatened strike was resorted to by the defendants, not in good faith to redress grievances or secure desired concessions, but as a result of a combination and conspiracy to accomplish the ulterior purpose of securing recognition of their unions or brotherhoods, as authoritative agents or representatives of its members, in all their dealings with the company, and also to unionize the roads of the company, and that the defendants did not honestly and fairly secure the two-thirds vote of the brotherhood employes in favor of the strike, but did secure the same by coercion, misrepresentation, and fraud.
>
> "An interesting and able argument in support of this contention is drawn from the provisions of the constitution and general rules of the two brotherhoods involved in this litigation, whereby it is made to appear that a strike may be declared which will have the effect of forcing the minority of the brotherhood members who vote against it and also all non-union employes in service upon the road of the employer out of work without their consent and even against their wishes. Attention is particularly called to the situation disclosed by the proof in this case, that a large majority of complainant's employes working on roads east of the Mississippi river, for

whose special benefit largely the threatened strike was intended, voted against it; and it is argued that these and other like considerations disclose that the necessary operative results of the system and methods of the brotherhoods in question are subversive alike of the fundamental rights of the employer to manage his own business, and of the employes to bestow their labor as they will.

"This kind of argument enters deeply into the domain of political science, and might well be addressed to a body of constructive statesmen or men originally contemplating a labor organization. It is an argument that would be pertinent against the organization of society into government. The will of the individual must consent to yield to the will of the majority, or no organization either of society into government, capital into combination, or labor into coalition can ever be effected. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes and by organic agreement to subject the individual members to rules, regulations, and conduct prescribed by the majority is no longer an open question in the jurisprudenc of this country. I entirely agree with the view expressed on this subject by Judge Taft in Thomas v. Railway Company, supra, hereinbefore quoted."

In *Longshore Printing Co. v. Howell*, 26 Or. 527, 46 Am. St. Rep. 640, the court, in discussing the question of the rights of labor unions, said:

"It must be understood, however, that these associations like other voluntary societies, must depend for their membership upon the free and untrammeled choice of each individual member. No resort can be had to compulsory methods of any kind either to increase, keep up, or retain such membership. Nor is it permissible for associations of this kind to enforce the observance of their laws, rules, and regulations through violence, threats, or intimidation, or to employ any methods that would induce intimidation or deprive persons of perfect freedom of action. Such organizations may be preserved and their membership augmented by reasoning and fair arguments, and even by persuesion and entreaty, and an observance of their adopted constitutions

and by-laws may be exacted through the same peaceful means, but beyond this it is not advisable from a legal standpoint to venture."

"Subject to limitations to be considered in a a subsequent section, labor unions have the undoubted right to make rules and by-laws for the government of their members, and for the regulation of their conduct towards each other in matters affecting the general interests of the body, and to enforce observance of such rules and by-laws may make disobedience thereof punishable by fine, suspension or expulsion according to the gravity of the offence. As has been said in a well considered case, the right of labor unions by organic agreement to subject the individual members to rules, regulations, and conduct, prescribed by the majority, is no longer an open question in the jurisprudence of this country. The will of the individual must yield to the will of the majority, or no organization whether of society into government, capital into combination, or labor into coalition can ever be effectual. The individual must yield in order that the many may receive a greater benefit. This principle has been directly applied in the case of strikes ordered by the union. It has been held that the union may order its members to strike or continue on strike on pain of fine, suspension or expulsion if the strike is a lawful one, and impose such penalties for disobedience of its orders. As regards other specific rules, which may be adopted, it has been held that a union may adopt a scale of wages, for which members may work, and may adopt by-laws providing that any member found guilty by its committee of working for less prices than those fixed by the union, shall forfeit a certain per cent of the price fixed for the same work, the penalty to be collected in the name of the association by process of law. So a union may adopt rules whereby members are prohibited from working with non-union men, or for an employer whose methods of conducting his business is antagonistic to the interests of the union, or for employers who do not pay their employes weekly, and for the apportionment of apprentices among employers of its members according to the number of workmen. By parity of reasoning the members may bind themselves as to their membership and rights in such societies, and the funds of the same, by the constitution, and by-

laws of the association which they adopt, or subscribe to after adoption."

Martin, Modern Law of Labor Unions, §280, pp. 357-359, and the many cases cited in support of the text.

The only limitation upon the right and power of a labor union to make rules and by laws for the government and regulation of its members, is that they must not be in contravention of the law, either common, statutory, or organic, or against public policy.

Martin, Modern Law of Labor Unions, §§281-285, and cases cited.

No Part or Provisions of the National, District or Sub-District Constitutions are in Violation of the Laws of West Virginia.

If the constitutions of the United Mine Workers of America and its subordinate branches, as a whole, are not violative of the constitution and laws of West Virginia, what specific part or provision thereof violates the laws or constitution of that State?

We submit, in view of what has already been said in this brief, as to the purposes of this Union and the right of a labor union to adopt rules and by-laws for the government and regulation of its own membership, that there is no provision in the said constitutions that is *per se* against the laws or constitution of West Virginia.

Furthermore, the court in a suit in equity by a private person would not, as an abstract question or proposition, declare any particular clause or provision of the constitution of this labor union unlawful under the laws and constitution of West Virginia, but would do so only when the union in attempting to carry out such clause or provision, if unlawful, against the property rights of the petitioner would thereby threaten injury or damage to such rights, as equity will only interpose its aid to protect the property of the party complaining.

The United Mine Workers Not a Combination or Comspiracy in Restraint of Trade within the Contemplation of the Sherman Anti-Trust Law.

Our position is that the questton whether or not the union, known as the United Mine Workers of America, is a combination or conspiracy within the purview of the Act of Congress of April 2, 1890, 26 Stat. L. 209, generally known as the Sherman Anti-Trust Law, does not properly arise in this case for the consideration and decision of the Court We say that this question does not arise here for two reasons:

The first is, that there is no allegation in the pleadings raising an issue with reference to the unlawfulness of this organization under the Act of Congress referred to.

The second is, that a private person, as the petitioner here is, cannot attack the validity of a combination or conspiracy under the Sherman Anti Trust Law, and can only enjoin an act or acts of such a combination when these acts threaten injury to the property rights of an individual.

The law only authorizes a suit in equity by the United States at the instance of the Attorney General. In support of the proposition that the petitioner cannot maintain this suit in order to declare the organization to which the respondents belong, unlawful under the Act of Congress of July 2, 1890, the attention of the Court is respectfully directed to the case of National Fireprooting Co. v. Mason Builders' Association, 169 Fed. 259, where the court in the course of its opinion says:

> "But the complainant asserts that the agreement in this case is positively unlawful and not merely negatively invalid—that it contravenes both national and state statutes against combinations, and thus does give rights of action to injured persons. With respect to the Fed. statute, it is not obvious in what way a trade agreement between builders and blicklayers, relating to their work in the state of New York, can be said to directly affect interstate commerce; but the consideration of this question is not necessary because a person by a violation of the federal act

cannot sue for an injunction under it. The injunctive remedy is available to the government only. An individual can only sue for threefold damages. Greer v. Stoller (C. C.) 77 Fed 2; Southern Indiana Exp. Co. v. United States Exp. Co. (C. C.) 88 Fed. 663. See, also, Bement v. National Harrow Co., 186 U. S 87, 22 Sup. Ct. 747, 46 L. Ed. 1058; Port V. Southern Railway Co., 103 Tenn. 184, 52 S. W. 301, 55 L R. A. 481; Metcalf v. American School Furniture Co. (C. C.) 108 Fed. 909; Block v. Standard Distilling, etc., Co (C. C.) 95 Fed. 978; Gulf, etc., R. Co. v. Miami Steamship Co., 86 Fed 407, 30 C. C A. 142; Pidcock v. Harrington (C. C.) 64 Fed. 821; Hagan v. Blindell, 56 Fed. 696, 6 C. C. A. 86, affirming Blindell v. Hagan (C. C.) 54 Fed. 40."

The learned Circuit Court of Appeals did not decide the question now under discussion, as it did not regard it as one properly arising in this case.

If this Honorable Court should conclude that this question is now before it for decision we submit that this labor union is not in violation of the Act of Congress of April 2, 1890, making combinations or conspiracies in restraint of trade or commerce among the several states or with foreign nations unlawful.

There is no decision that has come to our notice that holds that a labor organization, *per se*, is in contravention of the Sherman Anti-Trust Law. There are cases that hold that where two or more persons institute a boycott, or engage in unlawful acts by the use of intimidation, threats, coercion and violence to promote the purposes of a strike, when such boycotts or strikes involve an interference with interstate commerce, that the persons engaged in such acts cannot protect themselves against this law merely because they are members of a labor organization and are engaged in such acts in promoting its interests. The following are the cases so holding:

United States v. Debs, 64 Fed. 724;
United States v. Elliott, 64 Fed. 27;
Thomas v. Cincinnati, etc., R. Co., 62 Fed. 803;
In re Grand Jury, 62 Fed. 840;

United States v. Workingmen's Amalgamated Council, 64 Fed. 995;
Waterhouse v. Comer, 55 Fed. 149;
Loewe v. Lawlor, 208 U. S. 274, 52 Law. Ed. 488.

In these cases, and all others of like kind, there was no holding that a labor organization *per se* is contrary to the Sherman Anti-Trust Law. The reason must be that the purposes of these associations are not to restrain interstate commerce, or to stifle competition, or even to create monopoly; but on the contrary, they have for their purpose the betterment of the condition of the laboring man, on the principle that laboring men can, by the formation of associations and unions, accomplish the lawful purpose of bettering their condition much more effectively than to attempt to do so alone or singly.

We have already shown in a general way the purpose for which a labor organization may be created and its growth promoted. For a full discussion of the internal administration of labor unions, their constitutions, rules and by-laws, adopted for the purpose of promoting the business of the organization, we refer the Court to Martin on the Modern Law of Labor Unions, §§ 279-345, where this subject is extensively treated and the authorities cited. We are unable to perceive any clauses, or sections thereof, in the national, district and sub-district constitutions that are within themselves unlawful.

It is not denied, but admitted, that if coercion, intimidation, violence, or physical force of any kind is employed to promote the growth of this organization, then the means thus employed would render the persons thus employing such means, whether members of the association or not, guilty of a tort, and in a proper case could be enjoined from committing threatened injury to property. But, as we have seen, no such agencies have been employed in this case by the respondents. In order to determine whether the United Mine Workers, as an organization, is within the purview of the Sherman Anti-Trust Law, let us examine into

The real purposes of this organization and how these purposes are made effective.

As we have already seen, the national organization which has a membership of nearly three hundred thousand, which is made up of the members of the various local unions throughout the country, has nothing whatever to do in fixing a wage basis for any particular district. The method of arriving at this is in a joint conference between the operators and the members of the organization within a particular district. A district may embrace one state or a part of a state, or one state and a part of another state, depending, of course, upon the extent of the membership of the organization in that district and the number of operators therein. When the representatives of the operators and the representatives of the miners meet in joint conference, the latter submit a proposition to the former embodying the price of mining coal per ton or per measurement, and the price of day wages, and this proposition is discussed, and may be accepted as submitted, modified, or rejected by the operators. If no agreement is reached, an adjourned or future meeting is sometimes called for a further consideration. If the proposition is ultimately accepted, then that agreement becomes the basis of action within the district in fixing the price of mining coal and of day wages in and about the mines. That becomes a scale of wages for the action of the sub-districts within the district and the miners and operators within the sub-districts adapt it to the conditions existing in any sub-district within the territory of the district. When this agreement is finally consummated by such modifications as will adapt the scale to the sub-district, the operator and the local union whose members are mining coal for that operator are in contractual relations. This scale containing the price and conditions upon which the miners are working continues for a definite period, and contains many provisions regulating the mutual rights of the parties.

It will thus be perceived that the very essence of the organization, in its practical operation, is the local union whose members are at work in and about the mine under

the rules and regulations of the United Mine Workers of America.

In its practical operations, it thus becomes, through the members of its local unions, employed in locally mining coal for some operator in some sub-district, within the territory of some particular state.

It will thus be further perceived, that the members of the United Mine Workers of America are not engaged in inter-state commerce. The operator himself, in taking his coal out, through the agency of the labor of these miners, who are members of the United Mine Workers of America, is not, in the things done by his employes, engaged necessarily in inter-state commerce.

To render a combination unlawful under the Act of July 2, 1890, it must appear that such combination was formed for the purpose of restraining trade or commerce among the several states or with foreign nations, or that such restraint necessarily results from such combination, and thus deprives the public of the benefits which flow from free competition.

United States v. Freight Ass'n, 166 U. S. 290, 41 L. ed. 1007;
Northern Securities Company v. U. S., 193 U. S 197, 48 L. ed. 709;
Bigelow v. Calumet & Hecla Min. Co., 167 Fed. 709;
Gibbs v. McNeely, 118 Fed. 120;
Whitwell v. Continental Tobacco Co., 125 Fed. 454.

These, and all the authorities, hold that to vitiate a combination, its purpose or necessary effect must be to restrain commerce among the several states, or with foreign nations.

The size of a business alone does not constitute a monopoly in restraint of inter-state commerce in violation of section 2 of the Anti-Trust Act; but to render a combination illegal thereunder it must intentionally or necessarily prevent other persons from engaging in such business, thereby stifling competition.

U. S. v. American Naval Stores Co., 172 Fed. 458;
In re Green, 52 Fed. 104.

The authorities all hold that a combination which does not exclude other persons from engaging in the same business does not create a monopoly. As long as other persons are free to go into the same business, and compete with the person engaged in the combination, there is no ground for complaint.

National Fireproofing Co. v. Mason Builders' Ass'n, 169 Fed. 259.

The case just cited, decided by the Circuit Court of Appeals in 1909, involved the validity of an agreement entered into between the Mason Builders' Association and the Bricklayers' Union, and it was contended that it unlawfully interfered with the business and property of the complainant. The court, after stating the agreement, and its effect upon the business of the complainant, and citing the authorities holding that a private person cannot resort to injunction for the dissolution of a combination, but that his remedy is for three-fold damages, in the course of the opinion, says:

> "The complainant says that the agreement in question violates this statute because it tends to create a monopoly in the hands of members of the association and other general contractors who comply with its provisions. It may well be doubted, however, whether a combination of employers and employes in the building trade could ever be for the purpose of creating a monopoly 'in the manufacture, production or sale in this state, of any article or commodity of common use.' Be that as it may, the thing that is essential to the existence of a monopoly—the concentration of business in the hands of a few—is not present here. The business of installing fireproofing in the city of New York is open to all who choose to engage in it under existing economic conditions. General contractors cannot be said to have a monopoly when any person can be a general contractor. Members of the unions cannot be said to be monopolists when any qualified bricklayer can join a union."

Illustrations of lawful combinations appear in the following cases:

U. S. v. E. C. Knight & Co., 60 Fed. 306; idem. 934.
Same case, 156 U. S. 1, 39 L. ed. 325;
Bigelow v. Calumet & Hecla Min. Co., 167 Fed. 727;
Anderson v. U. S., 171 U. S. 604, 43 L. ed. 300.

Every member of the United Mine Workers is engaged in the business of mining coal. His employment in or around a coal mine does not constitute an engagement in inter-state commerce. The mining of coal by him is not interstate commerce, and the fact that his employer, the operator, has engaged him to mine coal does not constitute inter-state commerce on the part of the operator. This is well settled by the authorities. He is simply producing an article that may ultimately become the subject of interstate commerce.

U. S. v. E. C. Knight & Co., 156 U. S. 1, 39 L. ed. 325, and in the opinion of the court at pages 329, 330.
U. S. Tobacco Co. v. American Tobacco Co., 163 Fed. 701, 3 Fed. Anti-trust Dec. in the opinion at pages 420-422 of the latter report.
Hopkins v. U. S., 171 U. S. 578, 43 L. ed. 290.

But is not this now a moot question, since the Act of Congress of October 15, 1914, supplementary to and amendatory of existing laws against unlawful restraints and monopolies and for other purposes, which among other things provides,

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be

illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

Fed. Stat., Anno., Pamphlet Supplement, No. 1, January, 1915, p. 121.

Under this law the respondents could not be enjoined from continuing their membership in this labor union, nor would a decree declaring it unlawful be effective to make it an illegal organization as against a valid Act of Congress.

The United Mine Workers of America had not prior to and at the time of the institution of this suit formed a conspiracy and by its officers or agents by inducements, threats, intimidation and coercion sought to compel petitioner's employes to join the said union, to cause them to leave its service, to cause petitioner's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until petitioner should unionize its mine against its own consent and surrender the management of its business to said labor union.

Under this heading question 5, 6 and 7, (*ante* pp. 39, 40) arising upon the record, as made by petitioner's bill, will be considered.

Before proceeding to a consideration of the evidence bearing on the matters here involved, as charged in the bill and denied by the answer, attention is called to the

Difference between unionizing the men working in a mine and unionizing the mine itself.

In considering these questions, the attention of the Court is respectfully directed, as shown by the record, to the distinction existing between unionizing the men in and about a coal mine, and unionizing the mine at which these men are working. To unionize the men is simply to have them form themselves into a union by joining it and organizing themselves into a local, if they so desire. To unionize the mine, the men must not only be union men sufficient in number to deserve the name of being a unionized mine; but also the operator must enter into contractual relations with the United Mine Workers of America by signing the scale adopted by the organization, and the stipulations provided for in the scale. This is

not only signed by the operator, but it is also signed by the representatives of the United Mine Workers of America.

As to this distinction the attention of the Court is called to those parts of the record appearing at pages 362, 422, 423, 499, 496, 500, 520. 521, 624, 625.

An examination of the testimony of the petitioner at page 362 shows some of the main features of the requirements necessary to unionize a mine; that is, to operate as a union mine. So, at page 422, in the evidence of the petitioner, the witness McKinley shows that the men might be unionized at a mine, and the mine owners not recognize the union; and the United Mine Workers could not recognize a mine, so as to have it operated union, without the consent of the operator; and this witness of petitioner says that the United Mine Workers will not work with non-union men. The same witness says that a mine, when unionized, is under contract to run union, and this contract provides a definite period when the scale of wages shall begin and when it shall end—usually a period of two years. (*Record p. 423.*)

At page 496 the witness Savage says:

> "There is a difference between unionizing a mine and unionizing the employes in the mine; unionizing the employes—is having the men join the organization; unionizing a mine is creating joint relations between the employers and employes; a mine cannot be unionized unless the employer enters into contractual relations with the union; it is not the policy or purpose of the United Mine Workers as an organization to coerce a man into doing a thing against his will; this distinction between unionizing a mine and unionizing the employes of a mine has existed since the organization came about, and this method of unionizing a mine existed in 1906 and 1907."

And this same witness says at page 500 that a mine cannot be unionized without an agreement signed up between the operator on the one side and the Mine Workers' organization as the representative of the men on the other side. Witness Lewis, at page 520 of the record, says:

> "When an agreement is made with an operator it is usually signed by the officers of the district and the representatives of the operator; or when it is a sub-district agreement that has terms that the district organization will not deal with because of their peculiar local character, the officers of the sub-district and the representatives of the operator sign that agreement; in addition to that they have what is known as a scale committee that has taken part in all the deliberations during the time that this contract was being negotiated; they are also called upon to sign this agreement. This shows the men at home that not only the officers have participated in the negotiations, but also the men direct from the mine."

This same witness says that the contract requires when the United Mine Workers engage to work for an operator, they are to see that the men live up to their agreement; the organization must see that the men report for work on time, and that they attend to their work and perform it carefully and faithfully in every respect. They contract to work eight hours a day when a mine is in operation, are expected to be there, and any employe who does not perform his work faithfully, can be dismissed, subject to an investigation. If he does not demand an investigation, nothing is done about it. It is the object of the organization to see that the members receive fair treatment, and that they also treat the operator fairly. (*Record p. 521.*) The witness Sullivan at page 624, also says:

> "The difference between organizing the *men* at the mine and organized the *mine* is that when the miners are organizing the work of organizing the mine is only just started. They next proceed to meet with the operator who owns the mine, or operates it, for the purpose of making contracts or agreements. Under the constitution and methods of the United Mine Workers a mine cannot be organized without the consent of the owner, and it is not the object or purpose of the United Mine Workers to do so, and never has been; it has never been attempted as far as witness knows.
>
> After a mine has been organized, the agreement between the employer and the organization is paramount. The constitution of the organization

has nothing to do with the workings afterwards; that agreement does not take away from the operator the control of his men. The agreement is in writing and a copy of the one made in Ohio in 1910 is here handed to counsel for his inspection. If a member of the United Mine Workers in the territory comprised within District 6, should violate the agreement between the operator and the miners, the management of the mine has a right to discharge him; the discharged man could then have a hearing: it is taken up by the local officers at the mine, and if they fail to reach settlement it is referred up to the sub-district officers and very often they settle it. Perhaps it comes up to the state but not very often. The reason for these investigations as stated by the witness is that employers of labor as well as employes are very selfish, and are liable to make mistakes. The right of investigation is just as sacred to the employer as to the employe, for often the mine foreman or mine superintendent has some personal matter against one of his employes and he brings that into the mine and there he places inconveniences upon that employe to the extent that he can bear it no longer, and when he resists he is discharged. The mine owner knows nothing about this personal matter until he learns of it through the investigation. Then very often the mine foreman or superintendents are under the influence of liquor and say and do things that injure the business. When the mine owner finds out the true state of facts as a rule he puts the man back to work."

The difference between organizing the men and organizing the mine itself, is fully shown on the cross-examination of the witness Lewis at page 520, and at page 594 the method of organizing a non-union field is illustrated. The Court's attention is respectfully called to these two references.

The evidence shows here very conclusively the difference between unionizing the men and unionizing the mine. The former contemplates that men become members of the union, of course, of their own free will and accord; while the latter contemplates that the men belonging to the union are put into contract relations with their employer for a definite period under agreed stipulations en-

tered into by the operator and representatives of the organization for that district and local. How can it be possible to unionize the mine of the petitioner without its consent? It has declared that it intends to run its mine nonunion, and it can continue to do so without any violence, threats, intimidation or coercion or other unlawful acts on the part of the United Mine Workers of America. An examination of the record discloses all the acts of the respondents to unionize the employes of the petitioner, that is, to get them to become members of the United Mine Workers, and every act is free from anything tending to show a resort to unlawful means for that purpose. The parts of the record bearing upon this matter appear at pages 286, 294, 305, 307, 311, 330, 332, 333, 337, 356, 358, 364, 365, 370, 374, 414, 415, 416, 428, 429, 436, 437, 440, 452, 458, 459, 466—471.

An examination of the record fails to disclose any evidence at all of acts on the part of the respondents or any of them to induce or attempt to induce any employees of the petitioners to quit its service, or to induce any person or persons who had agreed to enter its service not to do so.

It may as well now be stated, once for all, that the rec ord is wholly barren of any evidence of intimidation, coercion, threats or violence on the part of the respondents toward the employes of the petitioner.

We may also state at this point that the respondents Mitchell, Wilson, Hughes, White, Hayes, Perry, Moore, Albasin, Roy and Applegarth were never served with process to answer the bill in this case, and the last seven of the said respondents were not only not served with process, but were never made parties to the bill filed in this cause.

The parts of the record disclosing the presence about the petitioner's place of business of any of the respondents appear in the record at marginal pp. 345, 355, 365, 368, 369, 372, 373-377, 396, 398, 399, 404, 405, 406, 424, 425, 426, 433, 434, 439, 440, 441, 442, 443, 444, 448, 453, 457, 505-516, 518-520, 532, 534, 535, 539-541, 548, 549-553.

We have thus specified all the pages of the record

where anything whatever will be found connecting any of the respondents by their presence with any of the employees of the petitioner so as to converse or communicate with them in any manner at all, or to disclose on the part of the respondents any opportunity whatever to exert any influence upon the employees of the petitioner. We have done this for the convenience of the court and in fairness to counsel for the petitioner.

The parts of the record referred to as containing the evidence relating to the conduct of the respondents bearing on the question of the alleged conspiracy on their part, to induce the employees of the petitioner to quit its service or to prevent others from entering its service, in no manner whatever connects any of the respondents with this charge except Green, Watkins, Zelenka and Hughes. None of the other respondents are connected with this chargeby a mere scintilla of evidence.

The witness, Green, conducted his negotiations in the most orderly and gentlemanly way with petitioner's general superintendent, (*record pp. 345, 355.*) On page 534 of the record, the presence of Mr Green is noted in the neighborhood of the town of Benwood and at a point about one hundred feet from the Western Supply Co's store, but that he did nothing and went away on a street car, but the witness, speaking of this, did not hear him say anything to anybody. (*Record pp. 534, 535.*) The gentlemanly behaviour of Mr. Green may be further noted at p. 365.

As to the conduct of Mr. Hughes, one of the unserved respondents, the attention of the court is called to marginal pp. 368, 369, 372, 377, 396, 398, 404, 405, 424-426, 433, 434, 439-444, 448, 453, 457, 505-516, 518 520, 532, 531, 535, 539-541, 548 553.

An examination of the record at the pages here pointed out, clearly shows that the conduct of Mr. Hughes was free from all violence, coercion or intimidation. If the petitioner's witness, Pickett, is to be believed, Hughes seemed indifferent as to whether petitioners's employees became members of the United Mine Workers. It will be borne in mind that some of the employees of the Glendale

Coal Company were discharged because they joined the union, and the conversation betweeen Hughes, and petitioner's witness, Pickett, at page 369 of the record in the second paragraph of that page relates to the men of the Glendale Company, and not to the men of the Hitchman Company.

It nowhere appears that Hughes made any effort whatever to induce the men of the petitioner to quit its service, but it is insisted that he did prevent others from entering its service who had agreed to do so. It is contended that the record shows that some men were induced by Hughes not to enter the service of the petitioner from what appears in the record at page 404:

> "Q. Do you recall having employed any men for the Hitchman Coal and Coke Company at the time Thomas Hughes was about that mine?
> A. Yes, sir; I employed men during that time.
> Q. Do you recall whether any of the men you employed failed to report for work?
> A. Yes, sir; there were some of them failed.
> Q. Do you recall whether you saw Thomas Hughes in conversation with them at any time after your employment of the men and before the time they were to report for work?
> A. Yes, sir; I remember one time although I do not remember the date exactly, but I employed some men and they agreed to report for work later, and after leaving the mine they went out on the pike and I noticed them—or noticed Mr. Hughes talking to them—and those particular men never reported for work."

This is the only evidence even remotely connecting any of the respondents with the charge that they have conspired and combined together to induce persons who have agreed to enter the service of the petitioner not to do so; and we most respectfully submit that the evidence here quoted is wholly insufficient to support such a charge.

Upon cross-examination, this witness, Pickett, speaking with referance to the men with whom, in his examination in chief, he says he saw Hughes talking, states that there were three or four of these men, that they had not

signed any contract of employment, that they said they wanted a job, said they were going after their tools. (*Record pp. 406 407*).

It will appear that the witness had never said anything to these men as to the conditions upon which they could be employed—that they could not be members of this labor organization would have to sign a written agreement not to become members of the United Mine Workers while working for the petitioner, and if they did so they would be required to quit at once.

From this statement of the evidence, can any reasonable man say that Hughes induced men who had agreed to enter the employment of the petitioner not to do so?

All that appears in the record in any manner connecting the respondent Watkins with the business of the petitioner since it began to run its mine non-union, appears in the record at pages 345, 355, 365. An examination of these references will show that Mr. Watkins did nothing whatever. There is not a scintilla of proof against this respondent with reference to this charge made in the bill.

The parts of the record connecting the respondent, Zelenka, with this charge in the bill appear at pages 345, 355, 365, 426, 433, 448, 534, 535.

None of these references show any evidence against the respondent, Zelenka, with reference to this charge (against the respondents) made in the bill.

There is no evidence at all in the record to sustain the allegation of a combination or conspiracy on the part of the respondents, to induce or compel the employees of the petitioner to quit its service or to induce others who had agreed to enter its service not to do so.

It was therefore error on the part of the learned District Court to perpetuate the injunction against the respondents on this charge of the bill.

At page 286 the respondents Green, Watkins and Zelenka introduce the subject of negotiations with the superintendent of the petitioner with a view of unionizing its mine, and the same thing appears at page 294. At pages 305-307 the unserved respondont Hughes has a conversa-

tion with one of the employes of the petitioner and further details of this conversation appear at pages 307-311. At page 330 a conversation with Hughes appears, held with one of the petitioner's employes, and also at pages 332-333. At page 334 mention is made of a notice of a meeting to be held at Nick Heil's baseball grounds, the nature of which is explained at pages 337-338, and it appears at page 342 that this baseball ground is a public place. At pages 350, 357, we find in the testimony of one of petitioner's witnesses the following:

"Q. In 1907 you resided where?
A. At McMechen.
Q. Did you have any meeting there at any time or under any circumstances with a man by the name of Thomas Hughes?
A. Yes, sir.
Q. Well, state as nearly as you now recollect, how you came to meet him and what he had to say for himself?
A. Well, I heard a knock at the door one evening and I went to the door and there was a gentleman on the porch who introduced himself as Mr. Hughes, an organizer of the United Mine Workers, and he wanted to talk organization to me, I told him that I didn't care to talk organization at all. In the position I was in I told him that I didn't care to take any hand in it whatever. Mr. Hughes asked me if I owned my property. I told him I had bought it and was trying to pay for it; and he said if I became a member of the organization that they would get me a job at another place but it might not suit me as well as the one I had. He also advised me before he went away that I was right in not taking any hand in it.
Q. Did you see Mr. Hughes after that?
A. Yes, sir.
Q. Well, under what circumstances?
A. He called a meeting one evening.
Q. Mr. Hughes called a meeting?
A. Yes, sir.
Q. Of what?
A. Of the men at the Hitchman mine; and he made a speech.
Q. Were you there?
A. Yes, sir.
Q. Well, tell us as nearly as you now recollect, what he said?

A. He said quite a few things. He said that he had taken it up with the mayor of Benwood, and the mayor of Benwood had told him that there had been better men than 'Bill Daugherty' hung.

Q. Hughes said that in his speech and you heard him?

A. Yes, sir.

Q. Well, did you see Mr. Hughes after that speech?

A. Yes, sir.

* * * * *

Well, the next time I saw Hughes I told him that the Mayor and the chief of police both told me that if he came over there and bothered me any more to let them know; that he had wilfully lied about the statement he had made; and to let them know and they would lock him up.

Q. And what did Hughes say to that?

A. He just laughed.

Q. Now, in the speech that he made in which he made this remark about you, what was the general character of his remarks relative to the men and the mine?

A. Well, what I heard of it was, (I did not hear all of his speech) that the men had better organize; if they didn't the company would cut their wages and they would be compelled to take the reduction.

Q. Why would they be compelled to take it? Couldn't they work some place else?

A. He claimed not; that they did not belong to the United Mine Workers.

Q. Do I understand you to say, then, that he intimated to these men that unless they got into the union, that if they got out of work at the Hitchman they could not get any work at any union mine?

A. At any union mine; that was the understanding I had."

In speaking of this same meeting at Nick Heil's ball ground, another witness for the petitioner at page 370, says:

"Well, this Friday evening Hughes held a meeting in the ball park and witness went there, he saw a good many people there, they were miners mostly from Benwood and McMechen and when witness says from Benwood he means the Hitchman mine; witness does not know whether he

could put in words the things that he recalls that Hughes said; witness says that Hughes said some very slandering things about some people in that neighborhood; he brought out some names that were connected with the Hitchman Coal and Coke Company; witness recalls that Hughes mentioned Daugherty's name, Jim Jarrett's name and Mr. Pickett's name; Mr. Pickett was superintendent of the Hitchman mine; in the course of his speech Hughes tried to make it appear that it was the right thing to join the union in Hughes' belief; he could not say whether Hughes made any comment upon the nerve of the men that were working at the Hitchman mine; Hughes did not comment upon the nerve of witness."

On cross examination this same witness says that by organizing the mine of the petitioner, he referred to the matter of getting the men to join the United Mine Workers; (*record pp. 370, 371*) and at pages 373, 374 this witness makes further explanation as to what he meant in his examination as to the remark made by the respondent Hughes. (*Record pp. 414-416.*)

The witness McKinley, testifying with reference to a conversation he had with the respondent Rankin, says:

"My recollection is that just after the Sub-District convention adjourned I met Mr. Rankin on the street and knowing him very well I entered into conversation with him. During that conversation I said to him, 'Well, what did you all do?' 'Well,' he said, 'there is one thing we did, and that was to arrange to organize the Panhandle district of West Virginia.' 'Well,' I said, 'why don't you let us alone?' and he replied, 'That was brought up in the convention and a resolution was passed directing us to organize the Panhandle;' and he said further, 'We will be over to see you right away,' or something to that effect.

* * * *

My recollection is that we did not hear anything about it for two or three months, and I thought they had given up the attempt until along about the middle of the summer they commenced to come in to see me, and mentioned the fact at different times when I saw them that they were going to organize us, and then afterwards I found that they were sending organizers about our

mines, as well as other mines in the Panhandle District, and they told me what they were doing at other mines. They neglected to say, however, just what progress they were making at our own mine, except that they were going to get us sooner or later.

Q. And if they got the men and didn't get you, what would happen with your mine, did they say?

A. Oh, they said they would shut us down and compel us to recognize the union.

Q. Did they say anything on that line with reference to the other mines in the northern Panhandle District that were running non union?

A. Yes, sir, they stated specific mines that they were going to organize.

Q. What mines were they?

A. The Glendale, Hitchman, Richland—which was ours—and the Beech Bottom mine.

Q. Do you know from them what progress they made at the Glendale mine?

A. Yes, sir, they told me that they had twenty some men (I think it was twenty-four) who had joined the organization, and that they had sixty men who had signed up or had agreed to join the organization at Hitchman, and that they were going to shut the mine down as soon as they got a few more men.

Q. The Hitchman mine?

A. Yes, sir; and all of the mines in the Panhandle District would have to recognize the union or remain closed."

(*Record pp. 414-416.*)

On cross-examination of this witness he states that there is a difference between organizing the men at the mine and organizing the mine, and evidently the respondent Rankin in saying that it was the intention to organize the mine, only meant (and could mean nothing else) that it was the intention of the organization to get the employes of these mines to become members of the United Mine Workers of America. This they had a perfect right to do without the use of coercion, intimidation or violence.

At page 428 of the record another witness of petitioner says that he saw respondent Hughes on the property of the Richland Coal Company, and that the witness asked Hughes his business, and Hughes told him that he was

there for the purpose of organizing the Panhandle District of West Virginia. And when further pressed by counsel for petitioner, this question was put to him: "What did you understand him to say was his meaning when he stated that he was there to organize the Panhandle District? A. Why, that he would make them join the United Mine Workers or tie them up were the words he used to me." This was a mere idle boast of this man Hughes, a man who has never been served with process, and who was wholly without power to do the very thing he said he would do. When further pressed by counsel for the petitioner for an explanation of the meaning of Hughes by the use of the expression referred to, this question was asked and answer given: "Did he make any explanation as to what he meant by tying up the Panhandle? A. That they would organize us and we would recognize the union. He went on further and stated that he would come down there and ask me for a job, and I would be compelled to give it to him, and he would work for me" (*Record p. 430.*) The witness further says: "My understanding of it was that if the company did not recognize this union that the mines would be shut down." This witness is the superintendent of the Richland mine, in the employ of the witness McKinley, who, as we have already seen, obtained an injunction for the purpose of preventing this organization from soliciting its men to become members of the United Mine Workers. The witness further says that Hughes said nothing about the Hitchman mine.

It will clearly appear from this evidence and the cross-examination of this witness at pages 433-435, that this man Hughes was merely "guying" this man Leonard, and Leonard knew it, and when coming upon the witness stand he endeavors to give it a very serious aspect in the interest of this very active witness McKinley, under whose employ Leonard is working at the Richland mine. It looks to us like a conspiracy on the part of these operators working together in this one case, to present some evidence at least, having an unlawful aspect, to perpetuate this very drastic and remarkable injunction.

At pages 436-437, of the record, reference is made by

another witness of the petitioner to the notice of this meeting which was held at Nick Heil's baseball ground for the purpose of discussing the principles of organized labor.

At pages, 439, 440, another witness of petitioner, who tore down one of these notices, speaks of a conversation he had with Hughes, who had charged the witness with tearing down the notice and asked him why he took the notice down; and witness states that Hughes gave his name, and stated that he was a gentleman from the south, and that he was there for the purpose of organizing the Hitchman miners. That he had put the notice up and that he did not intend to be interfered with by such fellows as witness. Whereupon, witness says that he replied to Hughes as follows: "I told him I didn't know as I was interfering with his business; that I was not taking much interest in his business at all; and I can't recollect whether that was all or not; I may think of something else. Anyway he said he would settle with me later—that he would see me—and I replied to him that that was all right —he could do that; that he was on private property and to get out of the alley." And the witness says he did get out.

There were two of these notices and they were carefully taken to the office of the petitioner, and preserved by it, as if in an earnest endeavor to find something, somehow, and in some way, to make out a case for an injunction against these respondents. It serves to show the very strong antipathy of the persons connected with the Hitchman management existing against organized labor, and particularly against this organization.

The respondent Hughes, as a member of the United Mine Workers of America, had a perfect right under the law to give notice of a public meeting at a public place, such as Nick Heil's baseball grounds were and are, for the purpose of discussing the principles of organization. He was not doing so secretly, but openly; everybody was invited to attend the meeting. It was not to be conducted with closed doors for the purpose of making misrepresentations and offering threats of violence and injury to the employes of the petitioner or any one else.

At page 452 another witness of petitioner says that he met the respondent Hughes, and he asked witness if he would not sooner the Hitchman mine would be a union mine than the way it was run, and witness told him he didn't know whether he would or not. Then Hughes wanted to know if he would not go back in again, and witness told him that if he got the rest of the men he was willing, and the witness then states that Hughes remarked: "He said something about that he thought it would not be hard to get the balance of the men; and that was all I remember of his saying."

At pages 458, 459, another witness of the petitioner, says:

> "Q. Did you have any talk with a man by the name of Thomas Hughes?
> A. I remember him; yes, sir.
> Q. You remember a man by that name?
> A. Yes, sir.
> Q. What was he doing there—if he was about the Hitchman mine—if you recall?
> A. Well, he explained to me that he was trying to organize the place again.
> Q. What is that?
> A. To organize the Hitchman coal miners again.
> Q. What do you mean by organizing?
> A. To get us organized back into the United Mine Workers of America.
> Q. What did he say to you?
> A. Well, he said it would be a very nice thing if we would go back again; and so he said if I would put my name down and give him fifty cents on a book (he did not show me the book, but said it had lots of names down on it of the Hitchman coal miners); he said if I would give him fifty cents I would be entitled to a union card to go any place and get a job, if the Hitchman company would fire me, and he would put my name down on his book.
> Q. Did you give him the fifty cents?
> A. No, sir.
> Q. What did you say to him on that subject?
> A. Well, I said I would not do anything like this; he might be a stranger and I did not know that he was the man that he said he was, and anyhow, I was awful careful in putting my name

down to anything. He told me that he was a good friend of Mr. Koch and that Mr. Koch had nothing against having the place organized again. He said he was a friend of his and I made the remark that I would ask Mr. Koch and see if it was so; and he said no; that was of no use, because he was telling me the truth.

Q. Did he show you any book?

A. No, sir; I was trying to see the names on the book but he would not show me anything. He told me he had it and I asked him how many names was on it, and he said he had about enough to 'crack off.'

Q. What is that?

A. That is what I didn't understand.

Q. Did you ask him what he meant by 'crack off?

A. The time was too short; no, sir. I was waiting for my street car to go home on and I went on the car.

Q. Did you say anything to Hughes about the job that you then had at the Hitchman mine?

A. Yes, sir.

Q. Well, what did you say, if you can recollect?

A. Well, I told him that I didn't care much about being organized again, because I had too much experience already how it goes. I told him I was in several strikes and there wasn't anybody that helped me out, and I had to beg the company to get my job back again after I lost my job.

Q. Did you say anything to him about having any property?

A. Yes, sir; I told him it was impossible for me to go any place else, because I could not walk around with my property on my back and hunt another job. I says, 'I have work where I am now and as long as the company treats me as they are treating me I will not do anything against them that they didn't like to have."

On cross-examination this witness says that he and Hughes talked in a friendly way about the matter; that witness was waiting to go up on a street car when he had this talk, and this was the extent of it. (*Record pp. 460, 461.*)

At pages 466, 467, another witness for the petitioner, speaking with reference to Hughes, is examined as follows:

"Q. What did he talk to you about?

A. Oh, he tried to get me along with him to help him out so he could get the Hitchmau mine organized again.

Q. In what way did he ask you to help him?

A. To help him to get the people together, and everything, and he was to pay me for it.

Q. Were there at that time many men employed at the Hitchman mine who were foreigners?

A. Yes, sir.

Q. Did you speak their language?

A. Yes, sir.

Q. Could he speak their language?

A. No, sir.

Q. Did he want you to interpret—You understand what interpret means?

A. Yes, sir.

Q. Did he want you to interpret what he said to those men?

A. Yes, sir.

Q. Did you do it?

A. No; I would tell him I won't do it.

Q. Then what did he say?

A. He got mad and went away.

Q. After that did you see him any more?

A. Yes, sir.

Q. How did he treat you after that? I mean how did he treat you when you did not agree to interpret for him?

A. Why, he came to my house—the second time he came to my house.

Q. You mean he came to your house a second time?

A. Yes, sir.

Q. Then he had been there before?

A. No; not before.

Q. The second time you talked to him he came to your house. Is that the idea?

A. Yes, sir.

Q. Well, what did he say then?

A. He tried to get me to interpret again, and promised me a good job and everything else.

Q. Did that appeal to you then? Did you agree to do it then, or not?

A. No, sir; I would tell him I had nothing to do with him any more.

Q. Why did you tell him that?

A. They blamed me for not getting the men organized; they said it was my fault that the people kept on working.

Q. And that Hughes could not organize the mine?
A. Yes, sir.
Q. Did Hughes tell you that?
A. Yes, sir; he said that is what he heard off of the people.
Q. Did he tell you at any time how he was getting along?
A. No.
Q. Did he succeed in organizing the men there? Did he organize the men at the Hitchman mine?
A. No.
Q. Did the mine continue working while he was there?
A. Yes, sir."

Another witness for the petitioner makes a statement with reference to the respondent Hughes in his evidence appearing at pages 468-470, and we take from the record as to what this witness said, the following.

"Q. Were you about the Hitchman mine working there in the fall of 1907, when Thomas Hughes was there?
A. Yes, sir.
Q. Did you see Thomas Hughes there?
A. Yes, sir; I saw him there several times.
Q. Did you have any talk with him?
A. Yes, sir; I talked with him several times.
Q. Did you hear him talk with any other persons?
A. He was around there all the time and he was talking to every one he would come to.
Q. To men employed at the Hitchman mine?
A. Yes, sir.
Q. Did he tell you what he was there for.
A. Yes, sir.
Q. What was it?
A He told me he was there to try to organize the mine.
Q. Did he say what his business was?
A. Yes, sir.
Q. What was it?
A. He said he was an organizer.
Q. For what?
A. For the United Mine Workers, and that he was there for that purpose. But I knew him before he came around there.

Q. You did know him before that?

A. Yes, sir.

Q. What did he say to you, if anything, with relation to organizing the mine?

A. I do not remember all that he did say, but I remember one certain thing that he said: He told me during one night that he was going to have a meeting called up there. I do not know what the date of it was, but it was in the latter part of August or first of September. He told me he had had a couple of meetings there, but he did not seem to think it was any good; but he told me he was forming a kind of secret order among the men. He said he had a few men—he did not state the number of them—and he said each man was supposed to give him so much dues to keep it going; and then he said after he got the majority he would organize the place. He asked me what I had to say about it and I told him my job at the present time was satisfactory and the men had agreed with the company not to organize and not to have anything to do with the organization, and I told him I did not want to have any trouble and nothing to say, anyway; and I think that was the last time I saw Hughes around there. I saw him after that across the river, but I didn't have any talk with him.

Q. Did he say anything to you about quitting work at the Hitchman and going to a union mine?

A. Yes, sir; he told me about it He said he would get me a job, and I told him that might be all right about that, but I told him I did not think he could place me in any job any better than the one I had at that present time; and that is about as far as that went.

Q. You say you remember of some meeting being held?

A. Yes, sir.

Q. What kind of a notice did he put out for the meetings?

A. Well, I could not just say about the notices.

Q. Did he mark on the pavements, or anything of that kind?

A. Well, there was names around there, about meetings, but I do not know whether he wrote them, or who wrote them. I could not state just what was on them, but we miners claimed that that was what the purpose was.

Q. Were there calls for meetings marked on the pavements?

A. Yes, sir.

Q In chalk or some substance like that?

A. It was in chalk.

Q. White chalk?

A. Yes, sir.

Q. Was that done anywhere near the Hitchman mine?

A. Well, the one I saw was right in front of Wilhelm's saloon, on the sidewalk.

Q. Where is Wilhelm's saloon with reference to the mine?

A. It was about 150 yards north of the mine.

Q. Did you attend any of the meetings that he held?

A. No.

Q. Did he say anything to you along the line of thought that unless you joined the union at that time, if the mine were unionized, you would not get a job.

A. Yes, sir; he stated to me that if we did not go in the local, or stay away from there and work where mines were organized, that we would not ever be able to get a job in a union mine, but I have worked in two union mines since that, and had two union cards, and then came back to the Hitchman.

Q. Did you hear him talk with others along the same line?

A. Yes, sir; he talked with them all about the same, that I ever heard him talk to.

Q. Did you hear him tell them that unless they joined then, that if the mine was organized they would be out of a job and they could not get any?

A. He was talking to me and there was five or six or seven sitting there in a bunch, and they all heard just the same as I did about it.

Q. Did he say what he was going to do with the men when he got enough to organize?

A. Yes, sir

Q. What did he say he was going to do?

A. He stated when he got a majority he was going to organize the mine. I expect the meaning of it was that he was going to organize whether it was against the company or not.

Q. Did he say anything about shutting the mine down it they did not unionize it?

A. He stated it that way—that whenever he got a majority he was going to organize or they would close the place down.

Q. In point of fact, did he get a majority and unionize the mine or not?
A. No, sir; I think he failed."

On cross-examination, this witness, in further explanation of his conversation with Hughes, says:

"Q. Well, then, while he was there he was trying to get men to join the union?
A. Yes, sir.
Q. And he invited you to join the union?
A. Yes, sir.
Q. And told you he thought it would be better for you to join, didn't he?
A. Yes, sir; that is what he said.
Q. And he said if you worked there and happened to be discharged, you could not get into a union mine?
A. That is what he said.
Q. His idea was that there were a great many more union mines across over in Ohio than there were non-union, wasn't it?
A. I expect that was what he meant.
Q. Well, did he give you any further reasons why he thought it would be better for you to join the union?
A. No; not just exactly."

(*Record p. 471.*)

This is the sum and substance of the evidence introduced by the petitioner that the respondents had formed a conspiracy prior to and at the time of the institution of this suit, to compel the petitioner to organize its mine without its consent, and to shut down its mine until it would surrender the management of its business to the control and direction of the United Mine Workers of America. What was said by the respondent Zelenka appearing in the record at pages 286, 358, 364, simply amounts to a gentlemanly and orderly conversation, merely expressive of his desire to one or two of the men, and to the superintendent, to have the men return to the organization and the mine placed on a union basis. In fact, his conduct was merely of a passive nature, scarcely manifesting an interest in the subject of organization. It is a remarkable thing that out of the hundreds of men in the employ of the petitioner it was only able to produce a very

few of them that even had conversations with the respondents, and these conversations related almost entirely to the respondent Hughes.

It is true that the respondent Hughes was a representative of the organization, but he was simply authorized, as will be shown presently by the evidence, to use argument and persuasion with the employes of the petitioner to become members of the United Mine Workers, and if he went farther than this he did so without warrant or authority for it from the organization, and not in the promotion of the interests of the organization. The uncontradicted evidence of the witness Savage makes this so clear that it cannot admit of question. In the first place, this witness says that had the organization sought to organize the employes of the Hitchman mine, they would not have sought to have them cease working for the company, because as an organization they do not desire to go to a mine and get a lot of idle men on their hands. It some times occurs that they do have them, but if the men quit of their own accord the organization is not responsible for it; that witness knows nothing of any movement, either as an individual or as an officer, in any way, to have the men of the Hitchman Company cease working for it, in 1906 or 1907, or at any other time since it started up non-union; he had nothing to do with it individually and knows of no attempt of that kind on the part of the United Mine Workers. (*Record p. 498.*)

The witness further says that he is acquainted with Thomas Hughes; he was employed by District 6 as an organizer in 1907; but he had no power or authority to shut down the Hitchman mine; no organizer has such power; the business of an organizer is to try to induce men to join the union; the witness further says it is not the policy of the union to coerce men into joining the union; they are expected to join voluntarily and freely. (*Record p. 490.*) Then witness further says that the United Mine Workers did not in 1907, nor have they since then, tried to compel the Hitchman Coal and Coke Company, without its consent, to recognize the United Mine Workers in its contractual relations with its men; that it was not then and is not now the policy of the United Mine Workers to dictate

to the Hitchman Company the men it should employ; and that an operator who is running his mine as a unionized mine has a right to discharge men for cause. (*Record p. 500.*)

The only evidence in the case that can be construed into anything like unlawfulness is the idle declaration and boast of the respondent Hughes, as testified to by a few of the witnesses, with reference to what he would do when the mine was organized, and the employes of the petitioner themselves, who had formerly been union men, knew as well as Hughes himself knew, that he could not organize the mine itself, although every one of the men in its employ might become members of the union. They also knew as well as he did that he had no power or authority to shut the mine down. It is clear from the record that if the men of the petitioner had been organized into the union they could not go out on a strike without a grievance and upon their own motion. The policy of the organization is not to permit a strike except to redress a grievance on the part of the men working. If this grievance can be redressed by conciliation or arbitration under the rules of the organization, this course must be pursued. A strike is the last resort permitted for the redress of a grievance. This strike cannot take place even then until the representative officers of the organization having the matter in charge have failed in the negotiations with the operator to effect a redress. Even then the men are not at liberty to quit the service of the operator as union and organized men, and as a part of the United Mine Workers' organization, unless this strike is directed by the proper officers. This is the common sense and fair view of the matter, not only from the standpoint of the employer, but from that of the organization and the miner himself; because when the men are out of employment, as they are out of employment when on a strike, the rules of the organization require that they shall be supported at the cost of the organization; and the cost to the organization to support men out of employment while on a strike has been very considerable.

And therefore if for no other reason, the policy of the organization is not to encourage strikes or "shut downs"

as they are called. In fact, it is in evidence that the president of this organization at the time this testimony was taken, personally does not favor strikes. He shows that it was his ambition at that time, as an officer of the organization, to bring about a situation that might ultimately remove the necessity for a strike under any circumstances.

The learned Circuit Court of Appeals that decided this cause goes into detail in its examination of this phase of the case (Record pp. 214 Fed. at pp. 708-712), and finds from the evidence there was no combination or conspiracy to do the wrongful acts imputed to respondents as charged in petitioner's bill, as summarized in italics in the headline of this part of our brief.

If this Honorable Court should conclude to go into the merits of this case, upon a *writ of certiorari*, it will determine all questions arising upon the record according to fixed rules of law.

> American Construction Co. v. Jacksonville T. & K. W. R. Co., 148 U. S. 372-378, 37 Law. ed. 486, 492, in the opinion, citing Harris v. Barber, 129 U. S. 366, 369, 32 Law. ed. 697, 699.

The principle here enunciated by this court restricts the petitioner on a writ of certiorari to the case as made by it in the District Court upon the pleadings filed therein and the evidence properly brought into the record bearing on the issues in the cause.

Documentary Evidence as to Unionizing Petitioner's Mine Without its Consent.

In a further endeavor to show that the respondents prior to and at the time of the institution of this suit were in a conspiracy to unionize the mine of the petitioner without its consent and against its will, the petitioner by its learned counsel introduced in evidence in this cause the bill of complaint against these respondents in another suit brought against them by the Richland Coal Company, and also the bill in a certain other suit brought against them by the Glendale Coal Company.

An examination of these bills will show them to be practically identical with the bill in this cause; that the verification of them was made October 23, 1907—the same day upon which the bill in this case was verified; that the bill in the case of the Richland Coal Company was sworn to by J. C. McKinley, who became a very important witness in this case in support of some of the material allegations of the bill filed therein.

The introduction of the bills of complaint in the cases just named as evidence in this case, was under objection, and is made the subject of respondents' exception, XXIV, (*record* p. 228) and XXXIV. (*Record* p. 230)

The allegations of these bills amount to nothing more than affidavits, and constitute no more than sworn declarations of the presidents of these companies, both of whom are stockholders, and one of them, McKinley, the general manager and a majority stockholder in the Rich land Company. These bills are mere self serving declarations dignified by the sanctity of an oath. A bill is a mere statement by the plaintiff of the essential facts of his case, and when made by an officer of a corporation, it is only a statement of these facts by such officer, and when sworn to by the officer, it is but the affidavit of that officer.

> "Affidavits are not formal proof, and hence they are not generally admissible as evidence at the final hearing on the issues made by the pleadings. Their use is confined to the interlocutory stages of the suit, and their chief purpose is to satisfy the court, as to the propriety and validity of various interlocutory orders or steps."
> 2 Street, Fed. Eq. §1300.

Here these bills only amount to self serving declarations, and are therefore incompetent as evidence in support of the issues arising from the denial of the allegations of the bill by the answers of the respondents.

> "It is a general rule of broad application that the *declarations of a party* in his own favor are *not admissble in his behalf*."
> Jones on Evidence (2nd ed.) §235.

The allegations in the bills of complaint in the other

two cases, sworn to *ex parte*, are mere hearsay so far as this case is concerned and are therefore incompetent.

> "The inherent weakness of hearsay testimony is not cured by the fact that the statement has been made under oath, or in any judicial proceedings between other parties. Thus, a voluntary affidavit ranks in equal grade with other hearsay testimony in the law of evidence."
>
> Jones on Evidence, (2nd ed.) §299.

An examination of these two bills will show that they are substantial copies of the bill in this case, prepared by the same counsel, and evidently in consultation with the two presidents, McKinley of the Richland Company and Hitchman of the Glendale and Hitchman Companies. It seems to be a far-fetched effort to perpetuate the injunction in this case against everybody in any wise connected with the United Mine Workers of America, including its national, district and sub-district organizations in every state in the union

An examination of the testimony discloses that Rankin, through whose idle and boastful declarations as to what he would do—because nobody is mentioned with him—(McKinley mentions nobody connected with him although effort was made to have him do so), all of the respondents, members and officers of this organization are sought to be made guilty of a conspiracy to unionize the petitioner's mine without its consent. And this same man Rankin about whom McKinley' testifies—it was only on one occasion that he made any of his boasts, and it was to McKinley alone— has become the manager of a coal company himself in Ohio, and under the policy of the United Mine Workers, as testiffed to by the witness Lewis, he cannot be the manager of a coal company, or its foreman or its superintendent, and be connected with the United Mine Workers of America

Furthermore, it is sought to perpetuate this injunction on a few isolated declarations and acts of Hughes unwarranted and unauthorized by any action by the officers of the organization, against the entire organization—international, national, district and sub-district, and all of these officers disclaim any authority or power upon the

part of Hughes to unionize the petitioner's mine without its consent, or to use anything but reason and persuasion to induce its men to become members of the United Mine Workers; and that, too, when Hughes has never been served with process and is beyond the jurisdiction of the court. It is sought to affect the entire status of this organization on this class of testimony, and to absolutely prevent its doing anything whatever to promote the growth of its organization, no matter how peaceful the methods used for that purpose.

The Declaration of Hughes and Rankin.

The declarations of Hughes and Rankin cannot be used against the organization, its officers and members, until it is first shown that these officers and members, as representatives of the organization, or at least among themselves individually, have formed a conspiracy to unionize the mine of the petitioner against its consent. If they have attempted this, whether members of the organization or not, and even separate and apart from the organization, they are guilty of a tort, and would be amenable to the injunctive process of the court without reference to their relationship to this labor union.

Therefore the first condition to be met in order to use the declarations of Hughes and Rankin in this case, is to prove first that the United Mine Workers of America, its representatives and members, have formed a conspiracy to unionize the petitioner's mine against its consent, and to do this unlawful means must be employed; or second, if there is no proof of this, then there must be further proof that the respondents individually are in a conspiracy or have formed a conspiracy to unionize the mine of the petitioner against its consent.

If this be shown and it be further shown that Hughes and Rankin constituted a part of this conspiracy, then their declarations as co-conspirators are admissible against the respondents.

A recent standard work, discussing the admissibility of the acts and declaration of conspirators in furtherance of the conspiracy, continuing with the subject, says:

"Involved in all of the cases cited in support of the preceding sections is the essential element of the fact that a conspiracy had been formed; and accordingly it is necessary in all cases that there be proof of conspiracy, otherwise evidence of the acts and declarations of one member is inadmissible against the other parties to the conspiracy, although it may be received against the party who made them, provided, of course, it comes within rules discussed elsewhere in this work as to the admission of declarations against the declarant"

3 Enc. Ev. 424, 425.

It will not be inferred simply because the respondents were members and officers of the national, district and sub district organizations, that from the fact of this membership they were in a conspiracy to organize, without its consent and against its will, the mining plant of the petitioner. As we shall see hereafter, a labor organization does not constitute a conspiracy; as already shown, it is a lawful organization. We discuss the subject of conspiracy as relating to labor organizations in another part of this brief.

Another part of the documentary evidence of the petitioner is referred to in the bill of petitioner. (*Record p. 20.*) This documentary evidence consists of two resolutions, one designated as "Number 8" and the other as "Number 10". These resolutions were adopted at a convention of Sub-District 5 held at Wheeling in March, 1907. Only one of these resolutions applies or can apply to this case, and this is Resolution Number 8, which reads as follows:

"Whereas, there are miners in the Pan-Handle District and Ohio that are not organized, and believing every mine should be organized, be it

Resolved, by this Ninth Annual Convention that the Sub-District officers together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done."

An examination of this resolution discloses that it contemplated an effort on the part of the sub-district together with the district officers, to take up the work of organizing every mine in the sub-district as quickly as may be

done. As we have seen, the organizing of a mine contemplates the entry into contract relations between the organization and the operator. That is, that the mine of the operator be under contract with its employes made jointly between it and the representatives of the organization acting for the men working in the mine.

It cannot be inferred from this resolution that the officers had in mind unlawful methods of securing the unionizing of the petitioner's mine. As said by the Circuit Court of Appeals in Lawler v. Loewe, 187 Fed. 522, decided after a decision in the same case rendered by the Supreme Court of the United States, (208 U. S. 274,) in discussing a clause of the constitution of the United Hatters' Association which provided that certain of its officers "shall use all the means in their power to bring such shops (i. e., non-union shops) into trade," this does not necessarily imply that these officers shall use other than lawful means to accomplish such object. So, in this case, this resolution spoken of, to unionize the mines in that sub-district, only contemplates lawful means.

This statement of the law that it will not be presumed that the members of a labor organization will carry out the purposes, lawful in themselves, of their association, in an inlawful manner, is illustrated in numerous cases found in the books.

In *Sheffield v. Balmer*, 52 Mo. 474, 14 Am. Rep. 430, the syllabus of the case is as follows:

> "Plaintiffs contracted to publish an advertisement in the weekly (Sunday) edition of their paper for a year. *Held*, that as it did not appear, and was not to be presumed, that the contract contemplated any labor to be done on Sunday, it must be held to be valid."

In Missouri there was a statute forbidding any labor on Sunday, fixing a fine for its violation. In this case the contract was as follows:

> "St. Louis, November 24th, 1868.
> We agree to pay Sheffield, Easton & Stone, publishers St. Louis Home Journal, five dollars per issue for publishing a one hundred (1 3 column) line advertisement for us in their weekly

(Sunday) edition every Sunday for one year; said advertisement to be changed at our option.

BALMER & WEBER."

In the course of the opinion, the court says:

> "The contract sued on does not require the plaintiffs, either expressly or by any necessary inference, to violate this statute. It is not required that an hour's work shall be performed on Sunday. The advertisement is required to be published in the weekly (Sunday) edition of the paper every Sunday. Now this may all be done, and the contract be completely performed, without violating the law by performing labor on Sunday in the least degree, and if the contract can be performed without any violation of law, then it is only a natural and legal presumption that it will be so performed, or at least there is no legal presumption that it will not be so performed."

14 Am. Rep. at page 433.

The law intends that when a thing may be done lawfully, that the party or parties undertaking to do the thing will do it lawfully.

> Skiff v. Stoddard, 63 Conn. 108, 26 Atl. 974, 28 Atl. 104, 21 L. R. A. 102.

As to Resolution Number 10, it is sufficient to say that it does not apply to the petitioner, because it is running non-union, over which the organization has no jurisdiction; the very wording of the resolution shows that it applies to union mines only.

Another question brought into this case at the final hearing by the introduction of the petitioner's testimony

and which is sought to be supported by documentary evidence, is whether or not the respondents prior to and at the time of the institution of this suit, were in a conspiracy or combination with the coal operators of Ohio, Indiana, Illinois, and Western Pennsylvania, to unionize the petitioner's mine without its consent and against its declared policy and intention to run its mine on a non-union basis.

There is no allegation of such combination or conspiracy contained in the bill, and, of course, the respondents had no opportunity on the final hearing to meet such a charge not contained in the pleadings.

The only course, therefore, open to respondents at the final hearing when this character of evidence was introduced, was to submit their objections to it in the form of exceptions, all of which appear in the record, and are specifically pointed out in this brief at pages 186-188. So far as the printed record in any manner bears on this feature of the case, it will be found therein at pages 291-294, 388, 396, 411-413, 479, 479, 479, 484, 485, 502, 506, 533, 540-545, 570, 575-584, 592, 609-615, 619, 642.

Before calling the Court's attention to the contents of the record to which reference by pages here is made, it will be seen that the petitioner introduced certain documentary evidence, on the phase of the case to which we now call the Court's attention. This consists of the following:

"Proceedings of Joint Conference of Coal operators and Coal Miners of Western Pennsylvania, Ohio and Indiana, Cincinnati, Ohio, March 8-29, 1910," known in the record of the case as McKinley's Exhibit No. 4, and as Upstill's Exhibit No 1, and which was excepted to as incompetent and irrelevant for the reasons assigned in the record as exceptions LXVII (*record* p. 237) and LIII. (*record* p 234.)

Also book entitled "Interstate Convention of 1908—Joint Conference of Coal Miners and Operators of Western Pennsylvania, Ohio and Indiana held at Toledo, Ohio, April 14-17, 1908," and known in the record of this case as McKinley's Exhibit No. 3. This was excepted to by respondents, and is the subject of exception LII, and this exception and the reasons therefor appear in the record at page 234.

Also a book entitled "Interstate Conventions 1906—Joint Conferences Coal Miners and Operators of Western Pennsylvania, Ohio, Indiana and Illinois—Indianapolis, Indiana, January 25th to February 2nd, and March 20th to 29th, 1906," and known in the record in this case as McKinley's

Exhibit No. 1, and which is made the subject of respondents' exceptions L. (Record pp. 233, 234.)

Also book entitled "Joint Convention of the Illinois Coal Operators' Association and the United Mine Workers of America—District 12—Held at Springfield, Ill., May 17, to June 1, 1906," and known in the record of this case as McKinley's Exhibit No. 2, and which is made the subject of respondents' exception LI. (*Record* p. 234.)

Also book entitled "Proceedings of the Eighteenth Annual Convention of the United Mine Workers of America: Held in the City of Indianapolis, Ind , January Fifteenth to Twenty second inclusive, 1907," and known in the record of this case as Plaintiff's Documentary Exhibit No. 4, and which is made the subject of respondents' exception XXI. (*Record* p. 227.)

Also a book entitled "Proceedings of the Ninth Annual Convention of Sub-District 5 of District 6, United Mine Workers Of America, Held at Wheeling, W. Va., March 14, 15, 16, 18 and 19, 1907," and known in the record as Plaintiff's Documentary Exhibit No 5, and is made the subject of respondents' exception XXII. (*Record* p. 228)

Also a book entitled "Official Mining Scale of Association of Pittsburg Vein Operators of Ohio for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and United Mine Workers of America. In effect April 1st, 1906, and ending March 31, 1908," and known in this record as McKinley's Exhibit No. 8, and made the subject of respondents' exception LVII. (*Record* p. 235.)

Also book entitled "United Mine Workers of America, District No. 6, Ohio, Issued by the Authority of the Executive Board of District No. 6, (Ohio Members) United Mine Workers of America, G. W. Savage, Secretary-Treasurer. For scale year April 1, 1908 to March 31, 1910," and known in the record of this case as Koch's Exhibit No. 1, and made the subject of respondents' exception. (*Decree, record* p. 696.)

Also a book entitled "Detailed Mining Scale for Subdistrict 5 of District 6, U. M. W. of A. Effective from April 1, 1910, to March 31, 1912," and known in the

record of this case as McKinley's Exhibit No. 9, and made the subject of respondents' exception LXIII. (*Record* p. 236)

Also "Excerpts from President T. L. Lewis' Report to the Twentieth Annual Convention of the United Mine Workers of America, held at Indianapolis, Indiana, in January, 1911, as published in the United Mine Workers Journal in its issue of January, 19, 1911," and known in the record of this case as Lewis' Exhibit No. 1, and made the subject of respondents' exception LXIX. (*Record* p. 238.)

Also "Expenditures of the United Mine Workers of America for the year 1910," as published in the Mine Workers' Journal in its issue of January 26, 1911, and known in the record of this cause as Lewis' Exhibit No. 2, and made the subject of respondents exception LXX. (*Record* p. 238.)

Also "Income of the United Mine Workers for year 1910," as published in its Journal of January 26, 1911, and known in the record of this cause as Lewis' Exhibit No. 3, and made the subject of respondents, exception LXXI (*Record* p. 238.)

Also the "Annual Report of the International Auditors, showing Income and Expenditures for the year, 1910," as published in the United Mine Workers' Journal in its issue of January 26, 1911, and known in the record of this cause as Lewis' Exhibit No. 4, and made the subject of respondants' exception LXXII. (*Record* pp. 238, 239.)

Before calling the Court's attention to these exhibits, let us briefly notice what appears in the printed record.

At pages 290-293 the witness McKinley identifies the exhibits therein mentioned, but on cross-examination he is unable to authenticate them as being copies of the originals. On page 385 the witness identifies McKinley Exhibit No. 9. At page 396 of the record the witness says that the scale of wages fixed by the union is done in convention, and afterwards the representatives of the union meet the operators in Pennsylvania, Ohio, Indiana and Illinois for the purpose of agreeing upon a scale, and to determine whether or not the price demanded by the organization for the miners can be accepted by the opera-

tors. At pages 411-413 of the record the witness McKinley shows how the scale of wages is applied to the general mining conditions in certain union fields, and certain non union fields. The witness also refers to a statement made by the defendant Lewis in a joint conference of coal operators and coal miners of Western Pennsylvania, Ohio, and Indiana, appearing in McKinley's Exhibit No. 4, and Upstill's Exhibit No. 1, from which this quotation is made: "If I have a proper conception of this movement, it does not mean that either miners or operators can publicly say 'We will organize West Virginia in order that the miners of Ohio or Indiana can get more work', that has done more to prevent the organization of West Virginia than anything I know of." The witness then says in answer to a question that this compares with the attitude of the United Mine Workers, and that he has heard practically the same language used himself. At pages 412, 413, quotations are made from Upstill's Exhibit No. 1, as to certain statements attributed to Mr. Savage, in which this language occurs:

> "Operators have told me in years past that they were willing to have the miners organize in Ohio, but they were not willing that their miners should be organized in West Virginia. We find as great opposition on the part of the operators from this State who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union State. Go down there and practice what you preach in Ohio. Help us get protection of the law in that State and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that State. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of these men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe those contracts as religiously as the miners in Ohio, Pennsylvania, Indiana, or any other State."

At page 478 the witness Upstill says that in the territory of Belmont, Jefferson and Harrison Counties, in Ohio, where union labor is employed, and in the Pittsburgh Vein No. 8 at the Hitchman mine, where non-union labor is employed, operating conditions are substantially the same, and the cost of production is about the same. At page 479, the witness Upstill states that the coal from the northern Panhandle of West Virginia is shipped to the west; and that there is a further differential of twenty-five cents per ton in favor of Ohio coal as against the Panhandle coal.

At page 485 the witness speaks of not being able to fill the orders of the Hitchman Company for the lake trade in 1907, and he got coal on the Ohio side of the river for that purpose.

At page 484, on cross-examination, the witness Savage says that he made the statement attributed to him on pages 112 and 113 of Upstill's Exhibit No 1, and gives the reason therefor. The witness says that when an effort is made in Ohio among the operators to obtain an increase in wages, they cite the West Virginia field in opposition to it; and the witness then says: "We (referring to the United Mine Workers) believe that if we organize West Virginia that that would take away the argument that they present to us in Ohio and the competitive fields, and we ask their assistance in organizing this State." Witness recalls certain statements made by Mr. Chapman, contained in Upstill's Exhibit No 1, at pages 64, 65, and says that he heard similar remarks made at various conventions, but that the organization does not agree with these statements. At page 506 the witness Savage, upon re-direct examination says.

> "It was not, in 1907, or at any time before or since, the purpose of the organization of the United Mine Workers of America to form locals and get miners to join the union for the purpose of discriminating against the West Virginia operator and in favor of the Ohio operator; if efforts were made in 1907 to get the employes of the Hitchman Company to become members of the Union, it was not for the purpose of discriminating against that Company in favor of any other

operator; it is the purpose to organize all the workers in the country, and if they were to do that they would never hope of organizing the miners anywhere. The Mr. Chapman to whose remarks attention was called on cross-examination was a coal operator."

At page 533 the witness Lewis says that "There is no foundation in fact for the statement made by the witness McKinley that it is the purpose of the United Mine Workers and those who meet with them in convention, to so place the West Virginia non-union operators that their coal cannot come in competition with the same markets they now compete in the West and northwest; that the miners' organization is not attempting to do that by organizing the miners of West Virginia."

The witness, continuing, says:

"In conventions the operators of the central conpetitive field, including Western Pennsylvania, Ohio, Indiana and Illinois, have always urged against improving the condition of the miners and against advancing the wages of the mine workers from the standpoint of their inability to do so, and earn a profit on their iuvestments, taking into consideration the cost of producing coal When that argument is met by the miners and they find that they are not able to defend their position, they then always bring up as a bugaboo the argument of coal being shipped from West Virginia, and that if they advance the wages of the men and add any more to the cost of production, it will simply drive the trade to West Virginia; and incidental to that, they say that we should organize the miners of West Virginia in order that their trade will not be taken away from them. The reply of the miners is that if West Virginia is organized, they are as much entitled to their share of the general and northwestern markets as operators in Ohio and Western Pennsylvania or anywhere else. Consequently there can be no foundation for any such statement.

All the coal from the Kanawha district is shipped either into the northern northwest or the southern northwest. Part of it goes by the Kanawha river to the southern market. There isn't any coal from the Kanawha district that goes east; it goes west in competition with the coal produced

in Western Pennsylvania, Ohio and Indiana; the Kanawha district is operated union under a contract agreed upon between the operators and miners in that district."

At page 545 the witness Lewis shows how the joint movement between the operators of Western Pennsylvania, Ohio, Indiana, and Illinois, and the United Mine Workers came about, and as shown, it was for the sole purpose of bettering the condition of the Mine Workers, and indirectly, the operators themselves. At page 542 the States taking part in this conference are mentioned, and at page 584, in answer to a question propounded to the witness by the court, the theory and purpose of these joint conferences are stated.

"The Court: Q. Do I understand you, Mr. Lewis, that you combine the states and hold these joint conventions, where that can be done, and make one contract, and if that is not convenient—you hold conventions between the district organizations and the operators in local fields?

A. Yes, sir; your Honor, that is the purpose and idea. In order to make it probably a little more clear we will take the states of Illinois, Indiana, Ohio, Western Pennsylvania and a part of West Virginia. They find markets for their coal in the northwest and outside of what they sell for fuel purposes in a domestic way. Then in the southwest those states are competitive with each other and more so than they would be with the states in the central competitive field. The states in the Rocky Mountain region are competitive with each other and more so than they would be with Kansas or Oklahoma, or Ohio, Illinois, West Virginia, and Western Pennsylvania.

Q. You make a different contract in different sections?

A. That is the purpose of the movement. For instance, if we had a Maryland organization, and what is known as the Myersdale section of Pennsylvania, and central Pennsylvania, and in the Irwin field along with eastern West Virginia, we would have those operators and miners get together because their markets are on the eastern seaboard. Their markets are competitive and they would have a joint movement. Then, again, the southern states would have a joint movement

—Tennessee, Alabama and Kentucky * * if they were organized."

Let us notice here, then, the effect of these joint conferences between the United Mine Workers and the operators of the different competitive fields. Take, for illustration, the states of Ohio, Indiana, Illinois and West Virginia, and the western part of Pennsylvania. These states compete for the lake trade where a large tonnage of coal finds a market, and these states all, of course, must compete in this market for the sale of their coal product The cost of production is the controlling factor, in connection with that of transportation, in the matter of competition. Now, if the cost of production can be equalized among these various states, so far as physical conditions will permit, then the operators of every one of these states is in a better position to compete with the others than if this equality in the cost of mining did not exist. For illustration, if in one state wages are much higher than in another state, with conditions practically the same, the operators of the state in which the higher wages are paid could not advantageously compete with the operators in another state, in which the cost of mining or the wages paid the miner were less.

Now, in national convention the only thing that the representatives of the organization have to do with wages, is to determine whether the scale that then exists in the various districts shall be raised or lowered, and these various scales so existing are taken as the basis upon which an increase of the scale is made. If the convention determines upon an increase, they fix the amount of the increase, and the base scale in any particular district is thus affected by the increase.

This increase or decrease is made by a percentage, the base scale existing in any district being taken as the unit for the increase percentage In support of this statement the Court is referred to the record at page 543, where it will apper that the counsel for the petitioner asked the purpose of this interstate convention system, to which the witness Lewis answered as follows:

"A. To arrange a wage agreement to govern

> mining rates the day-wage scale and the conditions of employment; and the reason that there have been no efforts made to have one national joint convention was on account of the diversified conditions in the different mining states due to the different character of the veins of coal; and it would be a physical impossibility to work out all the details of wage agreements in a national joint convention. Eventually, if they establish it, they would have to deal with the national organization and still refer back for district or sub-district agreement, all details of any wage contract that might become effective."

Then further on the witness is interrogated by the counsel for the petitioner as follows:

> "Q. And was it contemplated that these joint conventions when agreed upon should themselves constitute another higher or lower body?
>
> A. No; the object was to try to establish—as near as the natural conditions of the veins would permit—uniformity within the district as between the mining districts.
>
> Q. What was taken as generally the base of the wage scale—the scale of wages—that might be agreed upon between the operators of the central competitive states and the United Mine Workers in their joint conventions?
>
> A. The basis of negotiating and agreeing upon contracts was taken from the physical condition of the mines, the selling price of the coal and the earning power of the mine. Those are the three elements that enter into the negotiations of wage contracts." (*Record* p. 543.)

This clearly shows that the whole purpose of these joint conferences was to equalize the wage contracts of the mine workers so as to remove the inequalities existing in the same mining district among different operators in any particular competitive field, whether composed of one or more states, and in this way enable the operators to compete with each other in finding a market for their coal. *It is perhaps needless to say that by this organization, as shown clearly and undisputably by the evidence, the wage earner in the coal mines of this country is receiving a far better price for his labor than he would be receiving if this organization had not been formed.*

It is not the object of the United Mine Workers of America to unionize West Virginia for the purpose of making a wage rate by means of the union so high that the West Virginia operator could not compete with the operator either in Western Pennsylvania, Ohio, Indiana or Illinois. If that were the purpose it would destroy the coal industry of West Virginia, and the union itself would have to find employment for 78,000 or more miners now engaged in the coal field of West Virginia. And the organization would thus bring upon itself an overwhelming calamity by throwing these 78,000 or more men into the union fields, who would themselves be competing with the members of the United Mine Workers for employment in the fields that are already unionized. If these 78,000 men should go into the union fields, they of course, would join the United Mine Workers, and thus they could not find employment all the time in Ohio, and the time of work would have to be divided with these employes from West Virginia The very statement of this proposition is a refutation of the contention that the purpose of organizing West Virginia is to keep the operators from competing with those in Ohio, Indiana, Illinois and western Pennsylvania.

If the United Mine Workers of America were permitted to organize in the whole state of West Virginia, there would be a base w ge rate for the Kanawha field in one end of the state, and also a base wage rate for the field, in the Fairmont region, and in fixing the basis of each of these sections, the operators and miners in conference would take into consideration the physical condition of the mines, the selling price of the coal, and the earning power of the mines. Everything would be considered in order to equalize the cost to the operator with reference to the cost in any other field competitive with the West Virginia fields. For illustration, the operators in the Kanawha field would be competing with the operators selling their coal in the Northwest, and the Fairmont field in selling their coal in the East, and so on

We now submit this question: If the purpose of these joint conferences is to equalize the cost of mining to all the operators in any competitive field, the conditions with

reference to each field being considered and treated as the prime factor in determining the cost of mining, would all the different operators in this competitive field be better enabled to compete in the market for the sale of the coal? If they would not be in a better situation to compete for the market, why not? If operators could not compete with each other under those conditions, then some other factor must interpose to prevent competition.

Now, turning to page 570 of the record, the witness says:

> "When we have an organized mine that means that all the men in that mine are governed by the contract under which that mine is operated, and the men are paid their wages and governed by the laws of the organization. The operators understand what our laws are when they make contracts with our people."

The witness further says that when he uses the word "operators" he does not mean only those who take part in the joint conferences, but all mine owners whether in the conference or not. And to give the operator who is in contract relations with the United Mine Workers a free hand in the management of his mine, the witness says at page 571, that a mine superintendent or mine foreman cannot retain his membership in the organization, any more than a mine worker can be a member of the operators' association. The reason for this is that the interests of the members of the operators' association and the interests of this labor organization are opposed. The conflict between labor on the one side and capital on the other is fundamental. The one contending, of course for the highest wage rate, and the other for the lowest.

At pages 582-584 appears a wage agreement for the Hocking District with an explanation of it given by the witness Lewis. At page 592 the attention of the witness is called to a statement made by him in the Eighteenth Annual Convention of the United Mine Workers, held in Indianapolis in January, 1907, to which the witness replies that these statements are true, and further, that he is opposed to placing an embargo upon the development of the resources of any coal producing state in the interest of

other states, and this cannot be done if every operator is given an equal opportunity to enter the general market.

At pages 609-615 the witness is interrogated as to the contents of McKinley's Exhibit No. 2, and McKinley's Exhibit No. 1, and the witness is then asked the following question, (*record* p. 612;) "Was it not also said during that Cincinnati Convention held in 1910, by yourself, that in order to fulfill the pledge of the Chicago Convention (held in 1898) that the United Mine Workers were willing to go ahead and unionize West Virginia, but you wanted the operators to assist?" To which the witness answered as follows:

> "I may have said that in Cincinnati. I believe in fact, that I have said it in more than one convention, and in doing that I have always insisted upon the operators of those fields doing what they could to bring about conferences between the operators of West Virginia, and themselves, and to make my personal acquaintance with the operators of West Virginia, in order that we could explain to them the object of the joint movement; as I believe that the West Virginia operators had a wrong idea of why we had the joint movement and as a matter of fact I have met some of the largest operators in West Virginia, and the only obstacle in the way of them taking part in the joint movement was the doubt as to whether my ideas of the policies of our joint movement would be carried into effect."

At page 613 the witness is asked as to a statement made in that convention, that is the Cincinnati Convention, 1910, in regard to fixing a mimimum price for the mining of coal, and a suggestion made to operators that they should combine and raise the price of coal, so as to pay a higher rate of wages to the coal miners: and also explains in this connection certain statements contained in Upstill's Exhibit No. 1, showing the opinion of the witness in regard to the policy to be adopted by the coal operators in order that the coal miners may obtain a higher rate of wages; also a statement of the witness in regard to the policy of the then existing and still existing Sherman Anti-Trust Law, and that this law should either be amended or repealed.

At page 619 the witness says that it is true that he stated to the witness McKinley that it is the policy of the United Mine Workers, if possible, to organize all the mine workers in the United States and Canada, and it is likewise true that it is the policy of the organization to endeavor to secure for the mine workers a fair day's pay for their labor. That the organization has not itself declared in favor of a minimum wage rate at any time. That was a mere declaration that the witness himself had made, and which he believed, if it were possible, there might be made then a perpetual contract. These matters are simply the individual opinions of the witness, who became the president of the organization after this suit was brought, and who retired from that office before this suit was decided.

At page 642 the witness Sullivan says that when the organization desired to get the employes of the Hitchman Company to join the union, it did nothing to prevent the Company from selling its coal north and northwest, or to prevent its properly competing with the coal of the Ohio coal producers. Witness had no such object in view, either as an individual or as a member of the United Mine Workers; the organization had no such object in view, for that would be punishing its own members; that there are miners in the Kanawha field in West Virginia that are running on a union basis.

We have thus reviewed substantially all the evidence appearing in the printed record that is relied upon by the petitioner to show that the United Mine Workers are in a conspiracy or combination with the coal operators of Ohio, Indiana, Illinois and western Pennsylvania to unionize West Virginia or to prevent the operators of West Virginia from competing in the market with the coal producers of the State. It seems to us that this part of the record is wholly barren of any evidence to support such a contention.

The purpose of introducing this testimony is to show that this combination or conspiracy, sought in the evidence to be shown to have been formed between this organization and the operators of these states, is that it may result in the destruction of the coal mining industry

in West Virginia because, as is contended, they would fix the price of mining coal so high upon the West Virginia operators, that these operators could not compete with the operators in these other states; but which, as we have shown, is not the purpose of the joint conferences had between the operators and coal miners of these states, but on the contrary, to equalize the cost of mining so that all the states, including West Virginia, may compete for the market of the northwest.

It is claimed by the petitioner that it is shown by McKinley's Exhibits Nos. 1, 2 and 4, and Plaintiff's Documentary Exhibit No. 4, that prior to and at the time of the institution of this suit, there was a combination and conspiracy between the coal operators of Ohio, Indiana, Illinois and Western Pennsylvania, and the United Mine Workers of America to unionize the mines of West Virginia, including that of the petitioner, and that, therefore, the organization is not attempting to unionize the mine of the petitioner in a lawful manner, but as the result of a conspiracy.

Let us examine McKinley's Exhibit No. 4, and ascertain what it is, and whether or not it discloses any conspiracy. This exhibit is a report of a joint conference of the operators and coal miners of western Pennsylvania, Ohio, and Indiana held at Cincinnati in 1910. The Illinois operators were not represented in this conference and were not connected with it.

An examination of this report of the proceedings of this conference shows that its purpose was

> "To endeavor to negotiate a wage contract for a fixed period, beginning April 1, 1910,"

for the mining districts represented in that conference in Ohio, Indiana and Western Pennsylvania. There were 371 delegates in this conference, of whom 72 were operators and 299 were miners. Out of all this large number of delegates, a very few said anything about the West Virginia coal field, and all that was said by these delegates to this conference was provoked by the submission on the part of the miners of a proposition for an increase of wages. This proposition appears in McKinley's Ex-

hibit No. 4 at pages 15 and 16. This report shows great opposition by the operators to an acceptance of the wage rate demanded by the miners in this proposition, and great insistence upon it by the mines. The discussion of the differences between the operators and miners in this conference continued for a period of three weeks, and including the business transactions, make a printed volume of 485 pages.

It was during this discussion that the statements in that conference were made by about three of the operators and three or four of the miners which appear in the opinion of the District Court at pp. 665-675.

The petitioner claims that it was shown by the record in this McKinley Exhibit No. 4 that in a joint conference between the coal operators and miners held in Chicago in 1898, there was a mutual understanding or promise that they would co operate in trying to organize West Virginia and other non-union districts engaged in mining coal

A further examination of the other exhibits relied upon to prove this promise or understanding, will show that they consist of statements or declarations, just as those made in McKinley's Exhibit No. 4. There is not one scintilla of evidence or proof that such an understanding or promise was ever entered upon or made in the joint conference at Chicago in 1898. Proof of this alleged promise or understanding, which is denominated a combination or conspiracy, consists in statements which in the law of evidence are only declarations made by certain parties in these exhibits. The direct evidence in the record which shows anything, disproves any such undertaking or promise.

It needs no argument to say that such a promise cannot be received as evidence by mere declarations or statements to prove it, as against the respondents parties to this suit, as such evidence is mere hearsay. If it is sought to make out a conspiracy by what took place in the joint conference at Chicago, the same rule applies. The declarations cannot be used until *such conspiracy* is *first established*.

The purpose of this conference at Chicago is fully ex-

plained by the witness in his testimony appearing in the record begining at page 575 and including page 577.

The answer, however, to all of this effort to prove an attempt on the part of the United Mine Workers to be in co-operation with these operators to unionize West Virginia coal mines, which includes of course the mine of the petitioner, is that there is no allegation of this sort made in the bill, and that such evidence will therefore not be considered.

That evidence will not be considered in a cause in support of a fact not alleged in the bill, is a settled principle of the law,

> Crochet v. Lee, 7 Wheat. (U. S.) 522, 5 Law. Ed. 513.
>
> Piatt v. Bank of the United States, 8 Pet. (U. S.) 405, 9 Law. Ed. 173.
>
> Knox v. Smith, 4 How. (U. S.) 298, 11 Law. Ed. 983.
>
> Battle v. Mutual Life Ins. Co., Fed. Cas. No. 1, 109.
>
> 2 Beach, Mod. Eq. Prac. §790.

> "The range and compass of the evidence that can be properly adduced in any case is primarily determined by the pleadiugs. These determine the issues of the cause; and it is a fundamental rule of evidence that no proof is admissible in behalf of either party unless it relates to the facts alleged in the pleadings. A court will not notice matter, however clearly proved, unless it is put in issue. Omissions and allegations in the bill cannot be supplied by evidence. As commonly stated, the rule is that the proof must conform to the allegations. Allegations unsupported by proof amount to nothing and proof that does not sustain the case made in the bill or the defense set up in the answer is ineffectual for any purpose. The allegata and probata must reciprocally meet and conform to each."
>
> 2 Street Fed. Eq. Prac. §1577, citing Harrison v. Nixon, 9 Pet 483, 9 Law Ed. 201; Foster v. Goddard (1861); 1 Black 518, 17 Law. Ed. 282; Taylor v. Luther(1835); 2 Sumn. 228, Fed. Cas. No. 13, 769; Rubber Co. v. Goodyear (1869) 9 Wall. 793, 19 L. ed. 567; Blandy v. Griffith, Fed. Cas. No. 1529.

The learned Circuit Court of Appeals examining this phase of the case, in passing thereon, in conclusion said:

> "The documentary evidence consisted of the the declarations of a small percentage of the miners and operators who were present at these conferences. It was not shown that either before or after these declarations were made that those participating in the conference had entered into a conspiracy for an unlawful purpose. Indeed, these declarations were brought out in response to a proposition on the part of the miners for an increase of wages. A fair interpretation of the evidence shows that it was the purpose of the defendants to induce the miners of West Virginia to become members of the organization, and thereby secure as high wages as possible, compatible with the successful operation of the mines of that state by the respective owners. They had a perfect right to form a combination to accomplish such purposes by peaceable and lawful methods, and so long as they refrained from resorting to unlawful measures to effectuate the same they could not be said to be engaged in a conspiracy to unionize plaintiff's mine
>
> As we have already stated, the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance. Therefore the court erred in holding the organization to be unlawful upon the theory that it was guilty of a conspiracy."
>
> (Record p. 737; 214 Fed. p. 708.

The Labor Union, Known as The United Mine Workers of America, Does not Constitute a Common Law Couspiracy.

The courts, both state and federal, generally hold that a labor organization is lawful, and does not, therefore, constitute a conspiracy. The definition of a conspiracy given by Chief Justice Fuller in Pettibone v. United States, 148 U. S. 197, 37 L. ed. 419, is the one usually given by the courts and law writers:

> "A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

In this case the charge is, that the respondents and those associated with them, prior to and at the time of the institution of this suit, had formed themselves into a conspiracy for the purpose of unionizing the petitioner's mine without its consent, and in violation of the constitution and common and statutory law of West Virginia. If the combination itself is unlawful, the unlawful purpose must actuate its formation. In other words, if it is sought to show that the combination itself is unlawful, it must be shown that the underlying motive, purpose or object of its creation is unlawful.

The authorities which we have already cited in this brief show quite conclusively that the United Mine Workers as a labor organization is not a conspiracy within the meaning of the law. If it is a lawful organization and its objects are lawful is it shown in this case that it was attempting to carry out the purposes of its organization by unlawful mean?

It seems to us quite clear that there was no attempt to compel the petitioner to unionize its mine against its consent. This is impossible in the very nature of the act necessary to unionize a mine. If there is any act at all imputable to the respondents it is that they sought to induce the employes of the petitioner to become members of the United Mine Workers of America. This, of course, the petitioner was opposed to on account of the pique of its managing officers, which grew out of the refusal of the organization to allow its members to work as members of the union in the absence of a contract defining the wages and conditions of their employment.

If the organization permitted this in one instance, it would have to do so in all instances, and then the very purposes of the organization would thereby be defeated and the union practically destroyed.

After the petitioner decided to run on a non-union basis, there is no evidence of the formation of any combination having for its purpose the unionizing of the petitioner's mine without its consent. Nor is there any evidence in the record, nor could there be any evidence produced, showing that the respondents combined and formed themselves into a conspiracy under the name of the United

Mine Workers of America for any purpose, after the petitioner started to run its mine non-union in June, 1906.

To illustrate that a labor organization is not a conspiracy, we cite the case of State v. Stewart, 59 Vt. 273, 59 Am Rep. 710, 712. This was an indictment against certain parties who, it was alleged, had combined to prevent by violence and intimidation, an employer from retaining or employing certain persons or employes from entering into its service. Speaking of the labor organization in its opinion, the court says:

> "In England and here, it is lawful, and it may be added, commendable, for any body of men to associate themselves together for the purpose of bettering their condition in any respect, financial or social. The very genius of free institutions invites them to higher levels and better fortunes. They may dictate their own wages, fraternize with their own associates, choose their own employers, and serve man and mammon according to the dictates of their own conscience."
>
> 59 Am. Rep. at page 712.

Immaterial Evidence Introduced into the Cause by the Petitioner.

An examination of the record discloses that the petitioner introduced into the case a vast volume of evidence showing the method of conducting its business during the time that it was running its mine union, extending from some time in 1903 until the first of April, 1906. At the close of the scale agreement existing between the petitioner and the United Mine Workers during the period just mentioned, the record discloses that the petitioner was willing to continue to run on a union basis, but by reason of a disagreement with reference to a certain part of the scale, the petitioner did not sign the scale, and as under the regulations of the organization it was necessary for this scale to be adopted by mutal agreement, the the petitioner did not run its mine after about the middle of April, 1906, and remained idle until it began to run non-union. The position of the respondents with reference to the testimony showing the strikes on the part of the employes of petitioner while it ran on a union basis,

the time lost incident to these strikes, and the difficulties enctountered by petitioner to supply engine coal to the Baltimore and Ohio Railroad Company, has no bearing upon the issues made by the bill and answers thereto in this case.

The learned District Judge allowed the testimony to go in under exceptions, which were duly taken, but were overruled on the final hearing, and all this testimony was considered by the learned District Court as being relevant to the issues in this case. The parts of the record containing this immaterial and irrelevant testimony are as follows:

Evidence of E. T. Hitchman marginal pp. 302, 304, 305; R. J. Cotts, pp. 311-318; W. H. Koch, pp. 325-338, 340-349; E. C. Pickett, pp. 364-366; B. C. Rowand, pp. 377-381; John Oliver, 384-388; Wesley Corns, pp. 393-396; R. J. Cotts (recalled), pp. 399, 401; Wm. M. Daugherty, pp. 410 423; Albert Jarrett, pp. 444-446; James Jarrett, pp. 450-453; J. C. McKinley, pp. 460, 461, 475-478, 480, 484, 485. 491-496; John H. Sivert, pp. 522-524; John Mooney, 527-531; Robert Myers, pp. 536-539; B. C. Rowand, (recalled), pp. 543-549; E. A. Upstill, pp. 560-570.

An examination of the record at the pages referred to above discloses that nearly all of it relates to matter connected with the mine of the petitioner while it was run on a union basis, and during the period intervening between the time it ceased operations at its mine until it resumed on a non-union basis in June, 1906. All this matter is collateral and does not bear upon the issues made by the pleadings in this cause.

It will be seen that the petitioner complains of strikes which took place during the time the mine was running on a union basis.

This testimony also attempts to show why the mine did not continue to run on a union basis at the expiration of the term of its union scale; although it is clear from this evidence that the disagreement between the parties arose from the difference as to the price or scale for run of mine coal.

If this testimony amounts to anything at all, it simply

shows the reason why the petitioner decided to run its mine non-union, beginning in June, 1906. Of course, the petitioner had the right to decline to renew its relations with the organization, and refuse to operate its mine on a union basis, if it so elected.

After the mine resumed operation on a non-union basis, any evidence of combination, conspiracy, intimidation and coercion to prevent the petitioner from running its mine non-union would be competent. The evidence referred to does not bear on the issue that the respondents were using unlawful means to prevent petitioner from operating its mine on a non-union basis. And it does not bear on the issue whether this is a lawful organization, or whether the acts of the responents imputed to them after the petitioner started to run its mine non-union, and up to the time it instituted this suit, were unlawful in connection with the operation of the mine of the petitioner.

The individual experience of one operator, or even two operators, as to how the business of the United Mine Workers was carried on at his mine, through the agency of a single local union whose members went on a strike and caused inconvenience and damage to the petitioner, cannot possibly bear upon any of the issues raised in this cause. As we have just said, this makes a collateral issue. It would be necessary to determine in each particular case, with great volumes of evidence probably, whether or not these strikes were justified on the part of the men; and if they were, the petitioner could not have any legal ground of complaint.

We respectfully submit that the merits of this case are with the respondents.

CHARLES E. HOGG,
Counsel for Respondents.

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FILED
FEB 26 1916
JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1915.

NO. [redacted] 11

HITCHMAN COAL & COKE COMPANY, *Appellant*,

versus

JOHN MITCHEL, INDIVIDUALLY; T. L. LEWIS, INDIVIDUALLY; W. B. WILSON, INDIVIDUALLY, ET ALS., *Appellees*,

Upon Appeal from the United States Circuit Court of Appeals for the Fourth Circuit.

AND

October Term, 1914,

NO. 617.

HITCHMAN COAL & COKE COMPANY, A CORPORATION, *Petitioner*,

versus

JOHN MITCHELL, INDIVIDUALLY; T. L. LEWIS, INDIVIDUALLY; W. B. WILSON, INDIVIDUALLY, ET ALS., *Respondents*.

Upon petition and motion of Hitchman Coal & Coke Company, a corporation, for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Notice of Motion to Dismiss the Appeal in the Above Entitled Cause No. 241 and Brief in support of said Motion.

CHARLES E. HOGG,
Counsel for Appellees.

POOR COPY

Supreme Court of the United States

October Term, 1915.

NO. 241.

HITCHMAN COAL & COKE COMPANY, *Appellant.*

versus

JOHN MITCHEL, INDIVIDUALLY; T. L. LEWIS, INDIVIDUALLY; W. B. WILSON, INDIVIDUALLY, ET ALS., *Appellees.*

Upon Appeal from the United States Circuit Court of Appeals for the Fourth Circuit.

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Upon petition and motion of Hitchman Coal & Coke Company, a corporation, for a writ of certiorari, to the United States Circuit Court of Appeals for the Fourth Circuit.

Notice

To the Hitchman Coal and Coke Company, a Corporation, Appellant in the above entitled cause No. 241:

POOR COPY

You are hereby respectfully informed that upon the calling of said cause No. 241 on the docket for hearing on the merits thereof the appellees therein, John Mitchell, T. L. Lewis, W. B. Wilson and the other appellees named in said cause No. 241, will move the court to dismiss the appeal allowed therein, for want of jurisdiction of the Supreme Court of the United States to hear and determine the same, specifying the following as the ground of said motion:

It appears from the bill filed by the said Hitchman Coal & Coke Company, appellant in said cause, that the jurisdiction of the Circuit Court of the United States in and for the Northern District of West Virginia, (now the District Court therein), was invoked by you on the ground of diverse citizenship, and upon no other ground whatsoever; and it further appears from said bill that the appellant at the time of the filing of said bill was a citizen of the State of West Virginia, and that the appellee John Mitchell was then a citizen of the State of Indiana, and that the appellees T. L. Lewis, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes were at that time, respectively, citizens of the State of Ohio, and that the appellee, W. B Wilson, was then a citizen of the State of Pennsylvania. You are further informed that under the Act of March 3, 1891, 26 Stat. at L. 826, U. S. Comp. 1901, 547, and the Act of March 3, 1911, section 128,

> "the judgments and decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being * * * citizens of different States."

Inasmuch, therefore, as the jurisdiction of the court in said cause, designated as No. 241, depended entirely upon the opposite parties to the suit being citizens of different States, the decree rendered therein by the United States Circuit Court of Appeals for the Fourth Circuit is final, and cannot be reviewed by the Supreme Court of the

United States by appeal as has been attempted in this cause.

John Mitchell, T. L. Lewis,
W. B. Wilson, William Green,
D. H. Sullivan, George W. Savage,
A. R. Watkins, John Zelenka,
Lee Rankin and Thomas Hughes,
and others, appellees.

By Counsel.

CHARLES E. HOGG,
Counsel for the Appellee.

I, Charles E. Hogg, a member of the bar of the Supreme Court of the United States, hereby certify that I prepared the foregoing notice of motion for dismissal of the appeal in the foregoing cause designated as No. 241; that the same is not for the purpose of delay, and that in my opinion said motion is meritorious and well founded in law, and ought to be sustained.

CHAS. E. HOGG,
Counsel.

And the said HITCHMAN COAL & COKE COMPANY, A CORPORATION, petitioner in the petition and motion for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is hereby further respectfully informed that inasmuch as the said cause No. 241 and the said petition and motion No. 617 are to be heard together, the respondents to said petition and motion, John Mitchell, T. L. Lewis, W. B. Wilson and the other respondents therein named, in the event that the Court shall conclude that the said petition presents a proper case for the allowance of a writ of certiorari and shall treat the record of the appeal in said cause No. 241 as constituting a return to such writ, will move the court to affirm the decree rendered by the United States Circuit Court of Appeals with costs to the respondents.

CHARLES E. HOGG,
Counsel for Respondents.

BRIEF OF COUNSEL FOR APPELLEES ON THE MOTION TO DISMISS THE APPEAL ALLOWED IN THE SAID CAUSE NO. 241.

Statement.

The said cause No 241 is a suit in equity brought by the Hitchman Coal & Coke Company, the appellant, against John Mitchell, T. L. Lewis, W. B. Wilson, and the other appellees, individually, and in their capacity as officers of the United Mine Workers of America.

The bill therein was filed in October, 1907, and an inspection thereof shows that substantially it alleges:

> That the Hitchman Coal & Coke Company at the time of the institution of the said suit was a citizen of the State of West Virginia, and that the appellee John Mitchell was a citizen of Indiana, the appellees T. L. Lewis, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin and Thomas Hughes were citizens of the State of Ohio, and the appellee W. B. Wilson a citizen of the State of Pennsylvania (Record pp 2-3); that the appellant was then engaged in the business of mining and marketing coal in West Virginia and other States (Record pp. 3-4); that prior to April 1, 1906, appellant operated its mines by men affiliated with the United Mine Workers of America, and that beginning with and in the month of June, 1906, it began the operation of its mines on a non union basis and has continued to so run its mine ever since (Record pp. 4 5); since the appellant put its mine upon a non-union basis the United Mine Workers of America have sought and are now seeking by inducements, threats and intimidation, but so far without physical violence, to cause the employes of the appellant to leave its service, and to cause others who have engaged in their service to break their engagements of service and not work for appellant and to prevent others from working for it (Record p. 5); that the United Mine Workers of America, not incorporated, is a secret voluntary organization having certain express objects, some legal and others unlawful; and then the bill sets forth excerpts from the National, District and Sub-district constitutions of this Union (Rec-

ord pp. 6-15); that the appellees have unlawfully formed a conspiracy to cause the appellant's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled until such time as appellant shall Unionize its plant (Record pp. 16-17).

The bill then proceeds to set forth the action of the United Mine Workers in certain of their conventions relating to the organization of mines in West Virginia on a Union basis which will be found in the bill at pages 17-20. Then the bill sets forth the efforts, peaceable in character, of the United Mine Workers to induce the appellant to restore its mine to the Union basis (Record pp. 22-25).

It is then alleged in the bill that the United Mine Workers of America are under their constitutions *violating the common and statutory law of West Virginia as well as the constitution of the State*, and then follows a specification of the parts of their constitution that are in violation of the constitution and laws of West Virginia.

The appellant then files copies of the International and District constitutions as a part of its bill (Record pp. 25-26).

After setting forth the respective characters in which the appellees are sued, naming them, the bill avers the specific ground upon which it invokes the jurisdiction of the federal court and makes this allegation:

"That the jurisdiction of this court is invoked on the ground that your orator is a resident of the Northern District of West Virginia and a citizen of said State, and that each of the said defendants is a resident of a different State, to wit: no defendant is a resident of the State of West Virginia, and that the matter in dispute exceeds, exclusive of interest and costs, the sum of $2,000."

In this connection the bill of the appellant further alleges,

> "Your orator says that while membership of the said United Mine Workers of America, of the said District No 6 U M. W. A. and of said Sub District 5 of District 6 U. M. W. A. is large as hereinbefore stated, yet the names and addresses of the said members of the said several associations are to your orator unknown; that if any of them should happen to be residents of the State

> of West Virginia they are not necessary parties hereto, are not interfering with your orator in the matters herein complained of, and that they cannot be joined without ousting the jurisdiction of this court as to the other parties, the said defendants hereto, of whose actions and doings, purposes and proposed acts and doings, your orator herein complains as hereinbefore set forth."
>
> (Record p. 26).

The bill then alleges that unless the appellees are enjoined from so doing they will shut down appellant's mine, destroy its business, and without the consent and against the will of the appellant, compel it to recognize appellees in the further prosecution of its business (Record pp. 26 27); that for this purpose the appellant states upon information and belief that the appellees will use intimidation, violence and abusive language, picket the appellant's premises, and specifies other unlawful acts (Record p. 27).

Then follows the prayer of the bill for an injunction (Record pp. 27-31).

It will thus be perceived from the synopsis here given of the appellant's bill filed in its suit against the appellees in the Circuit Court of the United States (now the District Court) for the Northern District of West Virginia, that it invoked the jurisdiction of that court on the sole and only ground of *diverse citizenship*.

The constitution and laws of the United States were not mentioned in the bill, nor was any dispute or controversy raised or made therein as to the effect or construction of the Federal Constitution or laws on the determination of which the result of the suit depended; nor any title, right, privilege or immunity specially set up or other claim under the federal constitution or laws or treaties made in pursuance thereof.

The whole theory of the bill of the appellant filed in the said Circuit Court is that the wrongful acts imputed to the appellees, and the labor union of which they were members, and the National and District constitutions under which they were acting as a Union are in violation of the common and statute law of West Virginia.

The answers of the several defendants appearing in

the record at pages 53-84 admit the citizenship of the various defendants as alleged in the said bill. The answers do not controvert or deny the allegation in the bill that the jurisdiction of the court is invoked by the appellant on the ground of diverse citizenship.

After the trial and submission of the cause to the District Court for decision, the court in its opinion impliedly holds that the United Mine Workers of America is an organization or combination amounting to an unreasonable or undue restraint of trade in inter-state commerce, and is therefore in violation of the Sherman Anti-Trust Law (Record pp. 660-661, 680, 693).

As already stated, there is not a single allegation in the bill charging that the appellees or any of them are engaged in any acts, or threatening to do any act, in violation of any law of Congress or part or provision of the Constitution of the United States.

The imputation in the opinion of the District Court wherein this suit was originally brought, that the union or organization of which the appellees were members is in violation of the Sherman Anti Trust Law is absolutely unauthorized by the pleadings in the cause.

The District Court rendered its final decree on January 18, 1913, perpetuating the injunction theretofore awarded in this case (Record pp. 694-701). From this decree an appeal was duly taken to the United States Circuit Court of Appeals for the Fourth Circuit, and upon this appeal the decree of the said District Court was on May 28, 1914, reversed and the cause remanded with instructions to dismiss the bill at the costs of the appellant.

On August 15, 1914, an appeal was allowed from the decree of the Circuit Court of Appeals for the Fourth Circuit by Honorable J. C. Pritchard, one of the Judges thereof, to this court, upon petition of the said Hitchman Coal & Coke Company which has been duly filed and docketed in this court.

After filing the record of the appeal in the above entitled cause No. 241, in this court at the October Term, 1914, the said Hitchman Coal & Coke Company presented its petition to this court, accompanied with a certified copy

of the entire record in said cause No. 241 as it is in said Circuit Court of Appeals for the Fourth Circuit, supplemented by the original documents described in said petition, and moved this Honorable Court for a writ of certiorari directed to the Honorable Judges of the said Circuit Court of Appeals, to certify to this Court for its review and determination the said cause in which said appeal was allowed, and the said petition and motion for a writ of certiorari is designated as No. 617.

The said appeal No. 241 and said petition and motion for writ of certiorari designated as No. 617 are docketed together and are to be disposed of by this Honorable Court at one and the same hearing. The appellees in said appeal No. 241, being the same persons who are respondents to the petition for writ of certiorari No. 617, in the event that this court shall determine that the decree of the Court of Appeals ought to be reviewed on the merits of the case upon writ of certiorari, will insist upon the hearing thereof that this Honorable Court affirm the said decree of the Circuit Court of Appeals.

The Ground of Motion for the Dismissal of Said Appeal Number 241,

as now must be to this Court apparent, is that the jurisdiction of the court that originally heard and decided the cause depending entirely upon the *diversity of the citizenship* of the parties thereto, the decision of the United States Circuit Court of Appeals for the Fourth Circuit, made therein on May 28, 1914, is final and cannot be reviewed by this Court on an appeal.

The Law Relating to This Motion

It is firmly settled by repeated decisions of this Court that the judgment or decree of the United States Circuit Court of Appeals is final, in a cause wherein the jurisdiction of the Circuit court (now District Court) depends entirely upon the diverse citizenship of the parties to the suit.

Huguley Mfg. Co. v. Galleton Cotton Mills, 184 U. S. 290, 46 Law. Ed. 546.

Spencer v. Duplan Silk Co., 191 U. S. 526, 48 Law. Ed. 287.

Colorado Consolidated Mining Co. v. Turck, 150 U. S. 138, 37 Law. Ed. 1030.

Borgmeyer v. Idler, 159 U. S. 408, 40 Law. Ed. 199.

Press Publishing Co. v. Monroe, 164 U. S. 105, 41 Law. Ed. 367.

Empire State-Idaho M. & D. Co. v. Hanley, 198 U. S 292, 49 Law. Ed. 1056.

Continental Nat. Bank v. Burford, 191 U. S. 119, 48 Law. Ed. 119.

Pope v. Louisville, N A. & C. R. Co., 173 U. S. 573, 43 Law Ed. 814.

Benjamin v. New Orleans, 169 U. S. 161, 42 Law. Ed. 700.

Ex parte Jones, 164 U. S. 691, 41 Law Ed. 601.

Ayres v. Polsdorfer, 187 U. S. 585, 47 Law Ed 314.

Shutthis v. McDougal, 225 U. S. 561, 56 Law. Ed 1205.

Defiance Water Co. v. Defiance, 191 U. S. 184, 191, 48 Law. Ed. 140, 143.

Joplin v Southwest Missouri Light Co., 191 U. S. 150, 157, 48 Law. Ed. 127, 130.

Anglo-California Bank v. United States, 175 U. S. 37, 40, 44 Law. Ed 64, 65.

Macfadden v. United States, 213 U. S. 288, 297, 53 Law. Ed. 801.

Bagley v. General Fire Extinguisher Co. 212 U. S. 477 480, 53 Law. Ed. 605-613.

Gwin v. United States, 184 U. S. 699, 46 Law. Ed. 741.

Bankers Mut. Casualty Co v. Minneapolis, St. P. & S. St. M. R. Co., 192 U. S. 371-386, 48 Law. Ed. 484.

Arbuckle v Blackburn, 191 U. S. 405, 48 Law. Ed. 239

O'Callaghan v. O'Brien, 199 U. S. 89-119, 50 Law. Ed. 101.

Omaha Electric Light and Power Co. v. Omaha, 230 U. S. 123, 57 Law. Ed. 1419.

While the cases above named arose under section 6 of the Act of 1891. the provisions thereof are substantially the same as those contained in section 128 of the Act of March 3, 1911, so far as the question arising on this motion is concerned. Hence the decision in the cases just cited are applicable here.

In *Huguley Manufacturing Company v. Galleton Cot-*

ton Mills, 184 U. S. 290, 46 Law. Ed. 546, this court in its opinion, delivered by Mr. Chief Justice Fuller, said:

> "The act of March 3, 1891, chap. 517 (26 Stat. at L. 826) provides in sec. 6 that the circuit courts of appeals shall have appellate jurisdiction to review judgments and decrees of the circuit courts in all cases in which a direct appeal is not allowed by section 5 to this court, and that the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependant entirely on diversity of citizenship.
>
> The jurisdiction referred to is the jurisdiction of the circuit court as originally invoked. Colorado Cent. Consol. Min. Co. v. Turck, 150 U. S. 138, 37 L. ed. 1030, 14 Supt. Ct. Rep. 35; Press Pub. Co. v. Monroe, 164 U. S. 105, 41 L. ed. 367, 17 Sup. Ct. Rep. 40; *Ex parte* Jones, 164 U. S. 681, 41 L. ed. 601, 17 Sup. Ct. Rep 222; American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, 45 L. ed. 859, 21 Sup. Ct. Rep. 646; Arkansas v. Kansas & T. Coal Co. 183 U. S. 185, *ante*, 47, 22 Sup. Ct. Rep. 47."

In *Omaha Electric Light & Power Co. v. Omaha*, 230 U. S. 123, 57 Law. Ed. 1419, wherein it was contended that this Honorable Court had jurisdiction of the appeal, upon the contention of the appellant that a federal question was involved, the court refusing to uphold this contention, in its opinion said:

> "The relief sought was a perpetual injunction restraining the defendants from disconnecting the plaintiff's wires or interfering with or impeding its business as theretofore conducted. There was no prayer that the resolution be pronounced void, nor any allegation that it impaired the franchise contract, or would operate to deprive the plaintiff of its property without due process of law, nor any reference to the Constitution of the United States, or any of its provisions, nor even a general statement that a constitutional right was being or about to be infringed.
>
> Tested by the recognized standard, we think the bill did not state a case arising under the Constitution. It did not show, either in terms or by necessary intendment, that the plaintiff was asserting a right, privilege, or immunity under the

> Constitution, or was in anywise invoking its protection. For anything that appeared, the plaintiff was planting its right to relief entirely upon the doctrine of estoppel. As a basis of jurisdiction, it is not enough that recovery might be sought upon a constitutional ground for it must clearly appear that it is actually so sought. Crowwell v. Randall, 10 Pet. 368, 392, 9 L. ed. 458, 467; Hanford v. Davies, 163 U. S. 273, 280 41 L. ed 157, 159, 16 Sup. Ct. Rep. 1051.
>
> It being thus apparent that diverse citizenship was the sole ground upon which the jurisdiction of the circuit court was invoked, it follows that the decision of the circuit court of appeals was final. Spencer v. Duplan Silk Co. 191 U. S. 526, 48 L. ed 287, 24 Sup. Ct. Rep. 174; Bankers' Mut. Casualty Co. v. Minneapolis, St. P. & S. Ste. M. R. Co. 192 U. S. 371, 48 L. ed. 484, 24 Sup. Ct. Rep. 325; Shulthis v McDougal, 225 U. S. 561, 569, 56 L. ed. 1205, 1210, 32 Supt. Ct. Rep. 704; Lovell v. Newman, 227 U. S. 412, ante, 577, 33 Sup. Ct. Rep. 375; Denver v New York Trust Co. 229 U. S. 123, ante, 1101, 33 Sup. Ct. Rep. 657."

In *Colorado Consolidated Mining Co. v. Turck*, 150 U. S. 138, 37 Law. Ed. 1030, on a motion to dismiss or affirm, the court sustaining the motion to dismiss, decided that

> "By the Judiciary Act of March 3, 1891, judgments or decrees of the circuit courts of appeals are final in all cases in which the jurisdiction is dependent entirely upon the diverse citizenship of the parties."

To give the Circuit (now District) Court jurisdiction under the constitution, laws, or treaties of the United States, that it does so arise must appear from the plaintiff's own statement of his claim. In this case it must appear from the allegations contained in appellant's bill.

Spencer v. Duplan Silk Co., 191 U. S. 527, 48 Law. Ed. 287, citing in the opinion Colorado Central Consol. Min. Co. v. Turck, 150 U. S. 138, 37 L. ed. 1030, 14 Sup. Ct. Rep. 35; Tennessee v. Union & P. Bank, 152, U. S. 454, 38 L. ed. 511, 14 Sup. Ct. Rep. 654; Oregon Short Line & U. N. R. Co. v. Skottowe, 162 U. S. 490, 40 L. ed. 1048, 16 Sup. Ct. Rep. 869; Hanford v. Davies, 163 U. S 273, 41 L. ed. 157, 16 Sup. Ct. Rep. 1051.

Omaha Electric Light & Power Co. v. Omaha, 230 U. S. 123, 57 Law. Ed. 1491.

Shulthis v. McDougal, 225 U. S. 561, 56 Law. Ed. 1205, 1210, 1211.

That a federal question is involved must be directly raised by the plaintiff's bill. It is not enough that it may be inferred argumentatively from statements contained therein.

Shulthis v. McDougal 229, U. S. 561, 56 Law. ed. 1205.

If the plaintiff's bill does not show that the case involves a federal question and such a question is developed in the subsequent proceedings in the suit, the decree of the Circuit Court of Appeals is nevertheless final, and is not reviewable on appeal.

Shulthis v. McDougal, 225 U. S. 561, 56 Law. ed. 1205.

Ayers v. Polsdorfer, 187 U. S. 585, 47 Law. ed. 314.

Colorado Cent. Consol. Min. Co. v. Turck, 150 U. S. 138, 37 Law. ed. 1030.

Third Street & S R. Co. v. Lewis, 173 U. S. 457, 43 Law. ed. 766.

Borgmeyer v Idler, 159 U. S. 408, 40 Law. ed. 199.

Press Publishing Co. v. Monroe, 164 U. S. 105, 41 Law. ed. 367.

Bagley v. General Fire Extinguisher Co., 212 U. S. 477, 53 Law. Ed. 605.

In *Ayers v. Polsdorfer*, cited above, the court held that

"A judgment of the circuit court of appeals, in a case in which the jurisdiction of the circuit court was invoked solely on the ground of diverse citizenship, cannot be reviewed in the Supreme Court of the United States on writ of error because a Federal question arose in the course of the proceedings in the circuit court, even though such question may not be of such a character as would permit the case, under sec. 5 of the judiciary act of 1891 (26 Stat. at L. 826, chap. 517. U. S. Com. Stat. 1901, p. 488), to be brought directly from the circuit court to the Supreme Court."

In *Third Street & S. R. Co. v. Lewis*, cited above, the court decided as follows:

> "A decree of the circuit court of appeals in a case in which the jurisdiction at the outset depended on diversity of citizenship is final, even if another ground of jurisdiction was alleged in a supplemental bill by which a new defendant was made a party."

In *Borgmeyer v. Idler, supra*, the court held that

> "Where the jurisdiction of the United States circuit court rests solely, at the commencement of the suit, upon the ground of diverse citizenship, the judgment of the circuit court of appeals is final, although other questions are subsequently raised; and if the case is brought to this court from the circuit court of appeals, the writ of error must be dismissed."

In *Bagley v. General Fire Extinguisher Co.*, above cited, the court decided that

> "Jurisdiction below depends entirely upon diverse citizenship within the meaning of the act of March 3, 1891, (26 Stat. at. L. 826, 828, chap. 517, U. S. Comp. Stat. 1901, pp 547, 549), sec. 6, making judgments of the circuit courts of appeals final in such cases, where that is the only ground of jurisdiction disclosed by the complaint, although a Federal question may have been raised at the trial."

In view of the decisions of this court, some of which we have here cited, the fact that the District Court in which this suit was brought expressed the view in its opinion that the United Mine Workers of America constituted a combination or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, under what is known as the Sherman Anti-Trust Law, does not bring into this case a Federal question, whereby the decree of the Circuit Court of Appeals may be reviewed in this court by appeal.

Did the Jurisdiction of the Circuit (now District) Court Depend Solely on the Diverse Citizenship of The Parties, but Did It also Involve the Construction or Application of the Fifth and Fourteenth Amendments to the Constitution of the United States and the Sherman Anti-Trust Law?

The appellant in its petition for an appeal (Record p. 748) states that the decree of the Circuit Court of Appeals is not *final*, for the reasons set forth in the assignment of errors filed with its said petition. Examining this assignment of errors, presumably the appellant's reasons for stating that the decree complained of is not final are those appearing in errors VII and VIII, (Record, p. 754).

In the former of these errors assigned (No. VII) the appellant states that because of the action of the Circuit Court of Appeals in refusing "to perpetuate said injunction, decreed in said district court, by reversing said decree and ordering the dismissal of said bill," the appellate court thereby deprived the appellant of its contractual and property rights, as described in its bill of complaint, and as guaranteed to it by the Fifth Amendment and by the Fourteenth Amendment, to the Constitution of the United States.

The *Fifth* Amendment to the Constitution has no application to a case of this kind. It is settled law that the Fifth Amendment acts as a limitation upon the exercise of power by the National Government.

> Munn v. People of Illinois, 94 U. S. 113, 24 Law. Ed., 77, in the opinion of the latter report at page 83.
>
> Davidson v. Board of Adm'rs of New Orleans, 96 U. S., 97, 24 Law. Ed. 616 in the opinion of the court.
>
> Ex Parte Spies, 123 U. S. 131, 31 Law Ed. 80, in the opinion.
>
> Kelley v. Pittsburg, 104 U S. 78, 26 Law. Ed. 658.

It is scarcely necessary to state that this is one of the early amendments to the Constitution, and, as stated in the opinion of this court in the case of *Ex Parte Spies*, *supra*,

> "That the first ten articles of amendment were not intended to limit the powers of the State Government in respect to their own people, but to operate on the National Government alone, was decided more than half a century ago, and that decision has been steadily adhered to since."

In support of this statement of the construction placed by the court on the Fifth Amendment a great number of decisions of this court are cited.

In *Davidson v. Board of Admrs. of New Orleans, supra*, the court in the course of its opinion makes this observation:

> "It is not a little remarkable, that while this provision has been in the Constitution of the United States, as a restraint upon the authority of the Federal Government, for nearly a century, and while, during all that time, the manner in which the powers of that government have been exercised has been watched with jealousy, and subjected to the most rigid criticism in all its branches, this special limitation upon its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion."

An examination of the bill in this case clearly shows that the appellant is making no complaint of the exercise of any power or authority or the doing of any act of the General Government depriving it, or which threatens to deprive it, of any of its property or property rights.

Neither has the *Fourteenth Amendment* to the Constitution of the United States any application to this case. Presumably the appellant is relying in said assignment of error upon that part of section I of this Amendment which provides that,

> "nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The reading of this section of the Fourteenth Amendment clearly implies that it operates as a prohibition upon the States and not upon individuals; and this is the judicial construction placed upon this amendment.

Kiernan v. Multnomah County, 95 Fed. 849; Civil Rights Cases, 109 U. S. 3, 27 Law. Ed. 836. Younger v. Judah (Mo.) 16 L. R. A., 558. Ex Parte Commonwealth of Virginia, 100 U. S. 313, 25 Law. Ed. 667.

Claybrook v. City of Owensborough, 16 Fed. 297, 301.

In *Ex Parte Commonwealth of Virginia, supra*, the court decides that

> "The prohibitions of the Fourteenth Amendment have reference to State action exclusively, and not to any action of private individuals."

In the *Civil Rights Cases, supra*, the court in the course of its opinion said:

> "It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws."

And in *Claybrook v. City of Owensboro, supra*, after quoting Section 1 of the Fourteenth Amendment, the court in its opinion said:

> "This section gives a citizen of the United States or of a state, and even persons who are not citizens, an additional guaranty to the enjoyment of their fundamental rights. This guaranty is not against individual action or encroachment, but against the state, and its laws and its officers. These rights of the citizen are still to be protected and enforced, as between man and man, by and through state laws and agencies, and not by the United States and its laws. Virginia v. Rives, 100 U. S. 313; U. S. v. Harris, 106 U. S. 629; S. C. 1 Sup. Ct. Rep. 601; Le Grand v. U. S. 12 Fed. Rep. 577."

The bill does not complain of any act of the State of West Virginia violative of any of the provisions of the Fourteenth Amendment of the Constitution of the United States. On the contrary, the bill avers that the appellees by the acts imputed to them are violating the constitution, common and statutory law of West Virginia, under and by virtue of which appellant invokes the jurisdiction of the court, seeking relief by injunction. The appellant by its bill avers that the appellees are disturbing its property rights contrary to the constitution and laws of West Virginia. How then does the construction or application of the Fourteenth Amendment of the Constitution arise in this case? It must arise upon the case made by the appellant in its bill, and not otherwise. But the appellant makes no case in its bill showing any act of the State violative of the Fourteenth Amendment.

Therefore, the bill fails to present a federal question predicated upon the construction or application of any provision of the Constitution of the United States.

Now, the *Eighth* error assigned imputes error to the Circuit Court of Appeals in holding that the United Mine Workers of America do not constitute a combination in restraint of trade or inter-state commerce under the Sherman Anti-Trust Law.

It is contended that this part of the opinion and decision of the Circuit Court of Appeals, set out in Error VIII, relieves from the finality of its decree in this case. In other words, that the case involves a federal question arising upon the alleged application of the Sherman Anti-Trust Law.

As already stated, no mention is made of or allusion to, any federal statute or law in the bill, of which any act or acts imputed to the appellees are in violation,

It is charged that the United Mine Workers of America constitute a conspiracy, but there is no allegation in the bill or facts alleged showing that it is a conspiracy "in restraint of trade or commerce among the several states, or with foreign nations."

It is well settled by the decisions of this Honorable

Court that if jurisdiction depends on a federal question that it must appear on the record by

> "a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the constitution or some law or treaty of the United States, before jurisdiction can be maintained on this ground."

1 Street Fed. Eq. Proc. sec. 317, citing Western Union Telegraph Co. v. Ann Arbor R. R. Co. (1900) 178 U. S. 239, 44 L. ed. 1052, 20 Sup Ct. 867, 869; Little York Gold-Washing & Water Co v. Keyes (1877) 96 U. S 199, 24 L. ed. 656; Blackburn v. Portland Gold Min. Co (1900) 175 U. S. 571, 44 L. ed. 276, 20 Sup. Ct. 222.

As was said by this Honorable Court in *Press Publishing Co. v. Monroe*, 164 U. S. 105, 41 Law. Ed. at page 369, a case in which it was sought to review a judgment of the United States Circuit Court of Appeals upon a writ of error but which this court dismissed for want of jurisdiction:

> "The complaint, alleging that the plaintiff was a citizen of Illinois and the defendant a citizen of New York, and claiming damages in a sum of more than $2,000, showed that the circuit court had jurisdiction of the case by reason of the parties being citizens of different states. The plaintiff, in her complaint, did not claim any right under the Constitution and laws of the United States, or in any way mention or refer to that Constitution or to those laws; and, at the trial, she relied wholly upon a right given by the common law, and maintained her action upon such a right only."

And as was also said by this court in Spencer v. Duplan Silk Co., 191 U. S 529, 48 Law. Ed. at page 290, in which it was sought by the plaintiff in error to maint in the jurisdiction of this court on a writ of error to a judgment of the Circuit Court of Appeals, on the ground that it involv-

ed a federal question, in which the opinion in the case of *Press Publishing Co. v. Monroe, supra*, is quoted with approval and the law therein stated reaffirmed:

> "In the present case it is contended that the jurisdiction was not dependent entirely on the opposite parties to the suit being citizens of different states, because the suit arose under the laws of the United States, and that, therefore, jurisdiction rested also on that ground. But a suit does not so arise unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution, or validity or construction of the laws or treaties of the United States, upon the determination of which the result depends, and which appears in the record by plaintiff's pleading. Arbuckle v. Blackburn, 191 U. S. 406, *ante*, 239, 24 Sup. Ct. Rep. 148; Western U. Teleg. Co. v. Ann Arbor R. Co. 178 U. S. 239, 44 L. ed. 1052, 20 Sup. Ct. Rep. 867; Muse v. Arlington Hotel Co. 168 U. S. 430, 42 L. ed. 531, 18 Sup. Ct. Rep. 109."

So in the case now before the court, inasmuch as the bill contains an allegation that the appellant is a citizen of West Virginia and that the appellees are citizens of States other than West Virginia, that the amount in controversy exceeds the sum of $2,000, avers specifically that the jurisdiction of the court is invoked because of the citizenship of the parties to the suit, and then further avers that if any of the members of the United Mine Workers happen to be residents of West Virginia they are not necessary parties and that they cannot be joined in the suit without ousting the jurisdiction of the court, can there be any question, or does it admit of argument, that the jurisdiction of the Circuit (now District) Court in this case depended solely upon the diverse citizenship of the parties? It seems to us conclusively clear that no other ground of jurisdiction is shown to exist in this case.

For the reasons here given, and upon the authorities cited, the appellees, upon the calling of said case No. 241 for hearing upon the merits, will move the Supreme Court

of the United States to dismiss the same for want of jurisdiction.

CHAS. E. HOGG,
Counsel for Appellees.

Service of the foregoing notice of motion to dismiss said appeal and Brief in support of said motion, and delivery of a copy thereof. on the——day of January, 1906, is hereby acknowledged.

_____.
Counsel for Appellant.

Office Supreme Court, U. S.
FILED
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JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

No. [redacted] 11

HITCHMAN COAL AND COKE COMPANY, a Corporation,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et als.*,
Respondents.

Certiorari to Circuit Court of Appeals for Fourth Circuit.

Writ granted March 13, 1916.

RE-ARGUMENT.

Reply Brief for Petitioner to Respondents' Supplemental Brief on the Merits.

PRESS OF GIBSON BROS., WASHINGTON

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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 43.

HITCHMAN COAL AND COKE COMPANY, a Corporation,
Petitioner,

v.

JOHN MITCHELL, individually; T. L. LEWIS, individually; W. B. WILSON, individually, *et als.*,

Respondents.

Certiorari to Circuit Court of Appeals for Fourth Circuit.

Writ Granted March 13, 1916.

RE-ARGUMENT.

Reply Brief for Petitioner to Respondents' Supplemental Brief on the Merits.

Respondents make no reply to petitioner's brief filed on re-argument, but are content to comment upon the form of the petition and upon the brief that accompanied it which served their purpose. Comments on the petition and that brief are wide of the mark. The case is being heard upon a writ of certiorari granted March 13, 1916.

I.

RESPONDENTS CRITICISE THE SCOPE OF THE BILL AND THE SCOPE OF THE EVIDENCE INTRODUCED ON THE TRIAL.

Reply brief, pp. 2–9; 17–25.

It is for the pleader to make his own pleading, and the scope of the bill is to be determined by a consideration of the facts set forth in the bill and the statements and prayer for relief contained therein.

The immediate occasion for the plaintiff filing its bill was the effort of the United Mine Workers of America to bring about the unionizing of plaintiff's mine in 1907. And the immediate purpose in the granting of the injunction was to save to the plaintiff such rights as it claimed to have and as the Court thought it reasonably did have.

Certain statements and allegations are made in the bill for the purpose of setting forth to the Court all of the facts surrounding the doing of the acts which were the immediate occasion of the application for a restraining order in October, 1907, and as indicative of the design of the defendants it is set forth in the bill that these acts are part and parcel of a certain plan of these defendants as directing officers of the United Mine Workers of America; and then that organization is attacked in the bill as being a monopoly at common law.

The attention of the Court is thereby directed to the fact that whatever these people are doing—whether their acts at the time be otherwise lawful—they are doing those lawful acts pursuant to their existence as an unlawful body. But going further, the bill sets forth that this unlawful body has its unlawful purposes, and then sets forth that in 1907—pursuant to its unlawful purpose—the defendants in convention resolved to carry out a policy of unionizing all non-union fields. That—it is alleged in

the bill—is a further effort on the part of the defendants, generally, throughout the United States, to bring about the unionizing of all fields and the subjection of all coal operations to the control of the United Mine Workers of America.

Passing from the allegation that the Union itself is unlawful; passing the steps that the Union itself took in 1907; generally, to extend its lawful power by the unlawful acts of the attempted organizing of all non-union fields, for the purpose of increasing its power and enabling it to become an irresistible monopoly, and to be able to control absolutely all of the coal mining industry of this country, we come next in the bill to the charge that these defendants participated—some one or more of them—in the convention of Sub-District 5 of District 6, and that at that time, pursuant to the general plan of the organization, which is to be and become a monopoly; pursuant also to the direction of the National Convention to unionize the mines throughout the country, a resolution was passed directing that as soon as it could be done, five mines in the Panhandle District of West Virginia, included within Sub-District 5 of District 6, should be unionized.

Passing that, the bill sets forth that the Hitchman mine was one of the five non-union mines, and then follow the allegations with reference to the attempt to unionize that mine, and to unionize the Glendale mine, and the Richland mine, all in the Panhandle District of West Virginia. Now, it was explanatory, in a way, of how the Union came to try to unionize the Hitchman mine in 1907, and to explain why the Hitchman mine was run non-union, and to explain why the Hitchman mine owners insisted on their right to run non-union, and refuse to have anything to do with these defendants and with this Union, that it is alleged, through the recital of certain conferences, had between some one or more of these defendants and the

manager of the Company, that their attention was called to the fact—when these defendants sought to get permission to unionize the mine—that the mine had been run Union but that these defendants had been so oppressive in their conduct, and the business of the Company had been so interfered with, and so much damage had been done to the Company through the unlawful practices and intolerable methods of these Union officials, that the Company would not consent to run its mine Union any longer and that the Company would either run non-union, or it would go out of business.

These allegations are plainly set forth in the bill; they are all facts which the Court should be advised of; and besides being the allegations of the bill, we take it that they are the indicia to control the scope of the testimony which may on a trial be introduced on behalf of the plaintiff. It is a familiar proposition and founded in common sense and fairness that the defendants ought not to be asked to defend themselves against something of which they have not been advised. It is also a familiar proposition that the proof should correspond with the allegations.

We will not quote extensively from the bill, but will ask attention to a few of the allegations which go to substantiate what we have just said.

> "Your orator says that the said United Mine Workers of America, including its said subordinate associations or branches, is a secret voluntary organization having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes, that the matters and things herein complained of by your orator have arisen." (Record, p. 6.)

And then follow a number of excerpts from the Constitutions of the United Mine Workers of America and from the Constitutions of the subordinate bodies, and

from the Convention proceedings, all substantiating what we have stated to be in that portion of the bill which sets forth the matter leading to the immediate occasion for the application for the injunction, namely, the immediate effort to unionize the plaintiff's mine in 1907.

Passing to page 18 of the Record, the following language is used:

> "Your orator says that at said convention a committee's report was unanimously adopted, which contained the following: 'Your committee recommend that this convention heartily approve of the board's action in withdrawing a part of our organizing force from active service, as a result of a depleted treasury, but we further recommend that the force be increased whenever, in the discretion of the board, our fund would warrant.' "

Passing to Record, page 20, and speaking of the action of the Sub-District Convention, the bill sets forth that this resolution was adopted:

> "Adopting that suggestion of the defendant, Lee Rankin, the following resolution was then adopted by the convention—
>
> 'RESOLUTION NO. 8.
>
> Whereas, there are miners in the Panhandle District and Ohio that are not organized, and believing every mine should be organized, be it
>
> Resolved, by this Ninth Annual Convention, that the Sub-District officers, together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done.' "

On Record, page 17, this language appears:

> "Your orator further says that it pays as much as the Union scale of wage to its said employes, and that the said defendants in thus unlawfully and mali-

ciously agreeing together, confederating, combining and conspiring to effectuate by unlawful means the unionizing of your orator's mine are simply seeking power, for the purpose of strengthening the Union in future contests with employers of labor, to compel all miners and mine workers to join the Union, establish a monopoly and force employers of that kind of labor, and especially to force your orator to yield to the Union's demands, or else to give up its business."

On Record, page 23, this language appears:

"Your orator says that some time during the middle of this summer of 1907, the defendants, Green, Watkins and Zelenka, called on your orator's general manager at his office and said Green was spokesman. He said he would like to talk organization. Your orator's general manager stated to them then that while unionizing of the mine was out of the question yet if they had any business proposition to submit it would be listened to. Green urged that under your orator's present arrangement or contract with its employes the men felt at liberty to do as they pleased and did not feel any restraint while if your orator would make a contract with him as President of the United Mine Workers (now Secretary-Treasurer of the U. M. W. of A.), he could hold the men in check, see that all agreements incorporated in the scale were fulfilled and carried out to the letter and generally that he would see that the men lived up to their contract. To this, your orator's general manager replied that from personal experience in the past, in dealing with the Union, he had found the facts in reality to be just the opposite from the way Green put it, and that if that was all Green had to offer there was nothing worth considering. Green then requested your orator's general manager to think the matter over and said he would see him again about it within a couple of weeks. Several weeks after this, said Green, Watkins and Zelenka met your orator's general manager, while

the latter was at the McLure House, in Wheeling, and the latter then told Green that he could see nothing in the Union's proposition that would interest him in any manner. Green then asked said general manager if he would not put the proposition up to your orator's Board of Directors. This he did, and your orator's Board unanimously refused to have anything whatever to do with the United Mine Workers of America. Shortly after that, said defendant, Green, telephoned your orator's general manager, asked if he had submitted the Union's proposition to your orator's Directors and was told that the proposition had been submitted and that the Directors refused absolutely to consider the matter in any manner whatever."

On Record, page 24, this language appears:

"On one or more of the occasions heretofore referred to when some one or more of said defendants besought your orator to unionize its mine, your orator's general manager stated to said defendants that with them as officers of the Union it was not so much a question of looking after the interests of the men employed by your orator as it was a question of money and that they, these defendants, were in the business for what they could get out of it, and their attention was called to the fact that nearly $10,000 had been turned over to them from the Hitchman mine alone in the two years just prior to the strike."

Passing to Record, page 21, this language appears:

"Your orator says that in refusing to recognize the Union after the declaration of said strike, April 1, 1906, and after its men had left your orator's employment pursuant to said strike, and in thereafter and now running its mine non-union your orator did nor seek to reduce the wages of its said employes nor cause its said employes to work for less than the scale of wages established by said United Mine Workers of America, nor does your orator now seek nor con-

> template any reduction in the wages of its present employes. Your orator's sole purpose in running non-union and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representative of the said United Mine Workers of America, was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants.'

Now, these are the substantial averments of the bill which go to set forth to the Court the entire facts out of which the plaintiff's rights arise.

After the case had been to the Circuit Court of Appeals upon an appeal from a decree of Judge Dayton refusing to modify the injunction so as to permit peaceable persuasion in breach of contracts plaintiff had with its employes (172 Fed. 963), which motion had theretofore been submitted upon the bill and affidavits and answers of the defendants, all of these answers were withdrawn (Record pp. 178, 179) and other answers, designed to limit the admissions which had been contained in the first set of answers, were filed. Replications were filed to the last answers, issue was joined and the trial had.

But the answers which had been withdrawn were introduced in evidence on the trail and are in the Record.

Respondents' supplemental brief upon the merits conveniently overlooks admissions made in the first answers. But this Court's attention will be invited to those admissions.

From the joint and several answers of T. L. Lewis, et al. (Record pp. 53–68) filed September 5, 1910, one of the last set of answers, the following excerpts are taken:

> "But these respondents deny and each of them denies that they or any of them have unlawfully interfered in any manner with the operations of the plaintiff in the fulfillment of any of its contracts."

"These respondents, for further answer unto said bill, say that they deny that said United Mine Workers of America, including its said subordinate associations or branches, is a secret, voluntary organization, having certain expressed objects, some lawful and others unlawful, and that it is in the endeavor to carry out its unlawful purposes that the matters and things in said bill complained of have arisen, as in said bill is alleged, and deny that any of the objects, either expressed or otherwise, of said United Mine Workers of America are unlawful, and deny that they are attempting to do anything unlawful in the work of promoting said organization."

"and deny that they have been guilty of any unlawful conduct or acts with reference to the plaintiff's business mentioned in said bill."

"Respondents say that the only thing upon which they were informed or of which they had any knowledge was that plaintiff was running a non-union mine and had declined to unionize its mine."

"these respondents deny that the said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out, and now about to finally accomplish, namely: to cause plaintiff's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as plaintiff shall submit to the demand of the Union that it shall unionize its plant, and, having submitted to such demand by employing only Union men, shall become subject to the orders of the Union, paramount to the orders of plaintiff, their employer, as alleged in said bill, and deny that in thus unionizing its plant plaintiff shall surrender its control and the management of its business to the Union and the various rules and regulations laid down by the Union and accede in advance to every demand by said Union that its said officers, agents, employes and servants may make, as in said bill is alleged."

"These respondents further answering said bill say that they do not know, but they believe, that the plaintiff pays as much as the Union's scale of wages to its said employes, but deny that the said defendants unlawfully and maliciously are agreeing together, confederating, combining and conspiring to effectuate by unlawful means the unionizing of plaintiff's mine simply for the purpose of seeking power and for the purpose of strengthening the Union in future contests with employers of labor, and to compel all miners and mine workers to join the Union, and establish a monopoly and force employers of that kind of labor, and especially to force plaintiff, to yield to the Union's demands or else to give up its business, as alleged in said bill."

"These respondents, for further answer unto said bill, say that they admit that at the annual convention of the United Mine Workers of America, held at Indianapolis, Indiana, January 15 to 22, inclusive, 1907, the said defendants John Mitchell, T. L. Lewis, W. B. Wilson, Wil iam Green, D. H. Sullivan, George W. Savage and A. R. Watkins, John Zelenka and Lee Rank n were present and participated in its proceedings, and admit that it was openly stated with reference to the objects of said Union as follows: 'Organized labor contends that as industry cannot exist without labor, labor has the right to say under what conditions it shall be employed' but deny that the expression was used in said meeting, 'thereby dictating the management of the productive end of the business' as in said bill is alleged. These respondents say that the use of the language above quoted does not indicate an intention on the part of said United Mine Workers to dicatate the management of the productive end of the business of coal mining, and respondents deny that there was any language used in said convention conveying the idea or intending to convey the idea that said organization has for its object the dictating of the management of coal mines and the business relating thereto; but these respondents aver that said organization should have

the opportunity to be heard, and has the right to say, under peaceable methods and the forms of the law what the conditions ought to be with reference to said mines and the operation thereof to insure health and safety in the mining and production of coal generally, and that this was the matter then before said convention when the language above quoted was used."

"These respondents for further answer say that while they do not recollect distinctly what did occur in the said convention, they believe that it is true that the defendant, T. L. Lewis, stated that he had charge of the organizing force under the direction of the President; that there has been a tremendous loss in the membership of the Union as a result of the strike of May 1, 1906; that he had been instrumental in building up three national organizations of mine workers, and was one of the delegates and attended the convention which laid the foundation of the United Mine Workers of America; that the Union had 'closed shop' wage agreements with operators whereunder 181,384 persons were employed in the year 1905, and that all of those persons were required to be members of the Union; that respondents admit that it was stated in said meeting that the American Continent, meaning, however, the United States and British America, is not large enough to maintain two organizations of miners, and that he, said Lewis, favored one organization of the mine workers of the American Continent and the complete recognition of the Union's right to organize in every mining district in the country.

"And these respondents further aver that they believe, though they do not remember distinctly, that it was said in said convention by the defendant, W. B. Wilson, what is stated in said bill, and admit the same to be true for the purposes of this suit; but these respondents further aver that the occurrences and discussions in said convention, alluded to in said bill, only related to the then condition of the United Mine Workers of America and the con-

sideration of the best policy to promote its objects, which objects are expressed in the constitution and has for its objects the uniting of the mine employes that produce or handle coal or coke in or around the mines, and to ameliorate their condition by methods of conciliation, arbitration, or strikes, and that the proceedings in said convention did not contemplate any interference with the employes of the plaintiff, because they were not then Union men, nor are they now Union men, and such allegations can only be treated as surplusage for the purposes of said bill.

"Respondents further aver that it is true that at said convention a committee's report was unanimously adopted containing the matter set forth in said bill.

"These respondents further admit that that part of the bill setting forth the statements made by T. L. Lewis and John Mitchell are true, but that it was simply a tentative presentation of the situation that then confronted the organization, and did not have for its object the disturbance of plaintiff's mines or the men employed thereat, nor had it anything whatever to do with the plaintiff's business."

"These respondents further answering say that at the convention of Sub-District 5 of District 6, United Mine Workers of America, held in March, 1907, the defendants, A. R. Watkins, Lee Rankin, and T. L. Lewis, John Zelenka, and Thomas Hughes were present and participated in the proceedings. These respondents also admit that that which appears in the bill as being said by A. R. Watkins in his report is true, and that that part of the bill which sets forth what appears in the report of Lee Rankin as Secretary-Treasurer of Sub-District 5 of District 6 is also true; that that part of the bill which sets out Resolution No. 8, as well as Resolution No. 10, is true; but these respondents deny that they are in anywise connected with the operation of the plaintiff's mines, or have anything to do with the interference of the plaintiff's employes."

"These respondents, for further answer unto said bill, say that they have no knowledge, information, or belief, and therefore can neither admit nor deny, the allegation made in said bill that plaintiff, in refusing to recognize the Union after the declaration of said strike of April 1, 1906, and after its men had left plaintiff's employment pursuant to said strike, and in thereafter and now running its mine non-union, did not seek to reduce the wages of said employes or to cause said employes to work for less than the scale of wages established by the United Mine Workers of America, as in said bill is alleged. And these respondents, having no information or belief on the subject, can neither admit nor deny the allegation of said bill that plaintiff's sole purpose in running non-union, and in now insisting upon its right to do so, unhampered by and without interruption from said defendants, acting individually and as representatives of said United Mine Workers of America, was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants; but, be that as it may, these respondents deny that they have attempted to oppress or intermeddle with the business of the plaintiff in any manner whatsoever, but aver that they have only approached the representatives of the said company in a peaceable and law abiding manner and its employes for the purpose of soliciting membership from the employes of the plaintiff to the United Mine Workers of America."

"These respondents, for further answer unto said bill, say that it is true that upon different occasions after starting up non-union, the different officials of the United Mine Workers of America, but not all of them, amongst whom were the defendants, John Zelenka, A. R. Watkins, D. A. Sullivan, and William Green, visited the general manager of the plaintiff at his office at the Hitchman mine, and talked to him on the subject of recognition of the Union, the signing of the scale and the re-employment of plaintiff's employes, but deny that it was

under the technical guise of thus entering into contract relations with the plaintiff's employes of the United Mine Workers of America and for the purpose of doing away with the express provisions of plaintiff's contract with each of its employes that they should not become members of the Union, and if they did that their employment should thereby cease, as in said bill is alleged; but these respondents free of any technical guise aver that the said representatives of the United Mine Workers of America openly and fairly visited the general manager of the said plaintiff, was cordially received by him, and informed by him that they could see the men and talk with them, and that if said men desired to join the Union he would interpose no objection thereto, and that the said representatives of the United Mine Workers did not seek to have plaintiff unionize its mine under any technical guise, but desired that the plaintiff should employ Union men at its mines under the usual and ordinary contracts made by the Union in its relations with coal operators; that it is also true that the plaintiff did refuse to enter into any contract with the United Mine Workers having for its object the sole employment of organized labor at its said mines."

"These respondents further say that it is true that about July 1, 1907, the defendants, William Green, John Zelenka, and A. R. Watkins came to the office of plaintiff's general manager and had a conversation with him regarding the forming of a miner's union, or rather the putting of plaintiff's employes under the jurisdiction of the United Mine Workers of America, but deny that plaintiff on that occasion, through its general manager, distinctly stated that the proposition of said defendants would not be considered at all."

"These respondents, for further answer unto said bill, say that it is true that sometime during the middle of this summer of 1907, the defendants, Green, Watkins, and Zelenka, called on plaintiff's general manager at his office, and that said Green

was spokesman. The respondents admit that said Green expressed a desire to talk to said general manager in regard to organizing plaintiff's mines, but respondents deny that said general manager stated to them that while unionizing of the mine was out of the question yet if they had any business proposition to submit it would be listened to, and deny the conversation between said parties as set forth in said bill."

"These respondents, for further answer unto said bill, say that it is true that under the rules of the United Mine Workers of America, there was paid by plaintiff to the secretary-treasurer of the local union the amount specified in said bill.

"And these respondents deny that on one or more of the occasions heretofore referred to, as set forth in said bill, when one or more of said defendants sought plaintiff to unionize its mine, plaintiff's general manager stated to said defendants that with them as officers of the union it was not so much a question of looking after the interests of the men employed by the plaintiff as it was a question of money, and deny that they, these defendants, were in the business for what they could get out of it, and deny that such statement to them was made by said general manager, and deny that their attention was called to the fact that nearly $10,000 had been turned over to them from the Hitchman mine alone in the two years just prior to the strike."

"These respondents further say that they deny that the said United Mine Workers of America, and the said International Union United Mine Workers of America, the said District No. 6, United Mine Workers of America, and the said Sub-District 5 of District 6, United Mine Workers of America, are, under their constitutions, violating the common law and statutory law of the State of West Virginia, as well as the Constitution of said State in any manner whatsoever, and especially in the particulars designated in said bill, but aver that the said organizations are in every respect lawful and that their objects and purposes are lawful."

"These respondents for further answer unto said bill say that they deny that said defendants are acting individually and agreeing, confederating, combining and forming themselves into a conspiracy, under the name of the United Mine Workers of America, and deny that they will in pursuance of any unlawful purpose and design, by enticement, persuasion or coercion in any form whatsoever, bring about the shutting down of plaintiff's mine and the ultimate destruction of its business, as alleged in said bill, and deny that they will without the consent and against the will of plaintiff compel plaintiff to recognize said defendants and said associations in the further transaction of its legitimate business in mining and shipping coal, and deny that defendants will compel plaintiff to contract with its employes through the said defendants as officers of the said associations, under such rules and regulations made and enforced by said associations and by said defendant officers as will enable the Union to dictate the persons whom plaintiff shall employ and those whom it shall discharge, the wages it shall pay, and deny that they will compel plaintiff to agree that each of its future employes as members of said United Mine Workers of America shall owe and yield to said Union an allegiance which shall in all things be paramount to that which said employes would owe to plaintiff, and deny that they will thus take charge of, dictate the management of, and virtually control plaintiff's business, and deny that they will perpetrate acts of oppression and wrong upon plaintiff which distinctly violate plaintiff's contractual, common-law, statutory and constitutional rights as a citizen of the State of West Virginia."

"And these respondents deny all unlawful combination, conspiracy, confederacy and unlawful acts of any sort whatsoever sought by the said bill to be imputed to these respondents or to any of them."

The bill in this cause is a very comprehensive one, and the issues, as presented by the bill and the answers, plainly show that there is before the Court, in this case a

determination of the question whether the United Mine Workers of America are, under the allegations and under the proof appearing in the Record, a monopoly in the supplying of labor in the coal mining industry in the coal mining States contrary to the common law. This proposition also is before the Court, whether the design of the United Mine Workers of America as carried out pursuant to their constitution, and as carried out pursuant to the actions of its conventions, and especially pursuant to the act of the convention in ordering the unionizing of all non-union fields as soon as funds would permit it, is an unlawful conspiracy contrary to public policy, irrespective of its immediate application to the plaintiff's mine. There is also involved the question of whether the United Mine Workers of America are not conspiring at common law and in violation of plaintiff's rights in carrying out the action of Sub-District 5 of District 6 in attempting in 1907 to unionize plaintiff's mine, and, in attempting, by the motion to modify the injunction in this case (172 Fed. 963) to obtain judicial sanction for the accomplishment of that unlawful purpose, and by now contesting in this Court the right of the plaintiff to run its business in its own way and within the law, without regard to and free from all control and affiliation and dealings with the United Mine Workers of America. There is also involved the question whether the plaintiff is entitled to be protected from the acts of the defendants, not only based upon the other reasons just assigned, but upon the ground that the Company has certain contractual relations with its employes, accentuated by the fact that the defendants are simply intermeddlers.

With these issues presented by the bill and answers a question of the continuing character of the conspiracy necessarily arises.

The conspiracy by the organization to control the coal mining industry, and, in pursuit of that end, the direct efforts to unionize the plaintiff's mine are in addition to the unlawfulness of the organization issues to be determined by this Court, and according as that decision allows or does not allow these defendants to pursue their method of organizing plaintiff's mine, just so far will plaintiff's right to do business be affected.

There is a continuing conspiracy, as a national feature, involved in the existence and in the national work of the United Mine Workers of America, and there is a continuing conspiracy on the part of the defendants in seeking to obtain permission in this Court to unionize plaintiff's mine. The insistence that they have such right, and the abstaining from doing acts to unionize this mine, only as the result of the granting of the injunction which now exists and protects plaintiff in the operation of its mine, and the fact that, if the injunction is dissolved or is modified so as to permit them to go ahead, they would pursue their plan to unionize its mine and put it under the control of themselves is in itself a continuing conspiracy.

This Court in the case of United States *v.* Kissel and Harned (1910) 218 U. S. 601, said on this subject of conspiracy

> "But when the plot contemplates bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators to keep it up, and there is such continuous cooperation, it is a perversion of natural thought and of natural language to call such continuous cooperation a cinematographic series of distinct conspiracies, rather than to call it a single one."

And further on in the same pargaraph of the opinion, this language is used:

> "A conspiracy is a partnership in criminal purposes."

Applying that definition of a continuing conspiracy to these defendants, it is plain that this national body exists only to become and to be an irresistible monopoly and an oppressive power in the coal mining industry. It is clear that its existence from its organization in 1890 down to the present time, and its active work in extending its power for this unlawful purpose of controlling the coal mining industry in the United States, is a continuance of a criminal partnership.

It is plain also that these defendants who have conspired to violate plaintiff's rights and to unionize plaintiff's mine have an intention—the moment they are released from the obligation to obey the Court's injunction—to at once carry out the plan they have not yet disavowed. These defendants are today a partnership in that criminal proceeding.

Now, with regard to the scope of the evidence that is admissible. This Court in the case of Holmes *v.* Goldsmith (1893) 147 U. S., p. 164, says:

> "The modern tendency both of legislation and of the decision of courts is to give as wide a scope as possible to the investigation of facts."

In the case of Moore *v.* United States (1893) 150 U. S., p. 57 the first and second paragraphs of the syllabus say:

> "When the tendency of testimony offered in a criminal case is to throw light upon a particular fact, or to explain the conduct of a particular person, there is a certain discretion on the part of the trial judge which a court of errors will not interfere with, unless it manifestly appears that the testimony has no legitimate bearing upon the question at issue, and is calculated to prejudice the accused in the minds of the jurors.
>
> "When a necessity arises for a resort to circumstantial evidence in a criminal trial, objections on

> the ground of relevancy are not favored, as the effect of circumstantial facts depends upon their connection with each other, and considerable latitude is allowed on the question of motive."

In the case of Clune *v.* United States (1895) 159 U. S., pp. 592, 593, speaking of the proof of conspiracy by circumstantial evidence, the Court says:

> "It is familiar law that where a case rests upon that character of evidence much discretion is left to the trial court, and its ruling will be sustained if the testimony which is admitted tends even remotely to establish the ultimate fact."

There is put in issue in this case by the bill, and there is put in issue in one form or another by the answers, the motive of the plaintiff as well as the motive of the defendants. There is put in issue the charge by the plaintiff, while the mine was running Union prior to the strike of 1906, the question whether or not these defendants did tyrannize the over plaintiff and did cause the plaintiff to suffer such loss as to make it determine never to run Union again; and as to the proof of strikes during the time the Company ran Union, it is certainly admissible for the plaintiff to show what treatment it received and what justification it had and now has for its determined opposition to the United Mine Workers of America and for its persistent and continuous refusal since the strike of 1906 to run a Union mine. Likewise it is certainly competent, as explaining plaintiff's experience with the Union, and as explaining why the Company has taken the position it has with regard to that Union to show that it lost large amounts of money and suffered much inconvenience during the time it ran Union.

It is not in this case sought by the plaintiff to recover damages from the defendants for the loss which was caused by the Union strikes in 1903, 1904 and 1906, but

it was proper to show the exact facts regarding the loss that the plaintiff did suffer while its mine was under the control and management of these defendants.

Sole Exercise of a Trade.

> "It is a monopoly, and against the policy of the law, for any person or group of persons to secure the sole exercise of any known trade throughout the country."
>
> "Trade and Trade Unions," 27 Laws of England, Halsbury, p. 526, § 1026, and cases cited in note (k).

After a consideration of the rules of the Amalgamated Society of Carpenters and Joiners, Lord Shaw of Dunfermline, said:

> "They mean, and appear, to provide the materials and machinery under which, according to the decision and at the direction of the officials of the association, a particular trade may not merely be restrained, but, by concerted action with other branches of industry, that trade and the trade of the country at large may be actually paralyzed."
>
> Russell *v.* Amalgamated Society of Carpenters and Joiners (1912) A. C. 421, *435*.

The United Mine Workers of America have repeatedly paralyzed the trade of this country.

II.

RESPONDENTS CHALLENGE THE CONTENTIONS OF THE PLAINTIFF AND THE FINDINGS OF JUDGE DAYTON UPON THE FOLLOWING POINTS.

(*a*) Deny they had knowledge of the contracts plaintiff makes with its employes;

(*b*) Deny they made efforts to get plaintiff's men to quit work and to join their Union;

(*c*) Deny that Hughes had authority in the premises;

(*d*) Deny that their representatives tried to induce plaintiff's men to join their Union; and

(*e*) Deny that if the injunction now forbidding it were out of the way they intend to violate plaintiff's contractual rights.

That they intended to do all of these things was found by Judge Dayton in his decree, and upon those facts, together with the unlawfulness of the organization and the conspiracy they were engaged in with Union operators in competitive States, Judge Dayton's opinion and his decree were based.

It has hereinbefore been stated that after Judge Dayton refused to modify the injunction in accordance with the motion made by respondents for that purpose (Record, pp. 37–39; 41–49) and had entered a decree refusing to modify it (Record, pp. 50–52) the defendants (now respondents) withdrew all of the answers which had theretofore been filed and which constituted a part of the case considered by him upon that motion (Record, pp. 178, 179); and they thereafter on September 5, 1910, filed entirely new answers, the substantial difference being that by those new answers they denied practically everything that they had theretofore admitted, and they then called for proof. These last answers are those upon which counsel for respondents now bases his argument.

But from that decree refusing to modify the injunction, respondents appealed to the Circuit Court of Appeals, and on motion of plaintiff that appeal was dismissed on the ground that that Court had no jurisdiction, the basis of the opinion being

> "Under Act March 3, 1891, c. 517, § 7, 26 Stat. 828, as amended by Act June 6, 1900, c. 803, 31 Stat. 660 (U. S. Comp. St. 1901, p. 550), and Act April 14, 1906, c. 1627, 34 Stat. 116 (U. S. Comp. St.

Supp. 1909, p. 220), which gives a right of appeal to the Circuit Court of Appeals from an interlocutory order or decree granting or continuing an injunction, to be taken within 30 days, an order overruling a motion to dissolve or modify an injunction previously granted is not one continuing the injunction within the meaning of the statute, and is not appealable."

Lewis v. Hitchman Coal and Coke Company (1910) 176 Fed. 549.

PASSING TO THOSE ANSWERS WHICH WERE WITHDRAWN, WE CALL ATTENTION TO THE FOLLOWING ALLEGATIONS UPON THE POINTS ABOVE MENTIONED.

Respondents admit they had knowledge of the contracts plaintiff makes with its employes.

"it is true, as respondent believes and so avers, that the plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine; that the company would not allow any; that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and its orders, and that if any employes of the company joined the union they could not work any longer for the plaintiff."

Separate Answer of A. R. Watkins (under oath) filed May 26, 1908. (Record pp. 88, 90.)

"it is true * * * that each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine; that its men are non-union men; that said employes are required by plaintiff at the time of entering its service to agree not to become connected with the union while employed, and that if they do join the

union their said employment shall cease; that with such understanding plaintiff's employes entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but this respondent avers that any condition, stipulation, contracts or agreements on the part of said plaintiff with its said employes as a condition upon which they shall enter into employment and continue in their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and cannot be made a condition upon which to base any valid and binding contract or obligation between employer and employe."

Separate Answer of A. R. Watkins (under oath filed May 26, 1908. (Record, pp. 88, *92*, *93*.)

"It may be true, and is, as respondents believe, that plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the company would not allow any, that no union man could remain in the employ of the company while recognizing and giving paramount allegiance to the union and its orders, and that if any employes of the company join the union they could not work any longer for plaintiff. It may be also true that thereupon, with knowledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America, and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff. But these respondents deny any knowledge on their part or on the part of any of them that the employes of plaintiff were and are required by it at the time of entering its service to agree not to become

connected with the union while so employed; and these respondents deny any knowledge on their part or on the part of any of them that if said employes joined the union their employment with plaintiff shall cease; and these respondents deny any knowledge on their part or on the part of any of them that with such understanding plaintiff's employes entered into its employment; and respondents deny any knowledge that such employes are now working for plaintiff under such contract and with such condition. But these respondents deny that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employes as to the advisability or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union."

Joint and Separate Answer of T. L. Lewis, *et al.*, filed July 13, 1908. (Record, pp. 102, *105*, *106.*)

"each of said defendants is fully aware that plaintiff is operating a non-union mine and refused consent to operate a union mine, that its men are non-union men; and it may be true that said employes are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do join the union their said employment shall cease, but of this respondents deny any knowledge on their part; and it may be true that with such understanding plaintiff's employes entered its employment, and are now working with it under such contract and condition as alleged in said bill, but of which defendants also have no knowledge; but, be this as it may, respondents aver that any condition, stipulation, contract, or agreement on the part of said plaintiff with said employes as a condition upon which they shall enter into and continue their employment with it, are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States, under and by virtue of its Constitution and the spirit

and purpose of its institutions, and cannot be made a condition upon which to base any valid and binding contract or obligation between employer and employe.

Joint and Separate Answer of T. L. Lewis, *et al.*, filed July 13, 1908. (Record, pp. 102, *108.*)

"It may be true, and is, as respondent believes, that plaintiff on June 12 did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the Company would not allow any, that no union man could remain in the employ of the Company while recognizing and giving paramount allegiance to the union and its orders, and that if any employee of the Company joined the union they could not work any longer for plaintiff. It may be also true that thereupon, with knowledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time, to the satisfaction of themselves and the plaintiff."

Separate Answer of William Green, filed July 13, 1908. (Record, pp. 118, *121.*)

"each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine, that its men are non-union men; and it may be true that said employes are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do join the union their said employment shall cease, but of this respondent denies any knowledge on his part; and it may be true that with such understanding plaintiff's employes entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but of which defendant

also has no knowledge; but be this as it may, respondent avers that any condition, stipulation, contract, or agreement on the part of said plaintiff with its said employes as a condition upon which they shall enter into employment and continue their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and cannot be made a condition upon which to base any valid and binding contract or obligation between employer and employe."

Separate Answer of William Green, filed July 13, 1908. (Record, pp. 118, *123*.)

"It may be true, and is, as respondent believes, that plaintiff on June 12 did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the company would now allow any, that no union man could remain in the employ of the Company while recognizing and giving paramount allegiance to the union and its orders, and that if any employes of the company joined the union they could not work any longer for plaintiff."

Separate Answer of D. H. Sullivan, filed July 13, 1908. (Record, pp. 133, *136*.)

"each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine, that its men are non-union men; and it may be true that said employes are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do join the union their said employment shall cease, but of this respondent denies any knowledge on his part; and it may be true that with such understanding plaintiff's employes entered its employment, and are now work-

ing with plaintiff under such contract and condition, as alleged in said bill, but of which defendant also has no knowledge; but be this as it may, respondent avers that any condition, stipulation, contract or agreement on the part of said plaintiff with its said employes as a condition upon which they shall enter into employment and continue their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and cannot be made a condition upon which to base any valid and binding contract or obligation between employer and employe."

Separate Answer of D. H. Sullivan, filed July 13, 1908. (Record, pp. 133, *138*, *139*.)

"It may be true, and is, as respondent believes, that plaintiff on June 12th did start to run its mine on a non-union basis, and that each and every man who accepted employment at said mine was told at the time of entering plaintiff's employment that there was no union at the mine, that the Company would not allow any, that no union man could remain in the employ of the Company while recognizing and giving paramount allegiance to the union and its orders, and that if any employe of the Company joined the union they could not work any longer for plaintiff. It may be also true that thereupon, with knwoledge of said condition of employment, many men applied to plaintiff for work, and entered its employment under an express contract not to join the United Mine Workers of America and to work in its mine, and have so continued to work until the present time to the satisfaction of themselves and the plaintiff. But this respondent denies any knowledge on his part that the employes of plaintiff were and are required by it at the time of entering its service to agree not to become connected with the union while so employed; and this respondent denies any knowledge on his part that if said employes join the union their employment with plaintiff shall cease; and this respondent denies

any knowledge on his part that with such understanding plaintiff's employes entered into its employment; and respondent denies any knowledge that such employes are now working for plaintiff under such contract and with such condition. But this respondent denies that because of these conditions, if they do exist, the defendants have not any lawful right to converse with plaintiff's employes as to the advisability or propriety of becoming members of said union, and to use argument and persuasion to induce them of their own will and accord to become members of said union."

Amended Answer of A. R. Watkins (under oath), filed August 20, 1908. (Record, pp. 150, *153*.)

"each of said defendants is fully aware that plaintiff is operating a non-union mine and refuses to consent to operate a union mine, that its men are non-union men; and it may be true that said employes are required by plaintiff at the time of entering its service to agree not to become members of the union while employed, and that if they do join the union their said employment shall cease, but of this respondent denies any knowledge on his part; and it may be true that with such understanding plaintiff's employees entered its employment, and are now working with plaintiff under such contract and condition, as alleged in said bill, but of which defendant also has no knowledge; but be this as it may, respondent avers that any condition, stipulation, contract or agreement on the part of said plaintiff with its said employes as a condition upon which they shall enter into employment and continue their employment with plaintiff are contrary to public policy, are in restraint of that freedom of contract accorded to all citizens of the United States under and by virtue of its Constitution and the spirit and purpose of its institutions, and cannot be made a condition upon which to base any valid and binding contract or obligation between employer and employe."

Amended Answer of A. R. Watkins (under oath) filed August 20, 1908. (Record, pp. 150, *155*.)

Respondents admit they made efforts to get plaintiff's men to quit work and to join their union.

"it is true that on or about September 7, 1907, the said defendant, Thomas Hughes, was about the Glendale mine and about the Hitchman mine, seeing the miners but not intercepting them; taking lists of the names of the employes and trying to induce the men by persuasion * * * to quit working for the plaintiff, and to join the union,"

Separate Answer of A. R. Watkins (under oath), filed May 26, 1908. (Record, pp. 88, *99.*)

"it is true that the said Hughes did induce about twenty-four of the employes of the Glendale Coal Company to agree to join the union and quit the service of the Glendale Coal Company,"

Separate Answer of A. R. Watkins (under oath), filed May 26, 1908. (Record, pp. 88, *99.*)

"it is true that on about September 7, 1907, said defendant, Thomas Hughes, was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employes and trying to induce the men by persuasion * * * to join the union,"

Joint and Separate Answer of T. L. Lewis, *et al.*, filed July 13, 1908. (Record, pp. 102, *115.*)

"it is true that said Hughes did induce about twenty-four men employed by the Glendale Coal Company to agree to join the union,"

Joint and Separate Answer of T. L. Lewis, *et al.*, filed July 13, 1908. (Record, pp. 102, *115.*)

"it is true that on or about September 7, 1907, said defendant, Thomas Hughes, was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names

of the employes and trying to induce the men by persuasion * * * to join the union,"

Separate Answer of William Green, filed July 13, 1908. (Record, pp. 118, *131.*)

"it is true that said Hughes did induce about twenty-four employes of the Glendale Coal Company to agree to join the union,"

Separate Answer of William Green, filed July 13, 1908. (Record, pp. 118, *131.*)

"it is true that on or about September 7, 1907, said defendant, Thomas Hughes, was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employes and trying to induce the men by persuasion * * * to join the union,"

Separate Answer of D. H. Sullivan, filed July 13, 1908. (Record, pp. 133, *146.*)

"it is true that said Hughes did induce about twenty-four employes of the Glendale Coal Company to agree to join the union,"

Separate Answer of D. H. Sullivan, filed July 13, 1908. (Record, pp. 133, *146.*)

"it is true that on or about September 7, 1907, said defendant, Thomas Hughes, was about the Glendale mine and the Hitchman mine, seeing the miners but not intercepting them, taking lists of the names of the employes and trying to induce the men by persuasion * * * to join the union,"

Amended Answer of A. R. Watkins (under oath), filed August 20, 1908. (Record, pp. 150, *163.*)

"it is true that said Hughes did induce about twenty-four employes of the Glendale Coal Company to agree to join the union,"

Amended Answer of A. R. Watkins (under oath), filed August 20, 1908. (Record, pp. 150, *163.*)

Respondents admit that Hughes had authority in the premises.

> "Hughes * * * had no power or authority * * * but only to have said miners join the union."
>
> Separate Answer of A. R. Watkins (under oath), filed May 26, 1908. (Record, pp. 88, *99*, *100*.)
>
> "Hughes * * * had no power or authority * * * but only to have said miners join the union."
>
> Joint and Separate Answer of T. L. Lewis, *et al.*, filed July 13, 1908. (Record, pp. 102, *116*.)
>
> "Hughes * * * had no power or authority * * * but only to have said miners join the union."
>
> Separate Answer of William Green, filed July 13, 1908. (Record, pp. 118, *131*.)
>
> "Hughes * * * had no power or authority * * * but only to have said miners join the union."
>
> Separate Answer of D. H. Sullivan, filed July 13, 1908. (Record, pp. 133, 147.)
>
> "Hughes * * * had no power or authority * * * but only to have said miners join the union."
>
> Amended answer of A. R. Watkins (under oath), filed August 20, 1908. (Record, pp. 150, *163*.)

Respondents admit that their representatives tried to induce plaintiff's men to join their union.

> "some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance, or threat with some of the employes of the said plaintiff, and have in a peaceable and friendly manner invited said employes, so conversed with, to join said organization of the United Mine Workers of America, and have used moderate argument and persuasion at the homes of some of the employes to induce them to become members of the United Mine

Workers, endeavoring to show such employes that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization."

Separate Answer of A. R. Watkins (under oath), filed May 26, 1908. (Record, pp. 88, *92*.)

"some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employes of plaintiff, and have in a peaceable and friendly manner invited said employes so conversed with to join said organization and have used moderate argument and persuasion at the homes of some of the employes to induce them to become members of the United Mine Workers, endeavoring to show such employes that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization."

Joint and Separate Answer of T. L. Lewis, *et al.*, filed July 13, 1908. (Record, pp. 102, *108*.)

"some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employes of plaintiff, and have in a peaceable and friendly manner invited said employes so conversed with to join said organization, and have used moderate argument and persuasion at the homes of some of the employes to induce them to become members of the United Mine Workers, endeavoring to show such employes that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization."

Separate Answer of William Green, filed July 13, 1908. (Record, pp. 118, *123*.)

"some of the representatives of the United Mine Workers have seen and conversed peaceably and

quietly and without molestation, hindrance or threat with some of the employes of plaintiff, and have in a peaceable and friendly manner invited said employes so conversed with to join said organization, and have used moderate argument and persuasion at the homes of some of the employes to induce them to become members of the United Mine Workers, endeavoring to show such employes that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization."

Separate Answer of D. H. Sullivan, filed July 13, 1908. (Record, pp. 133, *138*.)

"some of the representatives of the United Mine Workers have seen and conversed peaceably and quietly and without molestation, hindrance or threat with some of the employes of plaintiff, and have in a peaceable and friendly manner invited said employes so conversed with to join said organization, and have used moderate argument and persuasion at the homes of some of the employes to induce them to become members of the United Mine Workers, endeavoring to show such employes that it would be better for them and their families, in the prosecution of their vocation as miners, that they become members of said organization."

Amended Answer of A. R. Watkins (under oath), filed August 20, 1908. (Record, pp. 150, *155*).

Respondents say these efforts will be continued when the injunction is out of the way.

Direct examination of T. L. Lewis. (Record, p. 534, l. 17–21.)
Direct examination of D. H. Sullivan. (Record, p. 628, l. 50–53. Record, p. 629, l. 1–11.)
Direct examination of G. W. Savage. (Record, p. 503, l. 34, 35. Record, p. 504, l. 5–9.)

We have made the foregoing extended quotations from the answers which were withdrawn for the purpose of making it evident that the admissions contained were not the result of inadvertence but stated the deliberate purpose and intentional acts of these respondents; and we have directed the attention of the Court to the fact that these answers containing these admissions were before the Court and constituted a part of the case submitted to and decided by Judge Dayton in 1908 in overruling the motion respondents at that time made to modify the injunction so as to give them a free hand.

With the consent of Court, it is, of course, permissible to withdraw pleadings and file new ones. And respondents were permitted to withdraw their pleadings, but under objection from plaintiff were not permitted to take those answers from the files. (Record, pp. 178, 179.)

With the incoming of new answers and the case coming on to be heard upon final hearing, plaintiff introduced in evidence all of these answers which had been withdrawn. (Record, pp. 85–87.)

As a result of the whole matter, petitioner now claims that the admissions made in those answers, which were a part of the Record in the proceedings, whereby respondents' motion to modify the injunction was overruled, became res adjudicata with the dismissal of their appeal by the Circuit Court of Appeals, and that they are estopped and cannot now question their admissions made in that proceeding when those same admissions have been introduced in evidence in the present Record now before this Court.

III.

RESPONDENTS CONTEND THAT PLAINTIFF'S CONTRACTS WITH ITS EMPLOYES ARE IN RESTRAINT OF TRADE.

And in support of that view cite three West Virginia cases.

The first of these is the case of Slaughter v. Thacker Coal and Coke (1904), 55 W. Va. 642, 47 S. E. 247.

The syllabus of that case is

> "Three coal mining companies operating in the same vein or seam in close proximity to one another, and just having commenced the development of that particular kind of coal, organize indirectly and nominally in the names of individuals a third corporation to act as a general sales agent, and each gives it by contract the exclusive right to sell its entire output of coal at prices uniform as to all three companies, and not to be departed from without the consent of all the companies, and said agent company is to advertise and introduce the coal in the markets, establish and control all agencies and subagencies, and make all sales and collections, and deduct for its compensation 10 cents per ton out of the proceeds of sales. Held, that the contract is illegal and void, its tendency being to suppress competition and restrain trade, contrary to public policy."

This citation by respondents' counsel is wide of the mark, because there is a combination of coal companies. The Hitchman Coal and Coke Company is not in combination with any other coal company. And the contract in question is merely a contract between the Hitchman Company and its own employe. That it makes a separate contract with each employe is not a matter of which these respondents may complain, inasmuch as it is the right of the plaintiff to protect itself against the United Mine Workers of America if it elects to do so.

The second of these cases cited by counsel for respondents is that of Charleston Natural Gas Co. *v.* Kanawha Natural Gas, Light and Fuel Co., *et al.* (1905), 58 W. Va. 22, 50 S. E. 876. Counsel's brief (p. 64), in citing this case, says that it decided

> "Courts decline to enforce contracts which impose restraint, though only partial, upon business of such character that such restraint will to any extent repress competition and prejudice the public."

A reference to the case shows that it is not at all applicable for the purpose upon the point on which it is cited, and without further discussion, the points of the syllabus are presented.

> "If two corporations supplying the same community with natural gas make an agreement whereby they parcel out between them the territory, giving to each the exclusive right to sell gas in a given boundary, fixing prices, and prohibiting change of prices except by their mutual consent, binding one company to use for public consumption only gas produced by the other, and prohibiting one from producing from the section of country in which the other produces gas, such agreement tends to monopoly, is void as against public policy, and the courts will not enforce it."
>
> "Courts decline to enforce contracts which impose restraint, though only partial, upon business of such character that such restraint will to any extent repress competition and prejudice the public."
>
> "The common law condemns, as against public policy, agreements between public service corporations of a character to prevent free competition in the interest of the public, and will not enforce them."
>
> "Any agreement between competing public service corporations, the consequence of which is the controlling of prices, limiting of production, or suppressing of competition, so as to create monopoly in

things useful to the public, is contrary to public policy and void."

"A combination, the object of which is to obtain sole control of a particular branch of business, is unlawful by common law, against public policy, and all contracts for the accomplishment of this end are void."

"(Syllabus by the Court.)"

The third of these cases is West Virginia Transportation Company *v.* Ohio River Pipe Line Company, *et als.* (1883), 22 W. Va. 600. In that case, on page 625, the Court said:

> "From the principles, which underlie all the cases, the inference must be necessarily drawn, that if there be any sort of business, which from its peculiar character, can be restrained to no extent whatever without prejudice to the public interest, then the Courts would be compelled to hold void any contract imposing any restraint, however partial on this peculiar business, provided, of course, it be shown clearly, that the peculiar business thus attempted to be restrained is of such a character that any restraint upon it, however partial, must be regarded by the Court as prejudicial to the public interest."

It cannot be contended under that authority that it is contrary to the public interest for the Hitchman Company to contract with its own employes that they will not join the United Mine Workers of America while they are employed by the Hitchman Company; nor is it contrary to the public interest for the Hitchman Company to agree that it will run its mine non-union while they are in its employ; but that authority is to the point upon the proposition that respondents and their organization in their endeavor to control the coal mining industry in this country have given to their occupation a public interest,

and for that reason in seeking to control the coal mining industry of this country they are acting in restraint of trade.

> "A restraint reasonably necessary for the protection of the covenantee must prevail unless some specific ground of public policy can be clearly established against it. (Underwood (E.) & Son, Ltd. *v.* Barker, [1899] 1 Ch. 300 C. A.)
>
> "Trade and Trade Unions" 27 Laws of England, Halsbury, p. 549, Note (g).

IV.

PREVIOUS KNOWLEDGE IS NOT IMPORTANT; BUT PRESENT KNOWLEDGE OF THE CONTRACT CANNOT BE DENIED.

It does not matter even if respondents did not know about petitioner's contracts with its employes when they filed their last answers September 5, 1910; they learned about them when the case was tried in December, 1910; they have had such knowledge ever since and they know about the contracts now.

The English case of De Francesco *v.* Barnum, decided by the Chancery Division of the High Court of Justice, makes this plain:

> "The plaintiff in May, 1889, entered into agreements with five girls whereby they agreed to perform in the ballet for the plaintiff during the following pantomime season at certain salaries. In October, 1889, B who had at that time no notice of these agreements, engaged the same girls to perform under his directions. The plaintiff, on discovering this engagement, gave notice to B of the agreements of May, 1889, but notwithstanding this the girls continued to be employed by B. The plaintiff sued B for damages for continuing to employ the girls after notice of the agreements of May, 1889, and the girls for breach of these agreements.

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"Held (following Blake *v.* Lanyon, 6 T. R. 221) that an action will lie against one who continues to employ the servant of another after notice of the prior contract of service, and, that in order to maintain such an action it is not necessary that the employer and employed should stand in the strict relation of master and servant."

De Francesco *v.* Barnum (1890) 63 Law Times 514.

Respectfully submitted,

GEORGE R. E. GILCHRIST,

HANNIS TAYLOR.

Counsel for Petitioner.

GEORGE R. E. GILCHRIST,

Of Counsel.

WHEELING, W. VA.,

December 7, 1910.

IN THE

Supreme Court of the United States

October Term, 1916.

No. [redacted] 11

HITCHMAN COAL AND COKE COMPANY, *Petitioner*,

versus

JOHN MITCHELL, INDIVIDUALLY, ET AL., *Respondents*.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

SUPPLEMENTAL BRIEF ON THE MERITS.

CHAS. E. HOGG, *Counsel for Respondents.*

NOTE.—This brief, designated SUPPLEMENTAL BRIEF ON THE MERITS, is intended to accompany the ORIGINAL BRIEF ON THE MERITS, filed in the case appearing on the docket of the last term of this court as

No. 241

Hitchman Coal and Coke Company, Appellant

versus

John Mitchell, Individually, T. L. Lewis, Individually, W. B. Wilson, Individually, et al.,

An appeal from the United States Circuit Court of Appeals for the Fourth Circuit,

in which the appeal was dismissed for want of jurisdiction, but in which a writ of certiorari was awarded, the record on appeal to stand as a return thereto.

The Index of the Supplemental Brief begins on the next subsequent page and contains some pertinent references to the Original Brief, inserted for the convenience of the court.

The Index of the Original Brief appears at the end thereof at pages 207-209.

As appeal No. 241 was taken on the theory that the case involved a Federal question, the parts of the original brief relating thereto can no longer serve any practical purpose, inasmuch as the appeal was dismissed on the ground that the record presents no such question.

The obsolete portions of the Original Brief appear therein at pages 8-12, 149-151, 153, 155.

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Respondents not a conspiracy under the name of 34-39
Not violating Constitution and laws of West Virginia 50-52

Supreme Court of the United States

October Term, 1916

No. 43

HITCHMAN COAL AND COKE COMPANY, *Petitioner,*

vs.

JOHN MITCHELL, INDIVIDUALLY, ET AL., *Respondents.*

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

SUPPLEMENTAL BRIEF ON THE MERITS.

I

STATEMENT.

This case is now before the court on a writ of certiorari, the record on the appeal thereof from the Fourth Circuit heretofore dismissed for want of jurisdiction, to be treated as the return thereto.

All questions properly before the court below may be considered and determined by this court inasmuch as the record of the appeal is now before us as the return to said writ.

The Hitchman Coal & Coke Company, upon whose application the writ was awarded, makes a statement extending from page 2 to 42 of the petition, while Rule

37 of this court provides "The petition shall contain only a summary and short statement of the matter involved."

Wherever the word "petition" occurs in this brief reference is made to the petition accompanying the application for a writ of certiorari.

We cannot ignore the matters set out in the petition, lest where it purports (a) to contain certain facts it might be inferred that respondents concede their truth for the purposes of this case; (b) or that certain other facts were properly in the record for consideration by this court in its review of the decree complained of, (c) or where the law is announced, referred to or quoted, its soundness and applicability admitted. We, therefore, respectfully ask the court to follow us in our

Review of the Statement Contained in the Petition.

in order that we may have a just conception of this case as presented by the whole record.

The averment taken from the bill *(petition, p. 2)* is positively denied by the answer *(record, pp. 66, 67)* and not estabilshed by the proof.

The conclusion of the learned District Judge, who decided this case in the first instance, that the United Mine Workers of America is an unlawful labor union is set out in the petition. *(Pages 3 and 4).*

On page 4 this conclusion is based upon the declaration of the learned judge that this organization "has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other states, to control, restrain, and, to an extent, at least, destroy the coal trade of the State of West Virginia."

There is not a single averment in the bill charging the respondents with any combination or conspiracy with coal operators in other states. The pleadings nowhere raise such an issue. Evidence as to such a matter is wholly foreign to the case.

It is, therefore, submitted that the cases of *Clune v. United States*, 159 U. S. 590, 40 L. ed. 269, and *Loewe*

v. Lawlor, 208 U. S. 274, *(petition, p. 4)* cited by the District Judge have no application to this case.

On pages 6 and 7, appear excerpts from the opinion of the District Court dealing with this labor union as engaged in a conspiracy with coal operators and producers in Ohio, Western Pennsylvania, Illinois and Indiana in restraint of trade and commerce, *a matter, as just stated, upon which the pleadings are absolutely silent*, and in this connection *Standard Oil Co. v. United States, 221 U. S. 1, United States v. American Tobacco Co.*, 221 U. S. 106 *(petition, p. 5)*, and *Adair v. United States*, 208 U. S. 161 *(p. 6)* are cited and relied upon, but *cannot be used in support of a case foreign to the one not made by the bill and answers.*

The petition *(pp. 12-14)* presents argument in an effort to show that juridiction of a Federal Court in this case does not depend *solely on diverse citizenship*, but also *involves a Federal question.* The dismissal of the appeal in this case on motion of appellees because the only ground of jurisdiction being the diverse citizenship of the parties, the decree of the Circuit Court of Appeals was *final*, necessarily renders this part of the petition *(pp. 12-14)* immaterial and inconsequent

It is futher stated *(petition p. 16)* that the material allegations of the bill have been abundantly sustained and there is no controversy over the facts.

The truth of this statement is not supported by the record, and is therefore denied.

All the documentary evidence referred to in the petition *(pp. 17, 18)* offered by the petitioner was objected to as irrelevant, except the constitutions of the United Mine Workers.

The objections are contained in the exceptions of respondents to certain parts of the evidence appearing in the record of appeal, pp. 222-229.

It is also stated *(p. 20)* that some of the rules and regulations of the United Mine Workers are lawful "and some unlawful, but pregnant with unmeasured

and unmeasurable abuse of unlimited and unregulated power."

It is by respondents denied that the clause in quotations presents the truth with reference to any of the rules and regulations of the United Mine Workers of America It is insisted that they are all lawful.

It is further stated that this labor organization "is a secret body." *This is not supported by the record and positively denied by respondents.*

The statement *(pp. 20-24)* in the petition as to an agreement between this union and the operators of other states, as we have seen, *is foreign to the case,* and will, therefore not be considered by this court.

A statement appears in the petition *(p. 24)* that "although the United Mine Workers as an organization have to date waged an industrial war against the non-union fields the Union operators still complain of the competition from those fields and urge the mine workers to greater efforts along the same line, and to other and more desperate and unlawful acts."

This conclusion is drawn by counsel for the petitioner from the irrelevant evidence admitted into the case over respondent's objection, in an attempt to prove a conspiracy between respondents and coal operators (not named or identified) resident in States outside of West Virginia, and *in the absence of anything in the pleadings making such evidence relevant.*

Certain parts of the Constitution of the International Union are set out in the petition *(pp. 26, 27)* and other portions thereof at pages 28, 29.

The matter relating to Joint Conventions *(p. 29)* is entirely foreign to this case, and evidence bearing on this was introduced at the trial with nothing in the pleadings making such evidence admissable, and went in under objections.

There are certain practices imputed to the United Mine Workers in the petition beginning at the bottom of page 29 and continuing to the end of page 30, many

of which are not made *issuable* by anything in the bill or answers, some of which are improperly stated and others have no foundation in fact.

Noticing these so-called "practices", beginning with the one of "driving operators out of business who incur their displeasure by means of strikes", it is at this point, sufficient to say that this charge is not true, as stated in the petition, and in fact is not sustained by the proof.

Another practice charged (petition, p. 30) is that "They (United Mine Workers) have sent out men to the trade to boycott West Virginia Coal."

There is nothing of this sort charged against the respondents, and we recall no evidence bearing out such a practice as here charged. Furthermore, it is not material whether such a practice does exist, unless directed against the petitioner to the detriment of its business.

Another practice charged *(p. 30)* is

"They" (United Mine Workers) "engage in politics and maintain lobbies for the purpose of affecting legislation."

This charge is made from a distorted construction of the language used in the preamble to the constitution of the union, expressive in parts of its purposes set forth in paragraphs Fifth-Tenth appearing in our ORIGINAL BRIEF ON THE MERITS at pages 94, 95. A proper construction of these paragraphs justify no such charge.

A further charge is that

"They" (United Mine Workers) "put operators at a disadvantage who refuse to go into the Joint Interstate Movement."

> "They compelled operators in the southwest territory to join the operators' association by refusing to allow their members to work for operators who did not join that operators' association upon that association agreeing not to employ any man who was not a member of the United Mine Workers of America."
>
> (Page 30).

There is no allegation in any of the pleadings in the cause justifying such a charge. The issues raised by the pleadings in this case appear in a subsequent part of this brief at pages 23-24 and also in our Original Brief on the Merits at page 7.

It is charged in the petition (p. 30) that

"They" (United Mine Workers) "have constantly aimed to involve West Virginia and other non-union fields in local or national strikes; and that is their aim today."

There is nothing properly in this case authorizing this statement.

There is no allegation in the pleadings imputing to respondents that they or any of them were endeavoring to involve petitioner's men in a strike since it began to run its mine non-union.

There is an allegation in the bill *(record, p. 18)* imputing the use of language to respondents Lewis and Mitchell, in one of the annual conventions of the union that organization would be effected by a strike movement. And the answer to this part of the bill *(record, p. 61)* sets forth that the language used by said Lewis and Mitchell

> **"was simply a tentative presentation of the situation that then confronted the organization, and did not have for its object the disturbance of plaintiff's mines or the men employed thereat, nor had it anything whatever to do with the plaintiff's business."**

It is a sufficient answer to this to state that none of the respondents are charged with the causing of any strike movement affecting the non-union portion of West Virginia, nor the mine of the petitioner. Petitioner does not complain in its bill of any strike or movement to accomplish that end.

> It is further charged in the petition *(p. 30)* that "Through their president, the defendant Mitchell, they threatened to stop every mine in the Pittsburgh district by filling them with or-

ganizers, if necessary, in order to compel compliance with their wishes. Mitchell boasted of this."

It is further charged in the petition *(p. 30)* that "they are constantly aiming to increase the cost of the West Virginia operators' coal through organizers and secret agents sent out to stir up strife."

This is not averred in the pleadings and is without evidence to support it. It is quite unreasonable and highly improbable that this organization could accomplish such a thing as here charged, as this could only be brought about by an increase in the price paid for mining the coal, and it is in evidence that petitioner pays his miners as much as the union scale provides.

The recital in the petition (pp. 31-35) of matters occurring prior to June 12, 1906, the day upon which petitioner began to run its mine non-union, are foreign to the issues in this case, and will, therefore, not be considered by the court.

The recital in the petition (pp. 37, 38) as to the Joint Interstate Movement is foreign to this case.

There is no allegation whatever in the bill touching this statement in the petition, and no proof along this line can be received.

It is also averred in the petition *(p. 39)* that at the annual convention of Sub-District 5 of District No. 6, held in March, 1907, the following resolution was passed:

"Whereas, There are mines in the Panhandle District and Ohio that are not organized, and believing every mine should be organized, be it

"*Resolved*, By this Ninth Annual Convention that the Sub-District officers together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done."

(Page 39).

It is admitted that the Hitchman mine is in Sub-District five, and that it is one of the mines referred to in the resolution.

The act of adopting this resolution does not support, or even tend to support, the contention of the petitioner made in its bill of complaint. The allegation of the bill as to unionizing petitioner's mine is in this language:

> "Your orator further says that in effecting their said object of unionizing your orator's mine the said defendants propose and threaten to, and your orator being so informed and believing it to be true, alleges on such information and belief that said defendants will and are about to, indulge in all of the many methods of accomplishing their result by the use of threats, intimidation, force, violent or abusive language, picketing your orator's premises, picketing or patrolling or guarding the streets and approaches to your orator's premises and going to the homes or boarding houses of your orator's employees for the purpose of intimidating or coercing them to leave your orator's employment and to picket railroad and street cars passing to and from or through your orator's premises for the purpose of intercepting your orator's employees in going to or from your orator's premises and for the purpose of intercepting and preventing persons coming to your orator's premises for the purpose of seeking or for the purpose of entering into your orator's employment."
>
> *(Record, p. 27).*

This allegation is denied in terms most direct and positive in the answer. *(Record, pp. 67, 83).*

The allegation her quoted and *also set out in the petition (p. 2)* is indeed the *gravamen* of the bill of complaint.

The court knows from the record that no coal mine can be organized and thus placed on a union basis, without the consent of the operator. *(Record, pp. 496, 500, 568, 570, 624, 625).*. To unionize a mine there must be

a written contract between the operator of the one part and the miners by their representative or committee of the other part. The contract is necessarily voluntary, bilateral, and as to the miners, collective. That is, the miners working in each plant contract as a body and not idividually each for himself. The terms are all defined and operate upon all the employes alike.

A further statement appears in the petition (p. 40) that

"reports were put in circulation by the Union's officials that the mine was going to be unionized, and that unless the men joined the United Mine Workers they would soon be out of their jobs."

This statement is *moulded* from an allegation made in the bill *(record, p. 22)* imputing the circulation of such a report to respondent John Zelenka, which is fully and positively denied by the answer. *(Record, pp. 63, 78, 79)* and not sustained by the evidence.

It is charged *(petition p. 41)* that "many miners were deterred from taking employment" with petitioner.

This statement is absolutely untrue and wholly without support by the record.

As to the statement in the petition *(p. 41)* as to what was done by Hughes at the Glendale and Richland mines—mines not owned by the petitioner—it is a sufficient answer to say that the former is owned by the Glendale Coal Company, a corporation, which has also filed a bill against respondents to which answers have been filed in which is denied, in direct and positive terms, the statement that Hughes succeeded in having twenty-two men join the Union and quit work at the Glendale mine. The proof of petitioner does not show that Hughes induced the men to quit, but on the contrary they were actually discharged by the Glendale Coal Company because they joined the United Mine Workers. *(Record, pp. 306, 310, 312, 313).*

It will be shown upon the trial of the Glendale case,

that the statement as to these twenty-two men has no foundation in fact, but that they actually came to Hughes and solicited membership in the Union, that they were then received into the Union by him, and for this alone these men were discharged by the Glendale Company. The record falls short of any proof to show that Hughes did a thing toward getting these men to quit work at the Glendale Coal Company's mine.

(Record, pp. 312, 313).

On re-direct examination this witness is specially interrogated by counsel for petitioner as to this matter, and testifies as follows:

"Q. In your direct examination, I understood you to say that Hughes had gotten a number of men to quit work at the Glendale mine? ,

Mr. Hogg: He didn't say that; he said they were discharged.

Mr. Gilchrist No; he didn't say that.

The Court:

Q. How was that? Had Hughes gotten any number of men to quit at the Glendale and Hitchman mines?

A. Well, it was brought about by Mr. Hughes, I think. There was a meeting of the men the night before this near the B. & O. station of Glendale.

Q Did any of them quit work?

A. Well, they way it came about was this: The men were at the meeting the night before near the B. & O. station at Glendale, and Mr. Hughes was present talking to them down at the B. & O. station, and I got the names of five of the men who were at this meeting and I instructed the mine foreman to have these men remain on the outside of the mine the next morning until we could have a talk—I mean with these five particular men—and when the mine foreman told these men to remain on the outside of the mine—that we wanted to see them and have a talk with them—why, there was fifteen others (there was twenty altogether)

—there was fifteen others who said they would stay out and see what we wanted. I was not present just exactly at this time but I was immediately after, and when I came up to these men they were sitting there on a pile of mine props and I told them, I says. 'From your actions last night and also this morning it seems to me as though you want to become members of the United Mine Workers,' and I says,

'You understand that you cannot become members of the United Mine Workers and work for the Glendale Coal Company, but', I says, 'we haven't any objections or we are not trying to hinder you from becoming members of the United Mine Workers of America, but you understand that you cannot be members of the United Mine Workers and work for the Glendale Company; and one of the number—I do not remember exactly which one—says, 'Well, I suppose that means for us to get our tools out?' And I told him that was exactly what it meant, and I also told them as soon as their tools were outside of the mine their money would be ready for them.'

(Record, pp. 312, 313).

This certainly overthrows any foundation for the statement that Hughes succeeded in having twenty men to quit work at the Glendale mine.

The petition states *(p. 41)* that

> "At the Hitchman mine, Hughes, according to his statements, succeeded in having enough men agree to join the Union to enable him to unionize the mine, and he was about ready to shut it down, which he also stated he would do, if the management did not recognize the Union."

This statement is predicated upon an allegation of the bill of complaint made in the following language:

> "And your orator says that while the said defendants have so far been unable to bring about or induce your orator's employees to

quit its service, still the said Hughes has recently stated to one of your orator's miners whom he was trying to induce to leave your orator's service and join the Union, that he, Hughes, had succeeded in having one hundred and twenty-five men at the Hitchman mine sign their names agreeing to become members of the United Mine Workers of America and that just as soon as he got twenty-five more names he was going to shut the Hitchman mine down."

(Record, p. 25).

This allegation is denied by the answers in direct and positive terms.

(Record, pp. 65, 80, 81).

And the answer denies that Hughes had any authority from the United Mine Workers or any organization connected therewith to do anything to induce the petitioner's employees to cease working for petitioner.

(Record, p. 80).

The evidence simply shows an idle declaration of Lee Rankin, who ceased to be a member of the Union several years ago, and an idle statement and vain boast of Hughes, who has not been brought before the court by process and who has in no manner made his appearance to this cause as to whom the suit ought to have been dismissed.

The testimony of petitioner as to this feature of the case appears in the record at pp. 414, 415, 429, 432, 470.

The pages of the record just referred to contain all the evidence as to this matter out of the twenty-odd witnesses introduced by petitioner, and this consists of an empty declaration of a person who for several years has not been a member of the Union and another person who was never brought before the court.

Will the Court hold all the officers and members of this labor organization responsible upon an idle declaration or vain boast, made on one or two occasions, of

in intention to do a thing which neither of the persons making it could possibly do, and which neither had any authority to do for the United Mine Workers as an organization?

On this point the learned Circuit Court of Appeals in its opinion in this case *(214 Fed. at pp. 708, 709)* said:

> "Paul Leonard, superintendent of the Richland mine, was introduced, and among other things testified that he had met a man by the name of Thomas Hughes on the Richland Coal Company's property, and had had a talk with him in regard to the organization; that Hughes told him that it was his purpose to orgainze the Panhandle District of West Virginia. Among other things, the counsel put the following question to him:
>
> 'Q. What did you understand him to say his meaning was when he said that he was there to organize the Panhandle District?
>
> A. Why, that he would make them join the United Mine Workers or tie them up, were the words he used to me."

Counsel also asked him the following question:

> 'Q. Did he (meaning Mr. Hughes) make any explanation as to what he meant by tying up the Panhandle?
>
> A. That they would organize us and we would recognize the Union.'

The witness further says:

> 'My understanding of it was that if the company did not recognize this union that the mines would be shut down.'
>
> This was a threat by one who was without power to execute same. Nowhere do we find any evidence tending to show that Hughes was authorized to shut down any of the mines of that vicinity. It should also be remembered that Leonard further testified that Hughes said nothing about plaintiff's mine.'

And in the same case *(p. 712)* the court further said:

> "The declarations of Hughes and Rankin

> are incompetent as against the organization, its officers and members, inasmuch as there is not sufficient legal evidence to establish the fact that the defendants as members of the United Mine Workers of America prior to and at the time of the institution of this suit formed a conspiracy; nor is there sufficient evidence to show that Rankin and Hughes were parties to such alleged conspiracy."

The petition further states *(p. 42)* that

> "At the Hitchman mine so great had been the disturbance created by the attempt to organize the men there that with the number the company could safely employ it was unable to fulfill its contracts for delivery of coal for the lake trade from its mine, and from ten to fifteen thousand tons of coal had to be bought elsewhere."

This statement in the petition does not comport with the following allegation made by the petitioner in its own bill of complaint:

> "After your orator started up non-union June 12th, 1906 * * * * despite their efforts, your orator was able to increase the number of its employees and to increase its business which is conducted successfully and peacefully and lawfully from that time until the present."
>
> *(Record, pp. 21, 22).*

The answers of respondents to this part of the bill is in this language:

> "And these respondents admit that plaintiff was able to increase the number of its employees and to increase its business, which it has conducted successfully and peacefully and lawfully from the time it started non-union to the present, but deny that this was done despite any efforts or acts of interference with the plaintiff's business on the part of these defendants or any of them."
>
> *(Record, p. 62).*

Nor does the above quoted statement contained in the petition comport with petitioner's own evidence. Its president, Edward T. Hitchman, in his direct examination was asked this question:

"How much time, if any has your company lost by reason of labor troubles since resuming work non-union in June, 1906?"

The witness replied: "None at all."

(Record, p. 254).

The petitioner ceased to run union on March 31, 1906, which was the end of the first quarter for that year and the output for that quarter was,—engine coal, 45,843.95 tons; commercial coal, 33,885.70 tons.

On June 12, 1906, the petitioner resumed its work of mining on a non-union basis, and on June 20th, 1906, the end of the second quarter, the output, engine coal was 21,249.10 tons, commercial coal 2,519.55 tons. The light tonnage is due to the fact that the mine only ran a very short time; for the third quarter ending September 30th, 1906, the output was 47,240.70 tons of engine coal, and commercial coal, 34,288.90 tons; for the fourth quarter ending December 31st, 1906, engine coal 52,909.70 tons, and commercial coal 45,638.15 tons, making a total of engine and commercial coal for the year 1906 of 285,557.75 tons.

(Record, p. 261).

The court's attention is respectfully directed to the report of the tonnage at the end of each quarter for the year 1907, disclosing an enormously large output for the third quarter ending September 30th, of that year.

These extraordinary large outputs relate to the period when it is claimed by the petitioner that its employees and mine operations were disturbed by the respondents.

The bill in this case was filed on October 24, 1907, and on that day a temporary restraining order was granted and on May 26, 1908, a temporary injunction was issued.

(Record, pp. 1, 41, 42).

As shown by the record *(p. 261)* among the largest tonnages of coal produced before or since the institu-

tion of this suit was during the quarter ending September 30th, 1907, just about three weeks prior to the issuance of the restraining order, which was engine coal 52,277.65 tons and commercial coal 39,662.05 tons.

Examine the total tonnage per year beginning with that of 1903, the first year petitioner began to run its mine as a union mine, and you will find in that year it was 130,281 tons; in the year 1904 it was 208,820.85 tons; in the year 1905 it was 266,341.65.

During these years it operated as a union mine, except during the first quarter of the year 1903, and the **total tonnage for these three years was 605,443.50 tons.**

Now, take the first five years it ran non-union. For the year 1906 the tonnage was 285,557.75; for the year 1907 it was 339,575.70; for the year 1908 it was 143,653.20; in the year 1909 it was 217,775.00; for the year 1910 it was 281, 559.20 tons.

The record discloses that there was an annual increase in the product of the mine from 1902 when it started up until and including the year 1907, when the output exceeded any other year.

In the year 1907 the output was 339,575.70 tons, and this is the year in which it is claimed and alleged by petitioner that the respondents' threatened to disturb its mining operations, and in which the suit was brought and in **which the temporary restraining order was made, and** the year to which all the admissible evidence relates.

Now, notice the increase in the product of the mine from year to year, beginning with 1903,

When the Mine Was Run as a Union Mine.

The increase of 1904 over the product of 1903 was 78,539.85 tons; of 1905 over 1904 was 57,520.90 tons.

We have admitted the tonnage for 1902, when the mine was run non-union because the mine did not run the full year.

Now notice the annual increase in the product during the time

When the Mine Was Run as a Non-Union Mine.

The increase of 1906, *the first quarter of which was run union*, over 1905 was 19,216.10 tons; of 1907 over 1906 was 54,017.95 tons; in the year 1908 the product was 195,922.50 tons less than in 1907, and 122,688.45 tons less than in 1906, the last year the mine was run union; the product for the year 1909 was 121,800.70 tons *less* than in 1907, and 48,566.65 tons *less* than in 1906, the last union year; but an increase of 74,121.80 over 1908; the increase in the product of the year 1910 over the year 1909 was 73,784.20 tons.

(Record, pp. 260, 261).

The production of the mine for the years 1906 and 1907 conclusively demonstrates that respondents did not interfere with the continuous and successful operation of petitioner's mine.

How could petitioner have produced a total output in the year 1906 of 285,557.75 tons, and in the year 1907 a total of 339,575.70 tons, more than in any other year of its history, from 1902 to the present time, if during these two years of 1906 and 1907 the respondents were all that time interfering with petitioner's employees and intermeddling in the operation of its mine?

The injunction (of a most sweeping and drastic character) went into effect on October 24, 1907, in the form of a restraining order and has ever since been in effect.

Do not these facts as to the tonnage of the mine in 1906 and 1907 clearly and satisfactorily convince us that the respondents did not in any manner disturb or interfere with the petitioner in the management, control, or operation of its mine during the entire period of time complained of?

II.

EVIDENCE IMPROPERLY INTRODUCED INTO THE RECORD BY THE PETITIONER.

Before entering upon the discussion of the merits of this case, we desire to purge the record of a great

deal of incompetent, immaterial, and irrelevant evidence.

All the testimony was received by the court subject to exceptions to be taken and passed upon at the final hearing.

(Record, pp. 480, 481).

Accordingly the respondents served with process to answer the bill, and who appeared and answered, submitted their exceptions in writing to all evidence, documentary and oral, which they regarded as improper.

These exceptions appear in the record *(pp. 222-247)* and each exception sets forth the ground therefor.

Although the learned Judge of the District Court based his decree, in part, upon this improper evidence, and while we have no apprehension that this Court will give this evidence any consideration in reaching its conclusion upon the case presented by the record, we direct attention to the parts of the record in which the objectionable evidence is found, *merely for the convenience of the Court*, thus enabling it more readily to examine those parts of the record wherein is found the testimony bearing on the issues between the parties.

Of course, we concede that the admission of improper evidence into a cause tried by the Court without a jury, as in this case (in equity), is no ground for reversal. The controlling inquiry here is whether there is sufficient competent evidence in the record to sustain the decree of the District Court, the same question that was before the Circuit Court of Appeals and was by that court determined against the petitioner.

Ruckman vs. Cory, 129 U. S. 387, 32 Law. Ed. 728.

Mammoth Mining Company vs. Salt Lake Foundry & Machine Company, 151 U. S. 447, 28 Law. Ed. 229.

Miller vs. Houston City Street Railway Company, 55 Fed. (C. C. A. 5th Cir.) 366.

Kleiman vs. Geiselman, (Mo.) 21 S. W. 796, 799.

Salt Lake F. & M. Company vs. Mammoth Mining Company, (Utah) 23 Pac. 760.

Sawyer vs. Campbell, 130 Ill. 186, 22 N. E. 458, 464.

Giles vs. Hodge, 74 Wis. 360, 43 N. W. 163, 164.

Richardson vs. Doty, 25 Neb. 424, 41 N. W. 282.

Ward vs. Parlin, 30 Neb. 376, 46 N. W. 529.

Certain portions of this improper testimony appear in the printed record, and the other parts consist of original documents transmitted to this court under an order duly entered in the cause directing their transmission here.

The Improper Evidence Contained in the Record

relates to matters occurring with reference to the operation of petitioner's mine before it began to carry on its mining business upon a non-union basis, and some other matters to be subsequently noted in this part of the brief.

The petitioner began to operate its mine non-union on June 12th, 1906, *(record, p. 5)* and the conspiracy is alleged to have been formed and other wrongful acts done and imputed to respondents by petitioner's bill of complaint, *after* it decided to resume its mining operations on a non-union basis.

Therefore, the alleged conspiracy and other alleged wrongs imputed to respondents occuring after June 12th, 1906, may be properly treated as evidence, if occuring prior to the institution of the suit, but any and all matters relating to respondents or any of them as members of this Labor Union shown to have occurred *prior* to June 12th, 1906, is necessarily immaterial and irrelevant, and only encumber the record and confuse us in our examination of the evidence.

That these matters occurring prior to June 12th 1906, are immaterial and have no bearing on the question whether or not respondents formed a conspiracy to "unioize" petitioner's mine is quite obvious upon reason and authority.

Commonwealth vs. Meserve, 154 Mass. 64, 27 N. E. 997.

The parts of the printed record in which this immaterial evidence occurs appear on the following pages thereof: 250-4, 255-6, 258, 266, 268-9, 273, 275-9, 282-5, 287-9, 298-304, 308, 313-330, 331-333, 343-356, 358-61, 369, 375-82, 383-7, 443-51, 455-8, 462-6, 467, 468.

The irrelevant evidence consists in large part of documents, many of which are referred to in "Plaintiff's Index", containing 453 pages. This "Index" relating to this class of evidence begins at page 114 and extends to page 142, and beginning with this page and extending to the end of the volume appear excerpts taken from these documents.

This immaterial evidence is made the subject of respondents exceptions as shown by the record *(239-240, statement of issues involved in the case)*, Numbers LXXII-CXIV *(pp. 240-246)*.

There is considerable immaterial or irrelevant evidence brought into the record on the cross-examination of respondents' witnesses, (Record, pp. 502-5, 542-3, 545-8, 550-4, 560-3, 565, 576-580, 582-5, 596-617), and went in under exceptions.

A great deal of this evidence relates to matters entirely foreign to any issue between the parties raised by the pleadings, other parts of it relate to various isolated matters occurring long after the institution of this suit, and at different points in the United States, and in no wise bear upon the issue and none of it has any tendency to throw light upon any question properly arising in the cause, as an examination of the parts of the record here referred to clearly discloses.

III.

GRAVAMEN OF THE BILL AND ISSUES INVOLVED IN THE CASE.

A careful examination of the record *(pp. 2–31)* discloses that the

Gravamen of Petitioner's Bill of Complaint

consists of the charges concisely stated that the

> United Mine Workers of America and its subordinate associations by its officers, agents, employees and servants have sought and are now seeking by enticement, threats, and intimidation, *but so far without physical violence, (a)* to cause petitioner's employees to leave its service and to cause others who have engaged to enter its service to break their engagement and not work for petitioner, *(record, p. 5)* that *(b)* the United Mine Workers and its subordinate associations is an unlawful organization with certain expressed objects, some lawful and others unlawful, as indicated by certain excerpts from its constitution *(record, p. 6–15)*; that *(c)* the respondents have combined and formed themselves into a conspiracy under the name of The United Mine Workers of America to unlawfully persuade, entice, and procure petitioner's mine workers to break, violate, and disregard their several contracts with petitioner, *(d)* for the avowed purpose of compelling it to unionize its plant and *(e)* have formed a conspiracy to compel by threats and intimi-

> dation petitioner's employees to join the Union *(record, pp. 15, 16); (f)* that the United Mine Workers of America as an organization or association are in their constitution violating the common and statutory laws of the State of West Virginia, as well as the constitution of said State *(record, p. 25);* that *(g)* unless enjoined from so doing the respondents acting individually and as conspirators under the name of the United Mine Workers of America will by inducement, persuasion, or coercion in some form or other shut down the petitioner's mine, compel it to recognize the Union in the transaction of its business and compel petitioner to carry on its business in such a manner as respondents dictate. *(Record, pp. 26, 27).*

The *gravamen* of the bill, as above set forth, is taken from *allegations of a most general nature*, unaccompanied by any averment of time, place or circumstances.

The allegations upon which the statement as the *gravamen* of the petitioner's complaint is predicated, as shown by the record *(pp. 5, 6, 15, 16, 25, 26, 27)*, seem to us scarcely to constitute allegations of facts, but appear to be more in the nature of conclusions of law or conclusions of fact.

The only overt distinct acts alleged in petitioner's bill of complaint that may properly be considered issuable facts are those appearing in the record (pp. 17-20, 22, 23, 25), and it is assumed that these specific averments of facts are to be taken and read in connection with the general allegations of the bill imputing to the respondents the charges therein made against them.

It will be noted that wherever anything clearly and properly of an unlawful character is alleged against the respondents that it is denied by their answers appearing in the record at pp. 53-84.

In the consideration of the petitioner's bill of complaint we will first discuss the various matters above

set forth in the gravamen thereof, and we will then bring to the Court's attention the alleged specific unlawful acts imputed to a part of the respondents as they appear in the record and which are positively denied by the answers.

A proper and orderly argument of this case makes it necessary that the issues between the parties be clearly defined and

The Issues Raised by the Pleadings in This Cause

must be determined alone by the pleadings therein; that is, all material facts averred in the bill and denied by answer necessarily create the controversy now before the Court for its determination.

In our Original Brief on the Merits (p. 7), we have submitted *four* separate matters as our conception of these issues based upon the record.

In this Supplemental Brief, for the convenience of the Court, we have enlarged upon our statement of these issues by rearrangemtnt thereof, as shown by the alphabetical order contained in our statement of the matters constituting the *gravamen* of the petitioner's bill of complaint; and the following are the issues as thus extended:

(a)

Whether or not The United Mine Workers of America by their representatives have sought and are now seeking by enticement, threats, and intimidation, *but so far without physical violence,* to cause petitioner's employees to leave its service and to cause others who have engaged to enter its service to break their engagements and not work for petitioner.

(b)

Whether or not the United Mine Workers of America and its subordinate associations is in any of its expressed objects unlawful as indicated by any parts of its constitution or preamble thereto.

(c)

Whether or not the respondents have combined and formed themselves into a conspiracy under the name of The United Mine Workers of America to unlawfully persuade, entice, and procure petitioner's mine workers to break, violate, and disregard their several contracts with petitioner.

(d)

Whether or not the respondents at the time of the institution of this suit and after petitioner began to run its mine non-union in June, 1906, were engaged in a conspiracy to compel the petitioner to unionize its plant against its own wish or desire.

(e)

Whether or not the respondents at the time of the institution of this suit had formed a conspiracy to compel by threats and intimidation petitioner's employees to join the United Mine Workers of America.

(f)

Whether or not the United Mine Workers of America as an organization or association are in their constitution violating the common and statutory laws of the State of West Virginia as well as the constitution of said State.

(g)

Whether or not, unless enjoined from so doing, the respondents acting individually and as conspirators under the name of The United Mine Workers of America will by inducement, persuasion, and coercion in some form or other, shut down the petitioner's mine, compel it to recognize the union in the transaction of its business and compel petitioner to carry on its business in such manner as the respondents may dictate.

The Court's attention is respectfully directed to the evidence in this case properly applicable to the issues raised therein. We have particularly pointed out in

this supplemental brief (ante pp. 18-a, 18-d), in addition to what has already been stated in our Original Brief on the Merits, that there is quite a volume of evidence entirely foreign to any issue raised by the pleadings in this cause. We emphasize the statement that the issues as here defined are all-comprehensive, and a critical examination of the bill and answer thereto discloses that every issue between the parties is comprehended in the statement above made thereof.

It is perhaps needless to remind the Court that as stated in the bill *(record, pp. 4, 24)*, and as shown by the evidence of the petitioner *(record, pp. 255, 256, 273)* the petitioner ran its mine non-union from April 1, 1903, until April 1, 1906; or that any acts or conduct imputable to the respondents bearing upon the issues between the parties must relate to the period subsequent to the time that petitioner started to run its mine non-union which was on June 12, 1906, to the time of the institution of this suit which was October 24, 1907.

IV.

ARGUMENT.

(a)

The United Mine Workers of America by their representatives or otherwise have not sought and are not now seeking by enticement, threats, and intimidation to cause petitioner's employees to leave its service and to cause others who have engaged to enter its service to break their engagements and not to work for petitioner.

The attempt of the petitioner to prove the affirmative of this issue *(a)* was wholly futile. The attention of the Court is respectfully directed as to these phases of the case to our Original Brief on the Merits, beginning with the last paragraph on page 33 and ending with the second paragraph thereafter on page 34.

The only part of the record in any wise whatsoever having even a tendency to bear on this issue is

that which appears in the testimony of the witness, E. C. Pickett, the superintendent of the Hitchman and Glendale Mines, (record, pp. 310, 312, 313), and the pertinent part of this witness's evidence has already been set out in this supplemental brief, *(pp. 10, 11)*.

It will be observed from this testimony that the respondents did not entice the employees of the petitioner to quit work, nor did they entice any of the employees of the Glendale Coal Company to quit work, but that certain of the employees of the Glendale Coal Company were *discharged by its superintendent* or quit the employment of that company on their own account because they desired to become members of this Labor Organization.

But counsel for the petitioner in a strenuous effort to make out a case against these respondents states that the Hitchman Coal & Coke Company, a corporation, and the Glendale Coal Company, another and different corporation, under the same management, was treated by the petitioner as one concern and the petitioner's bill alleges this fact; *(record, p. 21)*, and the bill also alleges that these respondents and each of them treated the two mines as a single concern, *(record, p. 21)*, which is denied by the answer of respondents wherein they say that "they deny that said defendants and each of them treated the two mines as a single concern and have so dealt with plaintiff as in said bill is alleged." *(Record, p. 61)*. There is no proof whatever that these two mines were treated by these respondents as a single concern. But, suppose that the petitioner did treat the two mines as a single concern? Would this allow the Hitchman Coal & Coke Company, a separate and distinct person from the Glendale Coal Company, to make complaint in this suit for any wrong sustained by the Glendale Coal Company or for any injury suffered by it from acts imputable to the respondents, even if such acts had been proved? To ask this question is to answer it in the negative. It is elementary law that a court will not

entertain a complaint for the redress of grievances not suffered by the plaintiff himself.

(b)

The United Mine Workers of America and its subordinate associations, is not in any of its expressed objects unlawful as indicated by any parts of its constitution or preamble thereto.

The legality of this Labor Union must be determined by the objects or purposes of the organization.

IN OUR ORIGINAL BRIEF ON THE MERITS, *(p. 35)*, we have stated the general purpose of this organization which is fully supported by the record.

In addition to what is there set forth, we especially note what is stated in the answer *(record, pp. 67, 83)* relating to this feature of the organization wherein it is averred that

> its object is to protect labor and promote its welfare by securing, if possible, through lawful methods higher wages, shorter hours, and better conditions at the mines for the safety and health of the employees, and in various other lawful methods aid the coal miner in the prosecution of his employment, and provide the necessaries of life for himself and family, and thus make him a more useful factor in society as a citizen of the state.

And also, as stated by one of the witnesses for petitioner *(record, pp. 362, 363)* who formerly belonged to this Labor Union,

> to equalize the opportunities among the miners and not discriminate in favor of one as against another where the conditions are the same.

And further, as stated by the President of the United Mine Workers *(record, pp. 574, 575)*,

> to raise the standard of wages to such a point that it will provide the miners and their families not only with the necessaries but with some of the comforts of life, to reduce the

> hours of labor to that point where they are not required to work any longer than necessary to produce all the coal that will meet the requirements of the nation, and to improve the working conditions of the men in the mines to the highest possible standard that artificial means can make those coditions good; to educate the Mine Workers in order that they may understand their own wants and requirements, so that they will know how to secure what belongs to them, by intelligent methods, and to do everything that will make of them better citizens and help, of course, to make of the nation a better nation of people.

And in this connection the Court's attention is directed to what is further stated by the President of the organization in answer to a question appearing in the record *(p. 574)* propounded to him by counsel for the petitioner, the answer thereto beginning at the bottom with the last paragraph of that page and concluding on the next. *(P. 575).*

In our Original Brief on the Merits we have discussed at some length the general proposition that Labor Unions are lawful, to which the Court is respectfully referred at pages 13-18, 82-90.

We have also discussed in our Original Brief *(pp. 91, 92)* the particular lawful purposes for which labor may organize, and also *(pp. 93, 102)* the constitution and purpose of the United Mine Workers, and also *(pp. 103 118)* the means adopted to carry into effect these purposes.

It seems to us incontrovertible that such a Labor Union as that of the United Mine Workers of America cannot be held by the courts to be unlawful. It is the policy of our Government to promote the welfare of the man who labors, whether in the mine, the factory, on our lines of transportation, on the farm or elsewhere.

Our own courts, Federal and State, recognize and enforce this policy, and the cooperation of the laboring

man with his fellows in the form of organized effort to better his condition is left to his judgment, and in the exertion of these efforts he will not be restrained by any agency of the Government so long as he does not injure or attempt to injure the lawful rights of property.

The predominant sentiment of the American people is with the laboring man in all his lawful endeavors to improve his opportunities to elevate his standard of living—to obtain for himself and family the comforts of life, to make his environments safe and sanitary, to secure such compensation as will enable him to properly clothe and educate his children and thus inspire them with a love of country and an attachment to our institutions, and thus make for the general uplift of our whole country.

The prime agency in bringing about results of this character touching the condition of the laboring man is that of organization and to hold such an organization as the one now before the Court, unlawful would deal a blow to the progress of this age that might be accompanied with disastrous results in the end. We cannot arrest, if we were to try, the march of progress that this part of our great citizenship is now making, and, if we are to realize the hope of the founders of our Government, we must not attempt to do so. The laboring man knows that his situation is very little above that of serfdom if he cannot contract and act collectively with his fellows as a means of promoting his standard of wages. The collective wisdom and foresight of organized labor has prescribed, and will continue to do so in this country, the standard of compensation which the laboring man must receive. The general diffusion of knowledge by means of our educational facilities has enabled the common laborer to understand and fully appreciate his usefulness and power and his indispensable aid in promoting the growth of his own country. We are no longer dealing with the ignorant and illiterate man in the field of

labor, but a man of intelligence and, in a large measure, a sense of independence, and we must therefore extend to him the same right to organize his agency of usefulness that we extend and secure to capital.

In the language of Circuit Judge Caldwell in his dissenting opinion in *Hopkins v. Oxley Stave Co.*, 83 Fed. 929,

> "In this country the right of wage earners and others to associate together and act collectively is not a boon granted by the Government. It is not derived from the constitution, statutes, or judicial decisions. It antedates the constitution. It is a natural and inherent right. It is the natural weapon of weakness. Its only enemies are despots, and those who would oppress the weak in the absence of the protection afforded them by organization and combined action. This right of men to combine together for lawful purposes necessarily carries with it the right of combined action. Of what utility is organization without the right of collective action? Collective action is implied in the very term "organization". Organization has no other object. Man, by nature, is a social being. Association and collective action, by those having common interests, for their protection and material, moral, and mental improvement, is a natural instinct. The British Parliament, whose power of legislation is unrestrained, and the English courts, in the beginning of the struggle between capital and labor, supposed that they could successfully permanently suppress this instinct; but, happily for mankind, the natural rights of man and the laws of nature proved more powerful and enduring than the acts of Parliament and the judgments of courts."

And as said by Mr. Justice Holmes in Vegelahn v. Guntner, 167 Mass. 92, 57 Am. St. Rep. at pages 448, 449, especially at page 449,

> "it is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition

> means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to be futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental conditions of life are to be changed. One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way."

The observation contained in these dissenting opinions are expressive of the views of the courts generally, both State and Federal, with reference to the right of laboring men to organize for their mutual benefit, and to secure those advantages which they cannot obtain in the absence of collective action.

We therefore submit that the United States Circuit Court of Appeals for the Fourth Circuit was clearly right, both upon reason and authority, in holding that this labor organization is lawful, and that the district court was in error in declaring a different judgment.

Counsel for the petitioner in the argument in this case *(pp. 78, 79)* refer to and quote from the case of United States vs. Weber et al (C. C. W. D. Va.) 114 Fed. Rep. 950, 953, as announcing the doctrine that the ultimate purpose of the United Mine Workers is not legal. This is *obiter*, because in that case the defendants, Weber and Haddow, were brought before the court on attachment for contempt in violating an injunction order issued in a case of which the court had jurisdiction. The only question there was whether or not the two defendants had violated the order of the court and were therefore guilty of contempt. Whether or not the

United Mine Workers of America, of which they were members, was a lawful Labor Union was in no manner before the court, and whether they were members of such organization was not material upon the inquiry whether they had violated the injunction order. It was sufficient for the purposes of the case that the order had been entered and that the defendants had violated it. No feature of the case, as reported, made necessary the inquiry and determination whether or not the United Mine Workers of America was unlawful. The court evidently went beyond the scope of the case in making the statement referred to in its opinion. As a modern decision, as to this *obiter dictum*, it is isolated and without support, either upon reason or authority.

Perhaps it may be well to again refer to the obligation which a member of this labor union takes upon joining it *(record, p. 15)* and to which petitioner's counsel attach great importance as well as the learned District Court in holding this ogrnaization unlawful.

We have already given some consideration to this phase of the case in our Original Brief *(pp. 120 124)*, and here call the attention of the Court to some pertinent authority and offer further reasons why this obligation does not render the Union unlawful.

> *Schneider vs. Local Union No. 60, Association Journeymen Plumbers etc., of the United States and Canada, 116 La. 270; 40 So. 700.*

The above was an action by Schneider and Shekeler against Local Union No. 60, United Association, Journeymen Plumbers, Gas Fitters, Steam Fitters, Steam Fitters' Helpers of the United States and Canada, by separate suit which was subsequently consolidated and tried together.

The action was brought for the recovery of damages for the illegal suspension of the plaintiffs from the defendant Union, resulting in a judgment in their favor

from which an appeal was taken to the Supreme Court of Louisiana.

As to the purposes of the organization the court in the course of its opinion said that

> "the declared purpose of the members of the Union in effecting their organization is to protect themselves from unjust and injurious competition, and to secure, through the power of organization, a steady demand and fair compensation for their labor and a position in society to which as wealth producers and citizens they are entitled."

The pledge required of all initiates and taken by the plaintiffs in the action is as follows:

> "I, ———— ————, in the presence of the members of this association, do truly promise and pledge my word of honor that I will yield obedience to all laws and legal summons that may be sent, said, or handed to me. I will not do any act in any way prejudicial to the best interest of this association, but will at all times endeavor to promote its prosperity and usefulness. I will at all times assist members of this association to the extent of my ability, defend them when unjustly treated or slandered, and cultivate for each and every member the warmest friendship and brotherly love. I will assist unfortunate or distressed members to procure employment and to secure just remuneration. I do further promise that I will never reveal any of the signs or workings of this association that may be now or hereafter confided to me, except in a lawful and authorized manner. I take this obligation voluntarily, without any mental reservation, and bind myself until death or honorable withdrawal, under the penalty of the scorn due to moral perjury and violated honor, as one unworthy of trust or assistance."

The General Assembly of Louisiana passed an act providing for a Board of Examiners of Plumbers for

the City of New Orleans, and pursuant to its provisions, the mayor named three master and two journeymen plumbers to constitute this board, and the board elected a plumbing inspector. The Union instructed the plaintiffs as members of this board to vote for its candidate for inspector, but the plaintiffs, although members in good standing of Local Union No. 60, of the United Association of Plumbers, etc., ignored the recommendation of their Local Union, and voted for other men for the position of inspector, contrary to the resolution and request of their organization, and because of this action they were suspended.

The Local Union insisted that the plaintiffs had violated their pledge and therefore suspended them from membership, and the plaintiffs brought this action for damages in which an injunction was granted reinstating the plaintiffs as members of their Local Union.

The Supreme Court in affirming the decision of the court below decided that

> "The obligation or pledge which an initiate in a labor union is required to take is to be construed with reference to the declared purposes of the organization, and is binding only in so far as those purposes are lawful and are to be attained by lawful means, and when such union attempts the accomplishment of those purposes by unlawful means, the initiate or member may properly say: 'I entered into no such contract.'"

(c)

The respondents have not combined and formed themselves into a conspiracy under the name of The United Mine Workers of America to unlawfully persuade, entice and procure petitioner's mine workers to break, violate and disregard their several contracts with petitioner.

The petitioner having attempted to bring the instant case before this Court by appeal on the ground

that it involves certain Federal questions, among which is

> that the United Mine Workers is a combination or conspiracy in restraint of trade within the meaning of the Sherman Anti-Trust Law,

this feature of the case was discussed in our Original Brief *(pp. 149, 155)*, but no Federal question having been raised by the pleadings of the petitioner this court *dismissed the appeal* but awarded a writ of certiorari. Of course, it will be conceded that only such questions as necessarily arise upon the pleadings will be considered by the Court on this writ.

It is alleged by the petitioner in its bill *(record p. 6)* that the United Mine Workers as a Labor Union was organized in 1890 and that respondents were members of it, even while petitioner was running its mine on a union basis under contract made by members of this organization beginning in 1903, and ending May 31, 1906.

It necessarily follows, therefore, as these respondents were already members of the organization before and at the time petitioner began to run its mine non-union, that they did not combine and conspire under the name of the United Mine Workers for the purpose of persuading, enticing or procuring petitioner's mine workers to break, violate or disregard their several contracts with the petitioner. It therefore logically follows that to sustain this charge of conspiracy the bare fact of membership in this organization must *per se* constitute a conspiracy, and every two or more persons belonging to this organization must necessarily be conspirators.

If this position taken by counsel for petitioner is sound, then any two or more members of practically every labor union in this country must be taken and treated as conspirators.

That a mere combination of persons may constitute a conspiracy, such combination must be for an unlawful purpose.

Pettibone v. United States, 148 U. S. 197, 37 Law. Ed. 419.

But it is alleged that these respondents formed themselves into a conspiracy under the name of The United Mine Workers of America, *to persuade, entice, and procure petitioner's mine workers to break and violate their several contracts with petitioner*, and therefore respondents, it is urged, are engaged in a *conspiracy*.

It is alleged by petitioner in its bill, naming all of them as defendants thereto,

> "that each and all of the said defendants * * * have agreed, confederated, combined and formed themselves into a conspiracy, under the name of The United Mine Workers of America, to unlawfully persuade, entice, and procure your orator's miners or mine workers, * * * to break, violate, and disregard their several contracts with your orator," etc.
>
> *(Record, p. 16).*

This allegation is positively denied by all the respondents served with process in this cause, *(record, pp. 57, 58, 73)*, the other respondents, *John Mitchell*, W. B. Wilson, and Thomas Hughes, *(record, p. 208)*, not being at any time served with process to answer therein.

The proof adduced by petitioner wholly fails to establish the conspiracy thus charged against the respondents.

If the respondents *did* form such conspiracy, they must have had knowledge before and when the suit was brought and at the time that alleged conspiracy was formed, that petitioner had contracted with its various employees as alleged in its bill *(record, p. 5)*, and shown in evidence *(record, pp. 264, 265)*, and accordingly the petitioner alleges in his bill that

> "each of said defendants is fully aware that your orator is operating a non-union mine; * * * that its employees are non-union; that

said employees are required at the time of entering service to agree not to become connected with the Union, while employed by your orator, and that if they do join the Union their employment with your orator shall cease."

(Record, p. 16).

This allegation of the bill is clearly, distinctly, and positively denied in the answers, *(record, pp. 58, 73)*, and we submit that the proof falls far short of establishing the truth of this allegation.

As to the evidence that these respondents did not know of the existence of this contract, we refer to our Original Brief on the Merits *(pp. 48–51)*.

If there was a *conspiracy* formed to induce the petitioner's employees to break their several contracts, every man who entered into such a conspiracy must have had knowledge of its purpose in order to participate therein; and the bill alleges *(record, p. 16)*, that each and all of these respondents formed themselves into this conspiracy (not some of the respondents, but *all* of them, giving their names); and of course, this, not being true, is denied by the answers.

(Record, pp. 57, 58, 73).

These respondents must have had knowledge of petitioner's contract with its employees, if they were in a conspiracy the object or purpose of which was to cause the petitioner's employees to break their contracts with petitioner.

Clemitt v. Watson, 14 Ind. App. 367, 42 N. E. 367.
United States v. Frisbie, 28 Fed. 808.
United States v. Cassidy, 67 Fed. 698.
People v. Mather, 4 Wend. (N. Y.) 229, 21 Am. Dec. 122.

The record shows that the decree entered in this cause by the District Court on January 18th, 1913 *(pp. 694–701)*, enjoined as conspirators to cause the petition-

er's employees to break their several contracts with it the following named respondents:

> John Mitchell, T. L. Lewis, W. B. Wilson, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka, Lee Rankin, Thomas Hughes, *(record, p. 694)*, John P. White, Frank J. Hayes, Edwin Perry, John Moore, John Albasin, William Roy, and William Applegarth. *(Record pp. 698-700)*.

Many of these respondents, so far as the record shows, did not even know that such a coal plant as that of petitioner existed, and of course had no knowledge or information that petitioner had a contract with each of its employees not to join The United Mine Workers of America.

It is certain that the following named respondents did not know that petitioner had such a contract with each of its employees as that mentioned in the bill *(record, p. 5)*, and offered in evidence. *(Record, pp. 264, 265)*.

> John Mitchell, T. L. Lewis, W. B. Wilson, D. H. Sullivan, George W. Savage, Lee Rankin, John P. White, Frank J. Hayes, Edwin Perry, John Moore, John Albasin, William Roy, and William Applegarth.

Nearly all of the respondents above named, with the exception of probably one or two did not even know that such a coal plant existed as that of the petitioner. It is flatly absurd to say that the above named respondents formed themselves into a conspiracy under the name of The United Mine Workers of America to induce the employees of the petitioner to break their several contracts with it.

The respondents, William Green, A. R. Watkins, and John Zelenka were only at petitioner's mine once between June 12, 1906, when petitioner began to operate

its mine non-union, and the granting of the restraining order in October, 1907, *(record, p. 286)*, and this was the occasion of their calling on the superintendent at his office to talk with him on the subject of the petitioner re-unionizing its mine, and the conversation between the superintendent and these parties was gentlemanly and friendly; and the superintendent states *(record, p. 297)* that he told the respondents Green, Watkins, and Zalenka of the contract between the petitioner and its employees that the latter were not to become members of The United Mine Workers' Union and that petitioner was to run its mine as non-union. It is quite clear that the last three named respondents did not thereafter do anything to disturb the petitioner in the operation of its mine in any manner whatsoever. The only respondent that did visit the mine of the petitioner, and that too in a peaceable and law-abiding manner, was Thomas Hughes, and what he said and did is set out in the record, (pp. 297, 305-313, 330, 332-3, 336-7, 342, 356-7, 365-6, 370-2, 382-3, 386-7, 429-435, 437-443, 452, 458-460, 466-469, 471).

An examination of the record does not very clearly disclose whether Hughes had any notice of the existence of this contract or not, but that he did, is quite problematical. Indeed, there is no such a disclosure by the record as satisfactorily shows knowledge on his part of this contract.

But, be this as it may, it is incontrovertible that there was no conspiracy between Hughes and the other respondents to cause petitioner's employees to break their several contracts, so as to impute the acts and declarations of Hughes to them or to bind them by such acts and declarations; and, therefore, petitioner's charge under this issue *(c)* is not sustained by the record and the Circuit Court of Appeals so held as indicated in its opinion.

(Record, p. 712).

Efforts of Hughes unsuccessful to induce the few of petitioner's employees interviewed by him to join the Union.

The record discloses that petitioner at the time this suit was instituted had in its employ from about 160 to 175 men, and *it cannot employ more* than from 175 to 200 men, although the superintendent says there was then in its employ about 300 men. *(Record, p. 25).*

The record also discloses that the efforts of Hughes to induce the employees of petitioner to join the Union were of no avail whatever, and of the various employees of petitioner examined as witnesses (record, pp. 301, 313, 319, 327, 336, 343, 364, 375, 379, 428, 436, 439, 443, 447, 451, 455, 465, 467), in all some sixteen or seventeen, not one of them was affected by the statements or interviews of Hughes, and, so far as the record discloses, not a single man employed by petitioner expressed or even indicated any intention to quit petitioner's employment or to join the United Mine Workers of America.

The record in this case actually discloses no present injury or damages resulting or threatened from any acts imputable to the respondents.

The suit and injunction issued therein is predicated upon an alleged anticipated or threatened injury. In a proper case this ground for injunctive relief is conceded by respondents.

The threatened injury must be impending and avertible only by the protecting preventative process of injunction.

Truly vs. Wanzer, 5 How. (U. S.) 141, 12 Law. Ed. 88.

Missouri vs. Illinois, 180 U. S. 208, 45 Law. Ed. 497.

East Saint Louis Connecting Railway Company vs. Jarvis, 92 Fed. (C. C. A.) 721, 735.

No act of any sort relating to the employees of peti-

tioner is imputable to any of the respondents, except said Hughes, who has never been served with process and never appeared to the cause to make defense thereto, and yet he is perpetually enjoined from doing all the various acts charged against respondents in the bill as his alleged co-conspirators.

The petitioner's case, as made on the face of its bill, is quite another and different one from that made after the answers filed thereto denying its material allegations imputing the many wrongful acts to the respondents therein stated and the evidence brought into the record in support of the petitioner's case.

The construction of the several contracts of petitioner with its employees.

The contract made by petitioner with each of its employees upon entering its service is in these words:

> "I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read."

The contract is one of indefinite hiring with the right to quit at any time on the part of the employee

and to discharge him at any time on the part of petitioner.

While this contract is not exactly the same as the one described in petitioner's bill *(record, p. 5)*, but was adopted by the petitioner and went into effect January 1, 1908, for the purposes of this suit, let us treat it as the one mentioned in the bill.

The material part of the contract with which we are here concerned is that which provides as to the employee that he *will not become a member of the United Mine Workers of America while an employee of the petitioner, and if at any time he wants to become connected therewith, he agrees to withdraw from its employment.*

It will be observed that this contract gives the employee the option of remaining in the employment of the petitioner, or if he desires to become a member of the United Mine Workers of America to withdraw from its employment. If he should become a member of this Labor Union, he may still remain with and work for petitioner with its consent. It necessarily rests with the petitioner whether or not he will retain him in its employ.

Under this contract, the employee may discuss with representatives of this Labor Union the advisability of becoming one of its members, without violating the contract, but he can take no steps amongst its employees while in the employ of petitioner to unionize its mine without its consent. There is nothing in the contract to prevent an employee from having interviews with any representative of the United Mine Workers and considering with him the advantages, if any, of becoming connected with such Union. How is the employee to know while in the employment of petitioner whether or not he *does* want to join the United Mine Workers of America, and he has this right under the contract, unless he meets members of the United Mine Workers of America and confers with them as to the objects of the Union

and the benefits and advantages conferred upon him by membership in it? Does the right to have these interviews and conferences thus conferred upon the employee under the contract preclude a representative or member of the Union from interviewing or conferring with the employee, in imparting to him information regarding the nature and objects of this Labor Union?

The right to obtain information concerning the United Mine Workers of America from any source whatever is not affected by the contract. This is left open to the employee and he may freely exercise this right. If this be true, how and upon what principle can any representative of this Labor Organization be enjoined from visiting an employee of petitioner, and from holding conversations and interviews with him, and thus present to such employee the various provisions of the constitutions of the national, district, and sub-district organizations, as well as the advantages to such employee of membership therein?

Let us not forget that though a part or all the employees of petitioner were to join the United Mine Workers of America, this does not "unionize" its mine. It must *itself enter into contractual relations* with the organization *to become a unionized mine.*

The mine is *now* for most purposes a union mine, except that it has not contracted with its men collectively, nor for a definite period, nor with them as members of the organization.

But *how* can it *now* be *practically on a union basis?* The following are the reasons why

Petitioner's mine is now practically on a Union basis:

First: It pays the same scale of wages to its non-union men that it paid to them while it ran its mine union.

(Record, pp. 263, 284, 363).

Second: There is no difference in the conditions upon which each man is employed, except that they are

now employed by individual contracts for an indefinite term, and under the Union contracts were collective and for a definite term.

(Record, pp. 254, 285).

Third: Conditions are met under the non-union basis as when the mine was operated on a union basis.

(Record, p. 363).

Fourth: Petitioner's men have a committee to settle their grievances as when the mine was run non-union.

(Record, p. 363).

That petitioner is now practically on a union basis, the evidence of its own witness, William M. Daugherty, one of the men that has been in its employ in and from 1902 to the present time, is here quoted:

"Q. When a mine is run non-union what does that mean? What do you understand by that, Mr. Daugherty ?

A. Well, I have not worked at very many non-union mines. The one I am working at now is run on the same basis that it was when the United Mine Workers were in power there.

Q. Is it a non-union mine?

A. Yes, sir.

Q. Now, you say that it was run pretty nearly on the same basis, did you say, as the others?

A. Yes, sir.

Q. What do you mean by saying "It is run pretty nearly on the same basis as the others?"

A. I mean that we get the same price for our labor; we have the same conditions that are met in the same way; we have a committee and if we have any grievances we take it up under the same style as we did when we were in the United Mine Workers.

Q. You are practically continuing the same operations that you had when you were a part of the United Mine Workers?

A. Yes, sir.

Q. Then, is there any complaint to you people from the company on account of continuing that system?

A. Not to my knowledge.

Q. Now, if you are continuing just as you did before what difference can you find in the matter of running non-union and running union in the conditions and methods of doing business at the Hitchman mine?

A. Well, one method is, since we have been running non-union we have never had any trouble of any kind and the mine has never been stopped.

Q. You mean when you have been running non-union you have run continously?

A. Yes, sir.

Q. And when you ran union you had some strikes?

A. Yes, sir.

Q. Is that practically the only difference between the two conditions—the one that prevailed when you had the union and the one that prevails when you have no union?

A. Well, there may be some other little difference.

Q. There may be some other little difference. Now, what would you say that consists in?

A. Well, it consists in this: That whenever we run out of an agreement we have the power to make our own agreement and go ahead and work. As it was before we had to wait for the officials to make it.

Q. You meet now and among yourselves you make an agreement. Haven't you been running at practically the same price all the time?

A. Yes, sir.

Q. Then you have had no agreement to make as to your scale of wages since you started to run non-union? Is that right?

A. Yes, sir; there have been agreements made since then.

Q. Was the scale lowered or raised?

A. Well, the scale was—whatever the United Mine Workers' scale paid that is what we got.

Q. Then it was consented to by the operator and he was just conforming to the scale of the United Mine Workers?

A. He was just to pay the scale, yes, sir; whatever it was.

Q. And then also as to the conditions prescribed by the United Mine Workers?

A. Yes, sir.

Q. About the only difference now and when you ran union is that you don't have the advice of the officers of the United Mine Workers, whereas before you did have it. Is that right?

A. That is right."

(Record, pp. 363, 364).

It is not material to inquire why petitioner determined to run its mine non-union.

But if such inquiry were material, the grounds for so doing are set forth in the following answer made by petitioner's superintendent as a witness in this case to the question why his company insisted upon running non-union:

> "We can get better results. We don't have the shut-downs and the annoyances to which we were subjected through no cause of ours or our men either, when we were running union."
>
> *(Record, p. 297).*

See further on this matter the evidence as disclosed by the record. (Page 256).

When the mine was run union, all the mine workers were employed by one contract for all the men and

they were members of the union. See, as indicating in a general way, the form of this contract, pages 280 and 281 of the record.

But if petitioner had the right to employ none but non-union men in its mine, it is not material to inquire into its reasons for its abandonment of the union, or why it decided to operate its plant non-union. It is sufficient, so far as its right to do so under the law is concerned, that it decided upon a non-union policy for the operation of its mine beginning as it did in June, 1906.

That petitioner got better results when it runs non-union than when it operated as a union mine is not proved by the recoord in the case. If better results were obtained after the mine began to run non-union than when it was run on a union basis, there should have been, with the growth of petitioner's business and its markets and with as large indeed a larger number of employees, a gradual increase in the product of the mine in 1907, 8, 9 and 10, but such was not the case as we have already seen in this brief. (Pages 16, 17).

(d)

The respondents were never at any time engaged in a conspiracy to compel the petitioner to unionize its mine.

Anyone who understands the meaning or significance of the phrase "unionized plant" will at once conclude that it is utterly impossible to bring about the "unionizing" of a plant without the consent of the operator. A mine may be full of union men and still the plant not be "unionized." While it is outside of the record, at this time there are a number of coal plants in West Virginia which have none but union men in them and still they are not unionized mines. So there are a number of instances wherein union men are working in a plant as well as non-union men, and the mine is not unionized.

In order that there may be a "unionized mine," there must be a local union at or near the plant or

mine to be unionized and a contract entered into on behalf of such local by a representative of the local union, which is usually one of the sub-district officers along with some member of the local union, on the one side, and the operator or his representative on the other, for a definite period of time, usually two years, providing a scale of wages, which is already adopted by the United Mine Workers, either in the sub-district or district in which the mine is located.

The contract provides for a settlement of grievances between the employer and employee and various other details designed for the good of the parties.

We have discussed the difference between unionizing the men working in a mine and unionizing the mine itself in our Original Brief, (pp. 156-185).

Inasmuch as there is *not one scintilla of evidence in the record showing that any one of the respondents during the period between July 12, 1906, and October 24, 1907, or at any other time, ever attempted to unionize petitioner's mine without its consent,* it is really a waste of time to say anything further on this subject than to observe, which the Court will see from the record itself, that at one time after the mine started to run non-union, which as we have seen, was on June 12, 1906, the respondents Green, Watkins and Zelenka visited the petitioner's superintendent at its mine in an endeavor to induce him to take up the proposition of reunionizing the mine, which the superintendent declined to consider, and these parties never made further effort to do anything more.

(e)

The respondents at the time of the institution of this suit, or at any other time, had not formed a conspiracy to compel by threats and intimidation petitioner's employees to join the United Mine Workers of America.

As already shown, the only person that visited the mines of the petitioner holding any interviews or con-

versation with the employees of petitioner was the respondent Thomas Hughes, who was never served with process, never brought into this case to make answer to the complaint and was the only person, so far as the record discloses, that had opportunity to employ any agency to induce the employees of petitioner to become members of the United Mine Workers of America.

The record is wholly barren of any evidence disclosing the use of force or violence of any kind exercised by said Hughes toward the men of the petitioner for any purpose whatever. We have already pointed out in this supplemental brief *(p. 39)* the parts of the record in which the appearance of Hughes about the premises or near the premises of the petitioner is disclosed.

The parts of the record showing the conduct of Hughes touching anything done by him to induce any employees of petitioner to join the Union appear therein at pages 330, 332-33, 356-57, 365, 372, 382-83, 386-87, 429, 437, 438, 440, 458, 459, 460, 466, 468, 469, 471.

The Court will perceive by referring to these pages that there were no threats of any sort made by Hughes to induce any employees of the plaintiff to join the Union nor were there any attempts whatever at intimidation. In fact from the petitioner's own testimony, the few statements in conversations with the employees on the part of Hughes was without any effect whatever upon the men, and in one or two instances he was directed by one of the employees of petitioner to leave the premises, and that Hughes promptly did so, and the sum and substance of any of his statements is that he was there for the purpose of trying to induce the employees ot the petitioner to join the United Mine Workers of America, and his efforts along this line may be treated as negligible.

It is certain beyond question that the allegation of the petitioner's bill that respondents were by threats and intimidation seeking to cause the petitioner's em-

ployees to become members of the United Mine Workers is not sustained by the proof in this case. This allegation of the bill is denied by the answer and we cannot find any evidence in the record to uphold it.

(f)

The United Mine Workers of America are not in their constitution violating the common and statute law of West Virginia or the constitution of that State.

The Supreme Court of Appeals of West Virginia has never decided the question whether or not a labor union is unlawful under its constitution and laws.

The case of *Thacker Coal & Coke Company v. Burke*, 57 W. Va. 253, does not decide the question now before the Court.

The Thacker Coal Company case was an action at law for the recovery of damages, the declaration containing four counts. The action was dismissed by the lower court upon a demurrer to the declaration.

> The first count in the declaration sets forth that the plaintiff was engaged in the business of mining coal, had in its employ a large number of men to work in the mines and who are actually engaged in the plaintiff's service; "that the defendants well knowing these facts, but contriving and wickedly and maliciously intending to injure the plaintiff in its business, unlawfully, wrongfully, maliciously, without justifiable cause, without the consent and against the will of the plaintiff, molested, obstructed and hindered the plaintiff in its said business by willfully, wrongfully and maliciously persuading, inducing, enticing and procuring said servants of the plaintiff employed as aforesaid to absent themselves and depart from the plaintiff's service; that by reason of such persuasion and enticement and procuration the said servants on the day named without license and against the will and consent of the plaintiff wrongfully absented themselves and departed from said service and con-

tinued to do so; that the plaintiff was unable to employ other servants to work in its mines in the place of the servants so enticed away, and was thereby prevented from procuring and carrying on its business as it could and would have done had the said employees not quit its service."

The *second* count in substance alleges

special written contracts with certain miners, nine in number, whereby these miners agreed to enter the service of the plaintiff and engage in digging and shipping coal from its mine at a certain fixed rate per ton; that on the arrival of these men the defendants knowing of the contracts wrongfully, maliciously and with unlawful purpose to injure the business of the plaintiff, and against its consent, induced and enticed the said employees not to enter the service of the plaintiff and to refuse to enter its service according to these written contracts, and that by reason of such persuasion and enticement on the part of the defendants the said employees refused to enter the service of the plaintiff and immediately departed from the place where they were employed to work, and that none of the employees have returned to work in the mine of the plaintiff.

The *third* count in substance alleges that it had employed a certain person, naming him, to mine a specified number of tons of coal, and that this employee had entered upon the performance of his contract, and that defendants knowing of such contract wrongfully, maliciously and with unlawful purpose to injure the business of plaintiff, induced this employee to break his contract and refuse further to perform it, and by reason thereof quit the service of the plaintiff.

The *fourth* count in substance sets forth that the plaintiff being the owner and operator of the coal mine made special written contracts with several different persons (naming them) whereby each one bound himself to mine for the plaintiff a fixed amount of coal at a speci-

> fic rate per ton; that these employees actually started upon the performance of their contract, but that defendants well knowing thereof, contriving and falsely and maliciously intending to injure, vex, harrass, oppress and ruin the plaintiff in its business, unlawfully and maliciously did agree, confederate, combine and form themselves into a conspiracy under the name of The United Mine Workers of America, and in pursuance and execution of their conspiracy unlawfully, wantonly, wrongfully and maliciously and against the will of the plaintiff, did entice and procure these employees to break their contracts and refuse to continue their work of mining coal as required by these contracts and these employees have refused to perform said contract.

Under the state of facts thus alleged the Supreme Court of this State decided that the plaintiff's declaration presented a cause of action for damages against the defendant.

Of course if the defendants in the case cited did form themselves into a conspiracy for the purpose of wantonly and wilfully, without any cause whatever, to procure the employees of the plaintiff in that case to break their contracts and quit its service and thus entail upon it injury and damage in its business, it matters not what name they gave to this conspiracy and under what name they formed the conspiracy, it would afford no excuse for their wanton, willful and malicious acts.

The petitioner in its bill *(record, p. 25)* assails certain parts of the constitutions of the International, District and Sub-District organizations as in violation of the laws and constitution of West Virginia.

The parts of the *Interantional Constitution* complained of *(record, p. 25)* are sections 1, 3 and 4 of Article X, and are contained in the record. *(Page 9)*.

It will be borne in mind that none of the provisions of the constitutions apply to any mine owners, except those

who have recognized the Union, and entered into contractual relations with its members by the formation of a contract for a definite term and with such stipulations as the parties mutually agree upon.

Are the respondents seeking to enforce any one of the parts or provisions of these constitutions against the petitioner? They are not charged with doing so and there is nothing in the record that they *are* doing so.

The petitioner cannot claim in this suit that any parts of the constitution of the international organization are violative of the constitution and laws of West Virginia, unless it first shows that the respondents are seeking to enforce these parts against it to its detriment or damage.

This is upon the principle that persons who have suffered no harm by the provisions of a statute cannot challenge its validity.

> *Standard Stock Food Company v. Wright*, 225 U. S. 540, 56 Law. Ed. 1197.
>
> *Pugh v. Pugh*, (S. D., 124, N. W. 959), 32 L. R. A. (N. S.) 954.
>
> Tomlinson v. Bainata, 70 N. E. (Ind.) 155, 158.
>
> *State v. Smiley*, 65 Kan. 240, 67, L. R. A. 903, affirmed in 176 U. S. 447, 49 Law. Ed. 546.
>
> *Ely v. Rosholt*, 11 N. D. 559, 93 N. W. 964, 966.

As we have said in our Original Brief *(pp. 143-148)*, the constitutions of the national and subordinate branches of this Labor Union are nothing more than by-laws for the government of the members thereof.

> *Supreme Lodge of K. of P. vs. Knight*, 117 Ind. 195, 20 N. E. 479, *463*.

Supreme Lodge of K. of P. vs. Kutscher, 119 Ill. 340, 53 N. E. 620.

Dornes vs. Supreme Lodge, K. of P., 75 Miss. 466, 23 South. 191.

In *Waterhouse vs. Comer*, 55 Fed. 149, the validity of Rule 12 (a by-law) (referred to in argument of petitioner, pp. 154, 155,) was passed on by consent of all concerned, and in *Toledo A. A. & N. M. Railway Company vs. Pennsylvania Company*, 54 Fed. 780, the Union was about to enforce it, had really ordered its enforcement, and in both cases it was held that this Rule was in violation of Section 1 of the Act of July 2, 1890, known as the "Sherman Anti-Trust Law."

While none of the parts or provisions of these constitutions or by-laws is in contravention of the Constitution and Laws of West Virginia, yet if all the provisions of the Constitutions of the United Mine Workers of America were invalid under the constitution and laws of that State, it is not a matter of which petitioner can complain in this suit, because neither the petitioner nor any of its employees is in any wise connected with the Union or any of its branches, nor is any one of these by-laws sought to be enforced against petitioner.

State vs. Associated Press, 159 Mo. 410, 81 Am. St. Rep. 402, 403.

American S. S. Company vs. Chicago S. S. E., 143 Ill. 210, 36 Am. St. Rep. 385, 386, 395.

Mogul Steamship Company vs. McGregor, L. R. 23 Q. B. D. 598, 610.

In *State vs. Associated Press*, as reported in 81 Am. St. Rep. at pp. 402, 403, the court said:

"And it has been determined that: 'A voluntary association, whether incorporated

or not, has, within certain well-defined limits, power to make and enforce by-laws for the government of its members. Such by-laws are ordinary matters between the association and its members alone, and with which strangers have no concern.' American Livestock Company v. Chicago Livestock Exchange, 143 Ill. 210, 36 Am. St. Rep. 385, 32 N. E. 274."

In *American Livestock Company vs. Chicago Livestock Exchange*, the following is the third point of the syllabus as reported in 36 Am. St. Rep. at p. 386:

"A person who is not a member of a corporation, nor entitled, either directly or indirectly, to any of the rights arising from membership therein, cannot complain of any of the rules adopted by it for the government of the conduct of its members, or invoke the aid of a court of equity to restrain their enforcement."

And in its opinion the court said (p. 394):

"If it be admitted that said by-laws are so far in restraint of trade as to be invalid for that reason, we are unable to see that the position of the complainant is in any respect improved. By-laws or contracts in restraint of trade are illegal only in the sense that the law will not enforce them. They are simply void. The law does not prohibit the making of contracts in restraint of trade; it merely declines, after they have been made, to recognize their validity: Mogul Steamship Company vs. McGregor, L. R. 23 Q. B. D. 598, 619."

The petitioner has not averred or proved that the respondents as members of the United Mine Workers are seeking to enforce against or apply to the petitioner the provisions of Sections 1 and 2 of Article VIII and Section 15 of Article IX of the Constitution of District No. 6 set out in the record *(p. 12)* or the provisions of Article IV, Section 6 of Article VI and Sections 2 and 3 of Article IX of the Constitution of Sub-District 5 of District 6 of this Union set out in the record. *(Pp. 13, 14).*

Unless it be shown that these various parts of the different constitutions here referred to are sought to be applied to the petitioner, it cannot assail their validity on any ground whatsoever.

These constitutions can never be applied to a non-union mine.

Their application necessarily presupposes a mine or mines that have already been organized.

But it may be plausibly contended that Sections 2 and 3 of Article I of the Constitution of Sub-District 5 of District 6 *(record p. 13) do* apply and are *intended* by respondents to apply to the mine of petitioner.

This constitution was adopted by a sub-district of one of the districts of the United Mine Workers of America, organized, as we have seen, in 1890, and was in existence as to the territory to which it relates at the time, and for sixteen years before, petitioner began to operate its mine non-union in June, 1906.

Upon petitioner concluding in June, 1906, to no longer run its mine as a union mine, but thereafter to operate it on a non-union basis, did this change of method of operation *ipso facto impose* upon the respondents as members of this Labor Union the duty or obligation to make effort to eliminate petitioner's mine from this section of the sub-district constitution in which is defined the territory to which the instrument applies? This must be answered in the negative, because the organization of this sub-district as an abstract proposition, had the right to unionize the mine of petitioner if it could do so in a lawful manner, and it still has this right if it may lawfully do so. But it can only be done by contract mutually and voluntarily entered into by petitioner on the one side, and its employees as voluntary members of this Labor Union on the other side.

But let this be as it may, this sub-district constitution *does* not and *cannot* affect the petitioner so long

as it declares its purpose to run non-union; and it *has* declared this to be its purpose and *now* so declares. It not only refuses to contract with this Labor Union and thus "unionize" its mine, but it even declares that its *employees* shall not be *members* of this Labor Union, and has *so contracted* with its several employees.

How then can petitioner complain of the constitution or by-laws of a Labor Union to which none of its employees belong and with which it has no contractual or other relations?

Aside from the reasons we have already assigned why the petitioner cannot complain of the constitutions of the international and subordinate organizations of the United Mine Workers as a Labor Union, it is submitted that these constitutions are only by-laws or rules for the government of the members of the Union, and as membership therein cannot be obtained except by the free and voluntary act or choice of the person desiring to join the Union, so if he desires to rid himself of the operation of these by-laws or rules, he is at liberty to quit the organization at any time.

To make a Labor Union violative of the common and statute law of West Virginia or the constitution of that State, it must *per se* amount to a conspiracy.

Inasmuch as neither the statute nor constitution of the State defines conspiracy we must look for its definition at the common law.

In *Porter v. Mack & Boren*, 50 W. Va. 581, the Supreme Court of Appeals of West Virginia declares that

> "There can be no conspiracy to do that which is lawful in a lawful manner."

This statement of the law of conspiracy is in harmony with the decisions everywhere defining this offence at common law.

See note to Cooley's Blackstone (4th Ed.) Vol. 2, Book IV, bottom page 1312, from which we take the following:

In Commonwealth v. Hunt, 4 Met. 111, S. C., 38 Am. Dec. 346, it is said: "It is a criminal and indictable offense for two or more to confederate and combine together by concerted means to do that which is unlawful and criminal, to the injury of the public, or portions or classes of the community, or even to the rights of the individual." * * * "A conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means." See further on what constitutes this offense, O'Connell v. Queen, 11 Cl. & Fin. 155; Collins v. Commonwealth, 3 Serg. & R. 220; Miffin v. Commonwealth, 5 W. & S. 461; S. C., 40 Am. Dec. 527; State v. Rowley, 12 Conn. 101; Alderman v. People, 4 Mich. 414; State v. Younger, 1 Dev. 357; S. C., 17 Am. Dec. 571; State v. Murphy, 6 Ala. 765; S. C., 41 Am. Dec. 79; People v. Mather, 4 Wend. 229; S. C., 21 Am. Dec. 122; State v. Rickey, 4 Halst. 293; State v. Straw, 42 N. H. 393; Smith v. People, 25 Ill. 17; People v. Powell, 63 N. Y. 38."

See also on this subject 5 Rul. Case Law pp. 1060, 1061 and the cases there cited, from the text of which we take the following:

"Chief Justice Shaw complained that he found, after examining the decided cases, great difficulty in framing any definition or description which specially identified the offense—a description broad enough to include all cases punishable under it, without including acts which are not punishable. He was of the opinion that as a general description, though perhaps not a precise and accurate definition, a conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. This definition, or rather description, has been widely accepted, and although authorities have been able to

specify certain combinations or even certain classes of combinations which the term conspiracy, as understood in law, connotes, it is doubtful if the definition has been improved upon. Substantially the same idea is variously expressed by attempting to define the term as an agreement, confederation or combination of two or more persons, to do an unlawful act or to do a lawful act by unlawful means, or either to do an unlawful act or to accomplish by unlawful means a legal end, or to do something unlawful by legal or illegal means, or to effect a legal purpose by illegal means; or an unlawful confederacy or combination of two or more persons to do an unlawful act or combination of two or more persons to do an unlawful act or to have accomplished an unlawful purpose."

A labor organization as such under the common law definition of the term does not constitute a conspiracy, either under the laws of West Virginia, as shown in our Original Brief on the Merits *(pp. 64–82)* or under the laws of other States:

Lindsley & Company v. Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127, 18 L. R. A. (N. S.) 707, 127 Am. St. Rep. 722.

Macauley v. Treiner, 19 R. I. 255, 61 Am. St. Rep. 770, 37 L. R. A. 455, 461.

National Protective Association of Steam Fitters and Helpers v. Cummeng, 170 N. Y. 315, 58 L. R. A. 135.

State v. Van Pelt, 136 N. C. 663.

1 Am. & Eng. Anno. Cas. 495, *500-502*.

Ames v. Union Pacific Railway Company, 62 Fed. 7, 14.

State v. Stockford, (77 Conn. 224) 107 Am. St. Rep. 28, 31.

The mere extent or size of the membership of an association of persons does not determine its legality, or make it a conspiracy.

Counsel for petitioner seem to attach great significance to the fact of the large membership of the United Mine Workers of America as a labor organization *(petition, pp. 24, 25)* and argue that it constitutes a monopoly.

It seems well settled that "the number who unite to do an act cannot change its character from lawful to unlawful."

> *Bohn M'f'g. Company v. Northwestern Lumbermen's Association,* (54 Minn. 223), 21 L. R. A. 337, *340.*
>
> *Martens v. Reilly,* 109 Wis. 464, 84 N. W. 840.

In view of the reasons here presented and those offered in our Original Brief *(pp. 63-90, 202-204)* the conclusion follows that the United Mine Workers is a lawful association and does not constitute a conspiracy.

The means adopted to carry into effect the purposes of this Labor Union are lawful.

Now while it is clear that the United Mine Workers of America as an organization is lawful, it is equally clear that the means or agencies which it has adopted to make its purposes effectual are also lawful.

The agencies or methods adopted for the promotion of the objects of the association are those of *conciliation, arbitration,* and *strikes,* as shown by the international constitution, Section 2, Article I. *(Record, p. 6).*

These methods are explained by the president of the national organization, who is a practical coal miner, has been a member of the Union since its form-

ation *(record, p. 506)* and whose evidence is uncontradicted. Of these methods this witness says:

> "Conciliation means the holding of conventions of operators and miners for the purpose of presenting their respective demands. That is the first step in the conciliatory feature of our union and has been practiced ever since it was organized. As to the next step—'arbitration'—it is generally understood by the operators and miners that we endeavor to arrive at intelligent conclusions as to our differences and arbitrate them ourselves. In other words, when we present our respective propositions, we enter into a general discussion of them. We then refer them to a committee of operators and miners, jointly, and under that system when that committee takes the matter up for further consideration, there are possibly a great many things that come out with regard to the detail or inner business methods of the operators that they do not desire discussed in open conference, because they are private matters. For instance, the operators have no desire to tell everybody the exact amount of profit they earn by their business, but they want to convey that information to the representatives of the miners as an argument against conceding what the miners' repretsentatives may demand in an open convention. But there are times also, when they present those things in order to show that they don't want to let their competitors, or let everybody know that probably they are making no money. There are a great many things in connection with that feature that are purely business matters and yet they are not laid bare to the people any more than such matters are in any other line of business. All these facts are brought out in joint scale committee meetings. After that if we can arrive at conclusions, or we can decide among ourselves that our demands have been unreasonable, and we have not been able to support them by the facts, and the miners have receded from their position, and the operators are unwilling to prove that their claims are correct and the

> miners incorrect—there have been times when it has taken place when we disagreed, and we failed to arbitrate our differences, and there was no desire to refer them to any other source or any other method of arbitration, that it has resulted in what we call 'strikes' or a suspension of work, and the general proposition is to try and bring about a condition to have a wage contract agreed to for fixed periods of time and do away entirely with the necessity of suspending the operation of the mines in any section of the country."
>
> *(Record, p. 507).*

From this part of the record, and our Original Brief *(p. 103)* it is shown that *conciliation* is a peaceful mode of settling any disagreement arising between employer and employees, whereby both parties in a friendly conference adjust their differences without a suspension of work, and injury to the parties concerned and to the public is thus avoided. This is one of the commendable features of this Labor Organization.

As to *arbitration* we refer to our Original Brief *(pp. 103-4)*, and likewise as to strikes, *(104-118)*.

The conclusion necessarily follows that neither the organization nor the methods adopted to make its purposes effectual are unlawful under the laws of West Virginia or general law, and that there is nothing as to this phase of the case of which the petitioner can complain.

The validity of the contract of petitioner with each of its employees.

We have considered the question of the validity of this contract in our Original Brief *(pp. 41-48)*, and respondents' want of knowledge thereof *(pp. 48-51)*, but we respectfully direct the attention of the Court to a further discussion of this question.

By this contract the petitioner agrees with each of its one hundred and seventy-five or more employees (all of them) that it will not employ in its mine any

miner who belongs to the United Mine Workers of America, and each employee agrees not to become a member of such Union while in the employ of petitioner. While this contract is in existence no union laborer can obtain employment in petitioner's mine or in any other mine where such a contract is applied. This contract is in effect a combination whereby union miners are excluded from the business of mining coal prevented from following their trade. When this suit was brought there were 12,500 union miners in the sub-district in which petitioner's mine is located, and if effect is to be given to this contract not one of them can be employed in petitioner's mine. The one hundred and seventy-five non-union employees of petitioner have combined with it to keep any of these 12,500 union miners out of employment by the petitioner. *Will a court of equity enforce such an unconscionable contract or combination?*

The Court may properly say to the petitioner, "You are at liberty to employ only non-union labor if you so desire, and if any person or persons attempt, by intimidation, coercion, violence, or other unlawful method, to compel you to employ union miners, they will be restrained from so doing; but when you enter into an agreement with other persons, the tendency or effect of which is to keep union men from getting employment at your mine, or at any other mine where such a contract is in existence, or may be brought into existence by the joint act of the owner and the employees, a court of equity will not uphold and enforce such a combination.

And if any persons seek to induce your non-union employees to quit your service, simply because they are non-union men and by reason of such inducement they are about to quit your service, they will be restrained by a court of equity, but under no circumstances will this court aid you to enforce a contract, agreement, or combination, the effect or tendency of which is to prevent other men from obtaining employment simply because they are members of a Labor Union."

Such an agreement or contract is potent as a scheme in restraint of trade and for the suppression of competition.

It is not the effect or result of this contract with reference alone to petitioner's mine that determines its validity, but what may be accomplished by means of such a contract, if its validity be sustained and its provisions specifically enforced. We are to determine its fairness and soundness with reference to its effect and operation upon the rights of other men laboring or seeking labor in coal mines and upon the public.

The question of the validity of this contract has not been passed upon by the Supreme Court of West Virginia, but in *Slaughter vs. The Thacker Coal & Coke Company*, 55 W. Va. 612, we find the following:

> "Three coal mining companies operating in the same vein or seam in close proximity to one another and just having commenced the development of that particular kind of coal, organize, indirectly and nominally in the names of individuals, a third corporation to act as their general sales agent, and each gives it by contract the exclusive right to sell its entire output of coal, at prices uniform as to all three companies, and not to be departed from without the consent of all the companies, and said agent company is to advertise and introduce the coal in the markets, establish and control all agencies and sub-agencies, and make all sales and collections and deduct for its compensation ten cents per ton out of the proceeds of sales. Held: That the contract is illegal and void, its tendency being to suppress competition and retrain trade, contrary to public policy."

In *Gas Company vs. Gas Company*, 58 W. Va. 22, it is decided that

> "Courts decline to enforce contracts which impose restraint, though only parital, upon business of such character that such restraint

will to any extent repress competition and prejudice the public."

A grant of the "exclusive" right of way and privilege to construct and maintain tubing for the transportation of oil through a tract of 2,000 acres of land amounts to a covenant by the grantor not to use or grant similar privileges to others, and as such is in unreasonable restraint of trade, and void.

West Virginia Transportation Company vs. Ohio River Pipe Line Company, 22 W. Va. 600.

"Contracts in partial restraint of trade are valid if reasonable as to time, place, terms, etc., and if manifesting an intention to protect the party relying thereon in the reasonable restraint of unjust discriminations against him; but the reasonableness of such contracts, as between the parties, is the test only in those cases where public interests are not involved, and, even though a contract be fair and reasonable between the parties, yet, if it is so injurious to public interests that public policy, which promotes the freedom of engaging in and carrying on all kinds of trades and professions beneficial to the public, requires that it should not be enforced, it will be held void."

Tarr vs. Stearman, (Ill.) 105 N. E. 958.

While the decisions rendered by the Supreme Court of Appeals of West Virginia as well as the one from Illinois are not predicated upon agreements or contracts affecting the subject of labor, yet may we not apply them here by way of analogy? If so, then we respectfully submit that the contracts of petitioner with its several employees are such as not to be enforceable in a court of equity, nor can it call on a court of equity to protect and uphold such a contract.

The contract here is distinguishable from the one involved in Hoban vs. Dempsy, (217 Mass. 166), 104 N.

E. 717. In the latter case the contract was made by the representatives of certain Trans-Atlantic S. S. Companies with a labor union of longshoremen, and one of the provisions thereof in substance is that all longshoremen employed by the steamship lines shall be members of the defendant union whenever such men are available, and whenever such men are not available then other men may be employed until the defendant union can supply men, but in any event, men not members of the defendant union may be employed until the end of the day.

The suit sought to enjoin the enforcement or carrying of this contract into effect by the members of another labor union of longshoremen.

The Court, in the course of its opinion, discussing this contract, said:

> "This is a simple case where employers and a union of employees have made an agreement freely and without any kind of restraint, the terms of which do not require the breaking of contractual relations with any one, to the end that all the work of a specific kind be given to the members of a union so far as they are able to do it, for a limited period of time. If a sufficient number of union men are not supplied, the employer may hire whom he chooses. For ought that appears, the contract may have followed competition between rival groups of workmen to secure the work."

The contract now before the Court is indefinite as to its term, and, according to the facts in this case, will be adhered to by the petitioner as long as he continues in the coal business, so that petitioner may not hire whom he chooses, but can only employ non-union laborers, and is not at liberty to engage union laborers under the contract.

It is the policy of all the governments of the States to keep the avenues of employment open and free, that the laborer may find ready employment at remunerative wages, and thus sustain himself and

family without becoming a charge to the State. So jealous is the State in guarding this principle that an agreement made by the laborer himself not to follow his occupation or to engage in a particular business is objectionable, because it tends to deprive the party of the means of earning a livelihood and the community of the benefit of his activities and to compel him to transfer his residence and allegiance to some other State or country, in order to pursue his occupation, and it also lessens competition and enables organized capital to silence competition and places the public at its mercy.

If the laborer himself cannot make a contract lessening the opportunities for his employment or deprive him from following his occupation or trade, can an employer of labor enter into a contract with his own employees, the effect or tendency of which is to close the avenues of employment to another class of laborers in the same line, and then appeal to a court of equity to uphold him in such a project? Will not the court decline to extend to him any relief in such a case, and say to him in emphatic terms: "You are at liberty to employ whom you please, but you cannot form a combination or scheme of any sort to deprive other people of employment or which tends to close the avenue to their employment."

But for the sake of the Argument, if the validity of the contract be conceded, the Bill of Complaint of the Petitioner was properly dismissed by the Circuit Court of Appeals.

The United Mine Workers of America is an unincorporated voluntary association, and of the association itself, a Federal court has no jurisdiction *on the ground of diverse citizenship,* the sole ground of the court's jurisdiction in this case.

Taylor vs. Weir, (C. C. A.) 171 Fed. 636.

Chapman vs. Barney, 129 U. S. 677, 32 Law. Ed. 800.

Irving vs. Joint District Council, etc.,
180 Fed. 896, 898.

if a Federal court has no jurisdiction of an unincorporated voluntary association, as such, it cannot take jurisdiction thereof by representation, and the effort of the petitioner to do so by making respondents defendants to the bill as individuals, and also as officers of this association, is necessarily ineffectual as an attempt to create jurisdiction over the association and its various members who are not parties to the suit.

In *Irving vs. Joint District Council, etc.*, 180 Fed. 896, the complainants were citizens of Massachusetts, and the defendants were (1) The Joint District Council of New York and Vicinity of the United Brotherhood of Carpenters and Joiners of America and the Amalgamated Society of Carpenters and Joiners of America and the members of said Joint District Council; (2) Edward H. Neel, as secretary of the Joint District Council and individually; (3) David French, Joseph Crimmins, L. E. Story, Henry W. Blumenburg, Henry Erickson, William O'Grady, Frederick Dhuy, Harry Lea, Thomas Dalton, Frank Hellereith, George Lynch, August Nagel, James B. Smith, James Martin, Julian Wazeter, individually and as business agents of said Joint District Council; (4) Charles H. Baushher, individually and as business agent of the said Joint District Council, and as a member of the General Executive Board of the United Brotherhood of Carpenters and Joiners of America; Frank Duffy, individually and as secretary of the United Brotherhood; (5) William D. Huber, individually and as president of the United Brotherhood.

In the course of the opinion in this case, the court with reference to its jurisdiction of the associations and the members generally, said:

> "The bill may be dismissed as to the Joint Council and its members generally, and

> stand as to the other defendants, in accordance with the practice indicated in Oxley Stave Company v. Coopers' Union (C. C.) 72 Fed. 695, affirmed 83 Fed. 912, 28 C. C. A. 99. There are intimations that service upon some of the members of such associations may be good as against the association and the other members in United States v. Coal Dealers' Association, (C. C.) 85 Fed. 252, American Steel and Wire Company v. Wire Drawers' Unions 1 and 3 (C. C.) 90 Fed. 598, and Evanston v. Spaulding, 150 Fed. 517, 82 C. C. A. 263, 9 L. R. A. (N. S.) 904. If these cases mean more than that members of the association not served may be held guilty of contempt if they knowingly assist in the violation of an injunction which has been granted, I am not disposed to follow them."

In *Oxley Stave Company v. Coopers' International Union of North America et al.*, 72 Fed. 695, the bill was in equity against the union trades assembly of Kansas City and various individuals named, who are officers and members of such organization and also all other persons who may be members of either of said organizations, their agents, attorneys, etc., to enjoin them from inaugurating and maintaining a boycott against the use of packages, casks, barrels, etc., made by complainant by means of machinery constituting a part of its plant.

In the course of the opinion in this case, the court said:

> "The defendants, James A. Cable and William Deal, have filed pleas to the jurisdiction of the court, on the ground that they and other members of said associations are not citizens of Kansas, but are citizens of Missouri. From the evidence in the case, these pleas are well taken. It is also objected that the defendant associations cannot be sued as a body, or its members enjoined who are not parties to the record. These objections are also well taken, and the complainant has leave to dismiss as to said parties, and the case stands only

against the other defendants named in the bill."

This case was taken by appeal to the Circuit Court of Appeals of the Eighth Circuit and was on appeal affirmed and is reported in 83 Fed. 912.

The Circuit Court of Appeals in its opinion in this case discussing the question of the court's jurisdiction, said:

"The first proposition contended for by the appellants is that the trial court acted without jurisdiction in awarding an injunction. The ground for this contention consists in the fact that in the bill, as originally filed, two persons were named as defendants who were citizens and residents of the State of Missouri, under whose laws the Oxley Stave Company was incorporated. But as the case was dismissed as to these defendants, and as to the two voluntary unincorporated associations, and as to all the members thereof who were not specifically named as defendants in the bill of complaint, before an injunction was awarded, and as the bill was retained only as against persons concerned in the alleged conspiracy who were citizens and residents of the State of Kansas, the objection to the jurisdiction of the trial court is, in our opinion, without merit. Oxley Stave Company v. Coopers' International Union of North America, 72 Fed. 695. It is further urged that the trial court had no right to proceed with the hearing of the case in the absence of any of the persons who were members of the two voluntary organizations, to-wit, the Coopers' Union, No. 18, and the Trades Assembly of Kansas City, Kansas, because all the members of those organizations were parties to the alleged conspiracy. This contention seems to be based on the assumption that every member of the two organizations had the right to call upon every other member for aid and assistance in carrying out the alleged conspiracy, and that an injunction restraining a part of the members from rendering such aid and assistance would necessarily

operate to the prejudice of those members who had not been made parties to the suit. In other words, the argument is that certain indispensable parties to the suit have not been made parties, and that full relief, consistent with equity, cannot be administered without their presence upon the record. We do not dispute the existence of the rule which the defendants invoke, but it is apparent, we think, that it has no application to the case at hand. The present suit proceeds upon the theory—without which no relief can be afforded—that the agreement entered into between the members of the two voluntary associations aforesaid is an unlawful conspiracy to oppress and injure the plaintiff company; that no right whatsoever can be predicated upon, or have its origin in, such an agreement; and that the members of the two organizations are jointly and severally liable for whatever injury would be done to the plaintiff company by carrying out the object of the alleged agreement. The rule is as well settled in equity as it is at law that, where the right of action arises ex delicto, the tort may be treated as joint or several, at the election of the injured party, and that he may, at his option, sue either one or more of the joint wrongdoers. Cunningham v. Pell, 5 Paige 607; Wall v. Thomas, 41 Fed. 620, and cases there cited. We perceive no reason, therefore, why the case was not properly proceeded with against the appellants, although numerous other persons were concerned in the alleged combination or conspiracy."

This suit is therefore between the petitioner, as plaintiff, a citizen of West Virginia, and the respondents, as citizens of States other than West Virginia.

If the respondents are guilty of the wrongs imputed to them in the bill, they *alone* are responsible to the petitioner, either by an action at law *(petitioner's argument pp. 188, 193–5)*, or by an injunction. *(Idem pp. 188, 196–202)*.

If they are *not guilty* of these wrongs then the bill

should have been dismissed at petitioner's cost, as the Circuit Court of Appeals decided.

Ten of the respondents are made parties defendant to the bill *(record, p. 2)*, and the other seven respondents were made defendants in their official capacity by the final decree rendered by the District Court perpetuating the injunction as to all seventeen of the respondents.

(Record, pp. 694-701).

Of these *seventeen respondents* only *seven* were *served with process;* the other *ten* were *never served with process* and made no general appearance to the cause; only *three* of these other ten were made defendants to the bill and *seven* of these other ten were never made defendants to the bill by naming them as such therein, and made no appearance whatever thereto.

This suit is therefore against *petitioner* as a *citizen* of *West Virginia* and *T. L. Lewis, William Green, D. H. Sullivan, George W. Savage, A. R. Watkins, John Zelenka,* and *Lee Rankin, citizens* of the State of *Ohio,* and as the *other respondents* were not before the court, the learned District Court could only *perpetuate* the injunction against these *last named seven* respondents who were parties to the suit and served with process to answer therein.

The court could neither award nor perpetuate an injunction against persons not parties to the suit.

2 High. Inj. (4th Ed.) Sec. 1548.

Fellows v. Fellows, 4 John. Ch. 25 and note.

Sage v. Quay, Clarke, Ch. 347.

Scott v. Donald, 165 U. S. 107, 41 Law. Ed. 648, 651, 654.

Iveson v. Harris, 7 Ves. Jr. (Eng.) 257.

13 Stand. Enc. Proc. 179 and cases cited.

Harvey v. Smith, 179 Mass. 592, 61 N. E. 217.

State v. District Court of First Judicial District, 34 Mont. 233, 85 Pac. 525.

Acme Cement Plaster Company v. Keys, (Tex. Civ. App.) 167 S. W. 186.

Peterson v. Smith, (Tex. Civ. App.) 69 S. W. 542.

"As a general rule, an injunction will not be allowed against a party not a defendant to the bill, or not properly brought before the court."

2 High, Inj. (4th Ed.) Sec. 1548.

"An injunction is never granted against persons who are not parties to the suit."

Fellows v. Fellows, supra.

"Officials who are not parties to or represented in a suit for an injunction against enforcing an unconstitutional statute cannot be included in the injunction."

Scott v. Donald, supra.

"In a suit for an injunction, defendants' agents and employees could not be enjoined, unless made parties by the petition."

Acme Cement Plaster Company v. Keys, supra.

"In a suit by a Missouri corporation to enjoin certain trades unions or assemblies, and their members, from instituting a boycott, the Federal Court has no jurisdiction of individual defendants who are citizens of Missouri, nor can the association be sued as a body, or members thereof enjoined who are not parties to the record."

Oxley Stave Company v. Coopers' International Union, etc., supra.

Inasmuch as only the seven respondents named above were before the court, if the bill cannot be sustained as to them, it must be dismissed.

The entire record is absolutely barren of proof, as to one single unlawful act complained of in the bill imputable to them, tending to sustain the issues raised by the pleadings.

As we have already clearly seen, there is no proof in the record connecting any of the respondents that were brought before the court, with the many and various charges made in the bill,

and which charges are specifically and separately set out at *pp. 92-94* of this supplemental brief.

There being no conspiracy on the part of the respondents as alleged but denied by answer and not proved, the declarations of Hughes are not binding upon the respondents before the court, and it is upon his act and declarations that the petitioner must rely for proof of its bill; and while these acts and declarations are not evidence against the seven respondents that were brought before the District Court, we have nevertheless directed the attention of the Court to just what Hughes said and did in our Original Brief at *pp. 161-178.*

Solicitation of petitioner's employees by Hughes to join the United Mine Workers of America not imputable to the other resposdents.

As the evidence discloses that the only person making solicitation of any of the employees of the petitioner was the respondent, Hughes, who was never before the court in this case by the service of process or appearance thereto and that there was no conspiracy between him and the respondents who were before the court, of course, no injunction could be awarded against him in this cause. But, will the Court treat the acts of solicitation by Hughes of a very few of the employees of petitioner to become members of this Labor Organization,

as the acts of the seven respondents who were properly before the court because Hughes and these respondents were members of the United Mine Workers of America, and thus perpetuate the injunction as to this feature of the case against the seven respondents who are parties to the suit and served with process to answer?

It seems to us that to do so there must be clear proof in the record, *first*, showing a conspiracy on the part of the seven respondents and Hughes to induce the petitioner's employees to become members of the United Mine Workers; *second*, that the acts of Hughes were in furtherance of this conspiracy; *third*, that these seven respondents had knowledge of the existence of this contract between petitioner and its various employees not to join this Labor Organization; *fourth*, that the acts of Hughes in soliciting petitioner's employees to become members of the Union would result in petitioner's employees or a material part thereof in joining this Labor Union; and *fifth*, if they did join this Labor Union, petitioner would suffer irreparable damage in consequence thereof.

The *first* of these requisites, to hold these seven respondents amenable to the injunctive process of the court for the acts of Hughes, is not made out by proof in the cause. The record is absolutely barren of evidence of any kind that these respondents entered into an agreement, combination, or conspiracy among themselves or with Hughes, to solicit or induce the employees of petitioner to join this Labor Union.

There is no evidence that any of the said seven respondents, the only ones that were before the court for the purposes of its injunction, were even together at petitioner's mine, or in its vicinity. The only thing to enable them even to be acquainted with Hughes was the fact that at the time this suit was instituted they were members of the United Mine Workers of America.

Will it be inferred from the common membership of Hughes and these seven respondents in this Labor

Union, that they were all in a conspiracy to solicit the employees of petitioner to become members thereof? This common membership justifies no such inference. These seven respondents were members of this Labor Union, even while petitioner was operating its mine on a Union basis, under a contract between it and the Union.

There are no circumstances disclosed by the record from which it can be inferred that these seven respondents and said Hughes entered into a combination or conspiracy for the purpose of soliciting or persuading petitioner's employees to become members of the United Mine Workers of America.

We have examined the record carefully and we are unable to find a particle of evidence of a combination or conspiracy between these respondents and Hughes, to induce in any manner petitioner's employees to join this Labor Union.

The *first* essential fact to hold these respondents liable for the acts of Hughes not being established, it scarcely seems necessary to notice the other *four*. But to show how utterly void of merit in a court of equity petitioner's complaint is, we shall notice the *fourth* and *fifth* essentials incumbent upon the petitioner to establish.

The mere fact that Hughes solicited the employees to join the Union, without more, does not authorize the issuance of an injunction.

It must clearly appear on the final hearing, *that a perpetual injunction may issue*, that by reason of this solicitation the petitioner's employees or some of them are about to "become members of the United Mine Workers of America," and that they *will* do so unless an injunction is awarded to prevent further solicitation.

The record discloses that only a very few of petitioner's men were approached by Hughes, and that they repelled all of his suggestions and solicitations to join the United Mine Workers. For illustration, see what

occurred between the witness *Pickett*, petitioner's mine superintendent, and Hughes *(record, pp. 306, 307, 308–311)*; the witness *Corns*, an employee of petitioner *(record, pp.* 330, 332, 333*)*; the witness *Daugherty*, another employee *(record, pp.* 356, 357, 358, 365, 366*)*; the witness *Hart*, also an employee *(record, pp. 370, 371, 372, 373)*; the witness *Jarrett*, another employee, *(record, pp.* 382, 383, 386, 387*)*; the witness *Knapp*, petitioner's master mechanic, *(record, pp. 439, 440)*; the witness *Logston*, another employee, *(record, p. 452)*, and the witness *Myers*, another employee, *(record, pp. 458–461)*.

A mere speculative conjecture on the part of petitioner that his employees or a part of them will join the United Mine Workers of America is not sufficient on the final hearing of the cause to make the injunction perpetual. It must clearly appear from the evidence that unless the injunction is issued all his employees or a material part thereof will join the United Mine Workers of America. The petitioner has assumed that because a few of its employees were interviewed by Hughes and by him solicited to become members of the United Mine Workers of America that, therefore, those employees will join the United Mine Workers of America and, therefore, all of the respondents must be *perpetually enjoined* upon these acts of solicitation on the part of Hughes alone from doing a thing that the evidence shows they never attempted to do, and many of whom were never at or near the coal mining plant of petitioner and some of whom, so far as the record discloses, did not even know of the *existence* of this coal plant.

It is clear, therefore, that the *fourth* essential ground, upon which a *perpetual* injunction may issue, is wholly unsustained by the proof and the United States Circuit Court of Appeals committed no error in reversing the District Court that had issued and perpetuated the injunction.

The *fifth* essential to be shown as ground for a *perpetual injunction* is that damages will be sustained by

the petitioner if its employees or a part of them should join the United Mine Workers of America.

We are keeping in mind the charge that respondents are in a conspiracy to induce the employees of petitioner to join the United Mine Workers of America and that the acts of Hughes are in furtherance of this conspiracy.

A conspiracy is indictable whether any act is done under and by it or not, but to sustain a civil action therefor damages must have resulted therefrom.

Martens v. Reilly, (Wis.) 84 N. W. 840, 843.

Boutwell v. Marr, 71 Vt. 1, 76 Am. St. Rep. 746.

Cote v. Murphy, 159 Pa. St. 420, 39 Am. St. Rep. 686.

Delz v. Winfree, 80 Tex. 400, 26 Am. St. Rep. 755, 57.

National Fireproofing Company v. Mason Builders' Association, (C. C. A.) 169 Fed. 259, 260.

Employing Printers' Club v. Doctor Blosser Company, 122 Ga. 509, 2 Am. & Eng. Anno. Cas. 694.

Brown & Allen v. Jacobs Pharmacy Company, (Ga.) 57 L. R. A. 547, 550.

Kimball v. Harman and Burch, 34 Md. 407, 6 Am. Rep. 340.

Carew v. Rutherford, 106 Mass. 1, 8 Am. St. Reports, 287, 291.

Stevens v. Rowe, 59 N. H. 587, 47 Am. Rep. 231.

Handley v. Louisville & Nashville Railroad Company, 105 Ky. 162, 63 L. R. A. 289.

Wilner v. Silverman, 109 Md. 341, 71 Atl. 962, 24 L. R. A. 895, 898.

Robinson v. Parks, 76 Md. 135, 24 Atl. 411, 413.

City of Boston v. Summons, (Mass.) 6 L. R. A. 629.

This is not a civil action for the recovery of damages, but *an injunction to restrain alleged threatened damages*. If the *action* were one to *recover damages already committed*, the *quantum* recoverable would be measured by the extent of petitioner's injury. It does not appear what the injury could possibly have been if petitioner's employees or some of them were members of this Labor Organization. If they *were* members of the Labor Union, these men would still be efficient workmen, receive the same wages as non-union employees, would necessarily work under the same conditions as the other employees, and would necessarily produce the same results as if they were *not* members of the Union.

If, then, the solicitations of Hughes had been of such a character, if continued, that some of petitioner's employees were *about* to become members of the Union, that is, they were about to violate their contracts by joining the United Mine Workers of America, how could this have caused *damages* or *injury* to the petitioner? *In what way could injury or damage have been sustained?*

If any damages could have been sustained, they must necessarily have been *nominal*, had Hughes succeeded in his solicitations; so if the injunction could have been *perpetuated* in this case, it could only have been to inhibit threatened *nominal* damages.

The authorities show that an injunction issues only to avert threatened substantial damages or injury.

Atkins v. W. A. Fletcher Company,

55 Atl. 1074, 65 N. J. Eq. 658.

Purvis v. United Brotherhood of Carpenters, (214 Pa. St. 348) 112 Am. St. Rep. 757.

Union Pacific Railway Company v. Ruef, 120 Fed. 102, 105-111.

Cumberland Glass Manufacturing Company v. Glass Bottle Blowers' Association, 46 Atl. 208, 59 N. J. Eq. 49.

Flaccus v. Smith, 48 Atl. 894, 199 Pa. 128, 85 Am. St. Rep. 779.

Allis Chalmers Company v. Reliable Lodge, 111 Fed. 264.

Inasmuch as the petitioner, as shown by the record in this suit, could only have recovered *nominal* damages against Hughes in an action at law, had such an action been brought, the *injunction could only issue, as against the respondents to restrain the commission of threatened nominal damages, assuming that a conspiracy had been formed between Hughes and the other respondents to induce the petitioner's employees to join the United Mine Workers of America.* This being the state of the case, this Court is asked to reveres the United States Circuit Court of Appeals and affirm the District Court of the United States for the Northern District of West Virginia perpetuating the temporary injunction awarded in this case as to *all* the alleged wrongs imputed to the respondents in petitioner's bill, all of which are denied by the answers *(record, pp. 53-84)* and in the absence of the necessary and requisite proof to sustain said bill. The character and extent of this injunction is shown by the record at pages 694-701.

The final decree of the learned District Court perpetuating the temporay injunction awarded on the 26th day of May, 1908, *(record, pp. 32-36)* is predicated upon the *assumption* that petitioner has proved its bill, under

the positive denial of the allegations thereof, as to all the wrongs therein alleged against the respondents, while the record discloses almost an entire want of proof to sustain the material allegations thereof.

The parts of the decree containing the acts enjoined consist of eleven paragraphs (record, pp.698-701) beginning with the last paragraph on page 698 and ending on page 701, immediately preceding the paragraph decreeing the payment of all the costs in this suit against the several respondents served with process to answer the petitioner's bill.

The respondents, Lewis, Sullivan and Svaage were at no time ever in the vicinity of the petitioner's mine, and there is no proof of any wrongful acts imputed to Green, Watkins, Zelenka and Rankin affecting the petitioner's men or its business, and there is no tstimony of any conspiracy between them and respondent Hughes; and it is indisputably shown (record, p. 624) that respondent Rankin severed his membership with the United Mine Workers of America about three years before the final decree in this case was rendered, and yet the burden of all the costs in this suit is placed upon these unoffending respondents, Lewis, Sullivan, Savage, Green, Watkins and Zelenka and Rankin, who long before the final hearing ceased to be a member of this Labor Union.

It is true that the witness McKinley (record, pp. 414, 415) testifies to some general declarations of respondent Rankin, but there is not a single word connecting him with any wrongful act done with reference to petitioner's mine.

Petitioner's authorities do not apply to this case.

For illustration, *Lumley vs. Guy*, 2 El. & Bl. (75 E. C. L.) 216, was an action at law, and as stated by Compton, J.

> "The declaration in this case consisted of three counts. The two first stated a contract

between the plaintiff, the proprietor of the Queen's Theatre, and Miss Wagner, for the performance by her for a period of three months at the plaintiff's theatre; and it then stated that the defendant, knowing the premises and with a malicious intention, whilst the agreement was in full force, and before the expiration of the period for which Miss Wagner was engaged, wrongfully and maliciously enticed and procured Miss Wagner to refuse to sing or perform at the theatre, and to depart from and abandon her contract with the plaintiff and all service thereunder, whereby Miss Wagner, wrongfully, during the full period of the engagement, refused and made default in performing at the theatre; and special damage arising from the breach of Miss Wagner's engagement was then stated. The third count stated that Miss Wagner had been hired and engaged by the plaintiff, then being the owner of Her Majesty's Theatre, to perform at the said theatre for a certain specified period as the dramatic artiste of the plaintiff for reward to her in that behalf, and had become and was such dramatic artiste for the plaintiff at his said theatre for profit to the plaintiff in that behalf; and that the defendant, well knowing the premises and with a malicious intention, whilst Miss Wagner was such artiste of the plaintiff, wrongfully and maliciously enticed and procured her, so being such artiste to the plaintiff, to depart from and out of the said employment of the plaintiff, whereby she wrongfully departed from and out of the said service and employment of the plaintiff, and remained and continued absent from such service and employment until the expiration of her said hiring and engagement to the plaintiff by effluxion of time; and special damage arising from the breach of Miss Wagner's engagement was then stated."

This case is cited in argument of counsel for petitioner at pp. 172, 232, 233, 235, 236.

And the following cases are to the same purport or effect:

Allis-Chalmers Company, Iron Moulders Union, etc., vs. 166 Fed. 45, cited in argument at pp. 82, 87, 90, 94.

Angle vs. Chicago, St. Paul M. & O. Railway Company, 151 U. S. 1, 38 Law. Ed. 55, cited in argument at pp. 114, 117, 123, 165, 172, 178, 180, 233, 235, 250.

Arthur vs. Oakes, 63 Fed. 310, cited in argument at pp. 60, 74, 149, 150, 180, 181.

Atkinson, Chipley vs. 23 Fla. 206, 1 So. 934, cited in argument at pp. 133 177, 180.

Frank et al. vs. Herold et al., 63 N. J. Eq. 443, 52 Atl. 152, cited in argument at pp. 132, 143, 180.

Keeble vs. Hickeringill, 11 East, 274, cited in argument at p. 246.

Old Dominion Steamship Company vs. McKenna, 30 Fed. 48, cited in argument at p. 69.

Beekman vs. Marsters, 195 Mass. 205, 80 N. E. 817, cited in argument at pp. 119, 146, 177, 178, 179, 180.

Berry vs. Donovan, 188 Mass. 353, 74 N. E. 603, cited in argument at pp. 62, 145, 146, 178, 179, 180.

Burke et al., Thacker Coal & Coke Co., vs., 59 W. Va. 253, cited in argument at pp. 118, 131, 142, 147, 162, 165, 171, 173, 178, 179, 180, 213, 226, 247.

West Virginia Transportation Company vs. Standard Oil Company, 50 W. Va. 611, cited in argument at pp. 117, 147, 165, 178, 179, 180, 247.

In most of the cases of the class to which the foregoing belong, the contract was one for definite service, and in a few instances for service at will, and the *wrong* consisted of the wanton or willful and malicious acts of the defendants causing the employees to actually quit the service of their employer, and the injury was the damage to the business of the plaintiff caused by the actual loss of service needed or required to carry it on.

In the case now before the court there is not a *scintilla* of proof that any one of the respondents did a single act to induce any one of the employees of petitioner to quit its service, or to induce any one not to enter into its service, and there is no proof of any kind that the respondents caused any employee to leave the petitioner's service, and the record in fact *shows* that not a single employee of petitioner ever left its employment, or ever indicated any intention of doing so. The facts in this case are very different from those found in the cases cited by counsel for petitioner.

There is another class of cases cited and relied upon by counsel for the petitioner in which the facts are so different or so much at variance from the facts in the case now before the Court that it is difficult to discern how they are to be applied here. Take for illustration the following:

Adair vs. United States, 208 U. S. 161— holds unconstitutional a statute making it a crime to discharge an employee because he belongs to a Labor Union.

Adams vs. Brennan, 177 Ill. 194, 52 N. E. 314— holds that a board of

education has no right to stipulate in a contract that none but union labor shall be employed—is restrictive of competition.

Aikens vs. Wisconsin, 195 U. S. 194, 49 Law. Ed. 154, upholds the validity under U. S. Const. 14th Amend. of a State statute prohibiting a combination for the purpose of willfully or maliciously injuring another in his business.

Allgeyer vs. Louisiana, 165 U. S. 578, 41 Law. Ed. 832—holds unconstitutional a statute of Louisiana which forbids the making of a contract for insurance with any Marine Insurance Company that has not complied with certain provisions of such statute.

American Malting Company vs. Keitel, 209 Fed. 351—involved only the question of the power of courts of equity to restrain the publication of libels.

Atchison, T. & S. F. Railway Company, vs. Gee, 140 Fed. 153—simply holds the defendants in that case guilty of contempt for willfully and persistently violating an injunction.

Gompers vs. Buck's Stove & Range Company, 221 U. S. 418, 55 Law. Ed. 797—was a review on a writ of certiorari of a judgment of the Court of Appeals of the District of Columbia affirming a judgment of imprisonment for con-

tempt in violating an injunction against the continuance of a boycott.

Building Trades Council, Gray et al., vs., 91 Minn. 171, 97 N. W. 63—was an injunction awarded on bill and accompanying affidavits enjoining a boycott.

Butchers' Union, etc., Company vs. Crescent City, etc. Company, 111 U. S. 746, 28 Law. Ed. 585—involved the validity of a state statute giving to the plaintiff in the suit the sole right of butchering live stock within certain prescribed territory.

Casey vs. Cincinnati Typographical Union No. 3 et al., 45 Fed. 135—was a case in which an injunction was awarded upon the face of the bill and accompanying affidavits, enjoining a conspiracy to boycott a newspaper for refusing to unionize its office.

Coffeyville Vitrified Brick & Tile vs. Shanks, 69 Kan. 297, 76 Pac. 856—was an action to recover damages by the plaintiff for his discharge because he belonged to a labor union under a statute which made it unlawful to do so, and the court held the statute unconstitutional.

Crump vs. Commonwealth, 84 Va. 927, 6 S. E. 620—was an indictment for a conspiracy to boycott a newspaper company for its refusal to unionize its office.

Hopkins vs. Oxley Stave Company, 83 Fed. 912—was a conspiracy to compel the company by means of a boycott to discontinue the use of a hooping machine.

Loewe et al., vs. Lawler et al., 208 U. S. 274, 52 Law. Ed. 488—was a private action to recover damages under the Anti-Trust Law and the court held that a combination by members of a labor organization to destroy by means of a boycott an existing inter-state traffic in hats violated this law.

Lochner vs. New York, 198 U. S. 45, 49 Law. Ed. 937—involved the constitutionality of a statute of that State limiting the hours of employees in bakeries, which the court held to be in contravention of the 14th Amend. U. S. Const.

Martel vs. White, 185 Mass. 255, 69 N. E. 1085—was an action at law for damages for acts in the nature of a boycott which resulted in the ruin of plaintiff's business.

Moran vs. Dumphy, 177 Mass. 485, 59 N. E. 125—was an action by an employee to recover damages against the defendant who, by false statements, had caused the plaintiff's discharge.

Munn vs. People of Illinois, 94 U. S. 113, 24 Law. Ed. 77—was decided on a writ of error to the Supreme Court of Illinois and involved the sole question of the constitutionality of a law of that State fixing

a maximum charge for the storage of grain in warehouses at Chicago and other places.

O'Brien vs. People, 216 Ill. 354, 75 N. E. 108—was a proceeding for contempt in disobeying an injunction issued to prevent the defendant from intimidating its employees while engaged at work.

People vs. Marcus, 185 N. Y. 257, 77 N. E. 1073—held a statute of New York unconstitutional making it a criminal offense for an employer to exact an agreement from an employee not to join a labor union.

Pocahontas Coke Company vs. Powhatan Coal & Coke Company, 60 W. Va. 508—holds that a contract in unreasonable restraint of trade is void and not enforceable.

Purvis vs. Local No. 500, U. B. of Carpenters and Joiners, 214 Pa. St. 348, 63 Atl. 585—was a case wherein a labor union sought to coerce an employer to employ only union workmen, and threatened to ruin his business if he did not do so.

Singer Sewing Machine Company vs. Union Buttonhole & Embroidery Company, 22 Fed. Cas. 220, No. 12,904—was a case wherein an injunction was issued in favor of one of the parties to a contract restraining the other party thereto from violating the contract.

State vs. Goodwill, 33 W. Va. 179—simply holds a statute of West Virginia void which forbids a mining or manufacturing company from issuing in payment of its employees anything except that specified in the statute.

State vs. Gidden, 55 Conn. 46, 3 Am. St. Rep. 23—was an indictment for a conspiracy to compel a publishing company, against its will, to discharge its workmen and employ such workmen as defendants should name, and to injure workmen then in its employ by depriving them of their employment.

State vs. Stewart, 59 Vt. 273, 9 Atl. 559—was an indictment for a conspiracy to hinder and prevent a certain corporation from employing certain workmen and to deter others from working for it.

Tunstall vs. Stearns Coal Company, 192 Fed. 808—was a case wherein there was a preliminary injunction awarded upon the face of the bill against the defendants restraining them from the use of violence, threats, intimidation, and bribery, to cause and induce the plaintiff's employees to quit its service.

United States vs. Haggerty, 116 Fed. 510—was a proceeding for contempt for violating an injunction restraining the defendants therein from the use of threats and

intimidation to bring about a strike on the part of the employees of the plaintiff in the injunction suit.

Young vs. Commonwealth, 101 Va. 853, 45 S. E. 327—was a writ of error upon a conviction and fine for the violation of a statute of Virginia prohibiting the use of trading stamps, trading checks, and similar gift enterprises, and providing a punishment for those who used them.

Many excerpts from judicial decisions and opinions appear in the written argument of counsel for the petitioner to the effect that *where there is a contract between two persons for personal service to be rendered by one to the other, an action lies against a third party who induces the former to break his contract and thereby, as a natural consequence of such breach, causes loss to the other.*

(Argument, pp. 107-108, 114, 115, 117, 118, 119, 120, etc.)

This principle or rule of law, and others of like character, found in the argument of counsel for petitioner, must be "construed with reference to the question actually under consideration by the Court in that case, and should not be extended beyond for any purpose of authority in another and different case."

Wright vs. Nagle, 101 U. S. 791, 25 Law. Ed. 921, 923.

Cohen vs. Virginia, 6 Wheat. (U. S.) at pp. 399-401, 5 Law. Ed. at p. 290.

In re Johnson's Estate, 98 Cal. 531, 33 Pac. at p. 463.

Crane vs. Bennett, 177 N. Y. 106, 101 Am. St. Rep. 722-26.

Halbouer vs. Cuenin, (Colo.) 101 Pac. 763.

American National Bank vs. Fountain, 148 N. C. 590, 62 S. E. 738.

Hogan vs. Board of Education of City of New York, 200 N. Y. 370, 93 N. E. 951.

Hamill vs. Samuels, (Tex.) 133 S. W. 419.

"The opinion of a court must be interpreted as a whole, and whatever was said must be tested by reference to the actual question then before the court."

(Hogan vs. Board of Education of City of New York, *supra.*)

"A judicial decision is to be considered as authority only in connection with the facts on which it was decided."

(American National Bank vs. Fountain, *supra.*)

"General language in an opinion is to be construed with reference to the facts of the particular case."

(Halbour vs. Cuenin, *supra.*)

"In applying cases which have been decided, what may have been said in the opinion should be confined to, and limited by, the facts of the case under consideration when the expressions relied upon were made, and should not be extended to cases where the facts are essentially different."

(Crane vs. Bennett, *supra.*)

For illustration take the statement made in *Thacker Coal & Coke Company vs. Burke*, (W. Va.) 5 L. R. A. 1091 and *West Virginia Transportation Company vs. Standard Oil Company*, 50 W. Va. 611, cited in argument (p. 247) by counsel for petitioner, and it will be found that in the former case, (an action at law) there was a contract for definite service, that the

defendants actually caused the servants to quit their service, leave plaintiff's employment and actually refused to work longer, whereby damage actually accrued to the plaintiff; and in the latter case (also an action at law), the court construed the declaration as charging a boycott whereby the defendants caused the plaintiff to lose its customers. Attention is directed to these two cases relied on by petitioner's counsel, that the wide difference in the facts thereof between them and the case at bar may be made obvious to the Court, and this is true as to the other cases relied on by petitioner.

Petitioner's counsel in their argument assume that the material facts alleged in bill of complaint against respondents have been proved.

Upon the *assumption* that the facts averred in the bill against the respondents have been *proved*, the conclusions and deductions made by petitioner's counsel in argument necessarily follow, and upon such an *assumption*, the authorities cited by them apply to such a case as the one set forth in petitioner's bill of complaint. Concisely stated, *what are the facts averred, assumed to have been proved, but* in truth *not* proved?

They are these:

> (1) That respondents are seeking by inducements, threats, and intimidation to cause petitioner's employees to leave its service, and others who have engaged to enter its service, not to do so.
>
> *(Record, p. 5.)*
>
> (2) That respondents have maliciously formed themselves into a conspiracy to compel by threats and intimidation and by other unlawful means, petitioner's employees to join the union.
>
> *(Record, p. 16.)*
>
> (3) That respondents have formed a conspiracy to cause petitioner's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled until such time as the

petitioner shall submit to the demands of the Union.

(Record, pp. 16, 17.)

(4) That some one or more of respondents, by inducement, persuasion, threats, and intimidation and by various means and devices did unlawfully make effort to induce petitioner's employees to cease working for it, and by like means, devices, intimidation, threats, persuasion, and inducement made effort to prevent men willing to work for the petitioner not to engage to work for it.

(Record, pp. 21, 22.)

(5) That respondents are now endeavoring to unionize petitioner's mine and threaten and allege to close down its mine and keep it closed until petitioner will agree to employ none but union labor.

(Record, p. 24.)

(6) That respondents, acting individually, and in conspiracy under the name of The United Mine Workers of America, will, by enticement, persuasion, or coercion in one form or the other, bring about

(a) The shutting down of petitioner's mine and the ultimate destruction of its business.

(b) Will, without the consent of the petitioner, compel it to recognize said respondents and associations in the further transaction of its business in mining and shipping coal.

(c) Will compel petitioner, to contract with its employees through respondents as officers of said association.

(d) Will compel petitioner to agree with each of its future employees as members of the United Mine Workers of America that they shall owe and yield to said Union an allegiance paramount to that which they would owe to petitioner.

(e) That respondents will take charge of, dictate the management of, and virtually con-

trol the petitioner's business, and thereby perpetuate acts of oppression and wrong upon petitioner.

(Record, pp. 26, 27.)

(7) That respondents in effecting their object of unionizing the petitioner's mine propose and threaten to use threats, intimidation, force, violence or abusive language, picketing petitioner's premises, picketing or patroling and guarding the streets and approaches to petitioner's premises and going to the homes or boarding houses of petitioner's employees for the purpose of intimidating or coercing them to leave petitioner's employment and to picket railroad and street cars passing to and from or to petitioner's premises for the purpose of intercepting petitioner's employees, and to intercept and prevent persons coming to petitioner's premises for the purpose of seeking or entering into its employ.

(Record, p. 27.)

Not one of the above *seven* specific charges nor a single one of the five subordinate dependent charges *(a) (e)* made in the bill against respondents is sustained by the proof, *although each and every one thereof is denied by the answers.* It is vain to base an argument upon non-existent things.

Many extracts from reports to conventions of the United Mine Workers and discussions which took place therein appear in the bill, presumably to be treated as evidentiary matters, *(record, pp. 17-20)* and importance seems to be attached to these parts of the bill by counsel for petitioner.

The parts of the bill containing these extracts are fully answered, *(record, pp. 59-61)*, denied wherein they are not true, explained where necessary, and if true, admitted.

Counsel for petitioner in their argument, and the learned District Court, in its opinion, assume that the irrelevant and immaterial evidence introduced by petitioner under excep-

tions is properly in the record, and present and discuss these new issues founded thereon.

The petitioner by the argument of its counsel seeks to bring into this controversy two new issues—not founded upon the pleadings but upon the irrelevant evidence which it brought into the cause under exceptions duly taken thereto by the respondents.

The *first* of these two *new* and *foreign issues* is that the United Mine Workers of America by their representatives in joint convention at the city of Chicago in 1898 with the coal operators of Ohio, Indiana, Illinois, and Western Pennsylvania, known as the Central Competitive Field, formed a combination and conspiracy with these operators, to unionize all the coal mines in West Virginia against the consent of the owners thereof, and thus ruin the coal industry in the State of West Virginia, and it is further argued that the acts imputed to respondents in the petitioner's bill were done in *furtherance of such a conspiracy*, while the bill itself does not allege any such conspiracy. In support of this new and foreign issue, counsel for petitioner relies largely upon the documentary evidence and especially upon "McKinley Exhibit No. 4", as well also as the learned District Court in its opinion.

(Argument, No. 2, pp. 7–33.)

There is not even an allusion in petitioner's bill to such a conspiracy as thus assumed in argument and by the learned district judge in his opinion.

The conspiracy charged in the bill is one formed by the respondents after petitioner began to operate its mine non-union (June 12, 1906), to unionize petitioner's mine against its consent and expressed desire.

It is further argued upon this *irrelevant* testimony, that as the United Mine Workers of America formed a conspiracy in 1898 with the operators of the "Central Competitive Field" to unionize all the coal mines of West Virginia, that, therefore, this labor union is unlawful, and should be so declared, and that the United

States Circuit Court of Appeals for the Fourth Circuit erred in holding otherwise, and thus *another* new and foreign issue is brought into the cause, inasmuch as the *lawfulness of this organization is challenged in the bill, because of certain specific provisions in the constitutions of its national and subordinate associations, (record, pp. 6-15, 25)* averred to be in contravention of the constitution and laws of West Virginia.

No material issue can be considered by the Court except that raised by the pleadings. This is an elementary rule of procedure.

As we have already shown in our Original Brief *(p. 53)*, ~~that~~ the evidence must relate to the allegations made in the bill, and in addition to the authorities there cited, attention is called to some of the many other cases supporting this rule of equity practice.

Reynold vs. Stockton, 140 U. S. 254, 35 Law. Ed. 464, 468.

Carneal vs. Banks, 10 Wheat. 181, 6 Law. Ed. 294.

Cracket vs. Lee, 7 Wheat. 522, 5 Law. Ed. 513.

Harrison vs. Nixon, 9 Pet. (U. S.) 483, 9 Law. Ed. 201, 208.

Phelps vs. Elliott, 35 Fed. 455, *461*.

Wren vs. Moncure, (Va.) 28 S. E. 588, 590.

In *Carneal vs. Banks, supra*, the following is the second point of the syllabus as reported in 6 Law. Ed. 297:

> **"A decree must be sustained by the allegations of the parties, as well as by the proofs in the cause, and cannot be founded upon a fact not put in issue by the pleadings."**

In *Reynolds vs. Stockton, supra*, we find in the opinion as reported in 35 Law. Ed. 468, the following:

"Whatever may be the rule where substantial amendments to the complaint are permitted and made, and the defendant responds thereto, or where it appears that he takes actual part in the litigation of the matters determined, the rule is universal that where he appears and responds only to the complaint as filed, and no amendment is made thereto, the judgment is conclusive only so far as it determines matters which by the pleadings are put in issue. And this rule, which determines the conclusiveness of a judgment rendered in one court of a State, as to all subsequent inquiries in the courts of the same State, enters into and limits the constitutional provision quoted, as to the full faith and credit which must be given in one State to judgments rendered in the courts of another State."

In *Phelps vs. Elliott, supra,* the statement of the rule is made in the opinion:

"Although the facts proved establish the complainant's equitable title to the bonds at the time when they were purchased by Riggs & Company, it is doubtful whether under this bill of complaint he can avail himself of these facts. The bill proceeds upon the theory that his title inures by the adjudication of the Supreme Court of the United States that the title to the award was vested in him. As has been stated, the court did not make any such adjudication, and it follows, now that the averment of the bill is shown to be untrue, that the case must be treated as though that averment was not in the bill. There is no other averment of title, and no facts are set forth from which an equitable title can be deduced. The rule is fundamental in equity pleading that every fact essential to the complainant's title to maintain the bill and obtain the relief must be stated in the bill, otherwise the defect will be fatal. In the language of the court, in Harrison vs. Nixon, 9 Pet. 483, 503, 'every bill must contain in itself sufficient matter of fact, *per se,* to maintain the case of the plaintiff. The proofs must be according to the allegations of the parties; and if the proofs go to matters not

> within the allegations, the court cannot judicially act upon them as a ground for decision, for the pleadings do not put them in contestation.' The allegatta and the probata must reciprocally meet and conform to each other. A party can no more succeed upon a case proved but not alleged than upon a case alleged but not proved. Foster vs. Goddard, 1 Black, 518; Boone vs. Chiles, 10 Pet. 177. A decree must be sustained by the allegations of the parties as well as the proofs in the cause, and cannot be founded on a fact not put in issue in the pleadings. Carneal vs. Banks, 10 Wheat. 181." (35 Fed. 461.)

So in *Wren vs. Moncure, supra,* the court in its opinion, said:

> "In a court of equity, as well as in a court of law, the allegations and proofs must agree. A recovery will not be allowed upon a case, although proved, which differs essentially from that alleged in the bill. Smith vs. Nicholas, 8 Leigh, 354; Brown vs. Toell's Adm'rs, 5 Rand. 543; Thompson vs. Jackson, 3 Rand. 504; Hunter's Adm'rs vs. Jett, 4 Rand. 104; and Manufacturing Company vs. Evans, 84 Va. 717, 6 S. E. 2. If this were not so, as has been aptly said, the pleadings instead of being a shield to protect parties from surprise, would be a snare to entrap them."
>
> In Crocket vs. Lee, 7 Wheat. 522, it was said by Chief Justice Marshall: 'If the pleadings in the cause were to give no notice to the parties or to the court of the material facts on which the right asserted was to depend; no notice of the points to which the testimony was to be directed, and to which it was to be limited; if a new case might be made out in proof different from that stated in the pleadings,—all will perceive the confusion and uncertainty which would attend legal proceedings, and the injustice which must frequently take place. The rule that the decree must conform to the allegations, as well as to the proofs, of the parties, is not only one which justice requires, but one which necessity imposes on courts."

> In Jackson's Assignees vs. Cutright, 5 Munf. 314, the language of Judge Carr is not less emphatic: 'The plaintiff must prove the case which he sets out in his bill; and although he should make out in evidence a good case, which, under other circumstances, would secure the interposition of the court, yet, if it be not the very case made by the bill, it will not support the bill.'" (28 S. E. 590.)

The issues in this case are defined in this supplemental brief *(p. 21)* and all the essential and material matters charged against the respondents are also set forth *(pp. 92-94)*, and the petitioner is restricted to these issues and allegations in the matter of proof, and having failed to sustain these issues, the decree of the Circuit Court of Appeals will not be disturbed by this Court. But, strange to say, an extended argument is offered in support of this *foreign* issue, this *new* and *fanciful* conspiracy.

It would seem as if the petitioner has taken refuge under this *new* and *foreign* phase of the case, as a plausible excuse for the further prosecution of this suit. We can perceive no other reason for such a position, thus taken by petitioner's counsel.

We now respectfully submit that the decree of the Circuit Court of Appeals should be affirmed.

CHAS. E. HOGG,
Counsel for Respondents.

HITCHMAN COAL & COKE COMPANY *v.* MITCHELL, INDIVIDUALLY, ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 11. Argued March 2, 3, 1916; restored to docket for reargument March 13, 1916; reargued December 15, 18, 1916.—Decided December 10, 1917.

The District Court has no power to decree an injunction against parties who were not served with process and who appeared only to object to the jurisdiction over them.

In order that the declarations and conduct of third parties may be admissible against persons sued with respect to acts done to carry out an alleged conspiracy, a combination between them and the defendants must be shown by independent evidence; but the criminal or otherwise unlawful character of the combination may be shown by the declarations themselves.

The same liberty which enables men to form unions, and through the unions to enter into agreements with employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. In the latter case as in the former the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make.

The right of action for persuading an employee to leave his employer, universally recognized, rests upon fundamental principles of general application.

The right of workingmen to form unions and to enlarge their membership by inviting other workingmen to join is conceded, provided the objects of the union be proper and legitimate.

The right of workingmen to enlarge the membership of unions by inviting other workingmen to join, like other civil rights, must be exercised with reasonable regard for the conflicting rights of others; and the members of a union having notice that the employees of an establishment are under contract with their employer not to remain in his employ after joining the union, may not lawfully, for the purpose of unionizing the establishment through an actual or threatened strike, induce or seek to induce such employees to violate their contract by joining the union, or (what in equity is the same) by secretly agreeing to join, and thereafter remaining at work until sufficient new members can be obtained so as to bring about a strike, thus uniting with the union in a plan to subvert the system of employment to which they voluntarily have agreed and upon which their employer and their fellow-employees are relying.

An employer is entitled to the good-will of his employees, irrespective of the fact that they are employed at will and that the relation is terminable by either party at any time; he is entitled to the benefit of the reasonable probability that by properly treating them he will be able to retain them in his employ and to fill vacancies occurring from time to time by the employment of other men on the same terms. It is unlawful for a third party, having notice of this relation, to interfere with it without just cause or excuse.

Intentionally to do that which is calculated in the ordinary course of

events to damage and which does in fact damage another person in his property or trade, is malicious in law and actionable if done without just cause or excuse.

A proffered excuse can not be deemed a just cause or excuse where it is based upon an assertion of conflicting rights that are sought to be attained by unfair methods and for the very purpose of interfering with plaintiff's rights of which defendants have notice.

Any violation of plaintiff's legal rights, contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect—for example, a combination to procure concerted breaches of contract by plaintiff's employees—is as plainly unlawful as if it involved a breach of the peace.

The purpose entertained by defendants to bring about a strike at plaintiff's mine in order to compel plaintiff, through fear of financial loss, to consent to the unionization of the mine as the lesser evil, was an unlawful purpose; and the methods resorted to by defendants—the inducing of employees to unite with the union in an effort to subvert the system of employment at the mine by concerted breaches of the contracts of employment known to be in force there—were unlawful and malicious methods, not to be justified as a fair exercise of the right to increase the membership of the union.

Convinced by costly strikes of the futility of attempting to operate under a closed-shop agreement with a certain union, plaintiff established its mine on a non-union basis, with the unanimous approval of its employees and under a mutual agreement, assented to by them all, that plaintiff would continue to run its mine non-union and not recognize the union; that if any man wanted to become a member of the union he was at liberty to do so, but he could not be a member and remain in plaintiff's employ. Under that agreement plaintiff ran its mine for a year and more, and, so far as appears, without the slightest disagreement between it and its men, and without any grievance on their part. Thereupon, defendants, having full notice of the agreement, and acting without any agency for the men, but as representatives of an organization of mine workers in other States, and in order to subject plaintiff to such participation by the union in the management of the mine as necessarily results from the making of a closed-shop agreement, sent their agent to the mine, who, with full notice of, and for the very purpose of subverting, the status arising from plaintiff's agreement and subjecting the mine to the union control, proceeded, without physical violence, indeed, but by persuasion accompanied with threats of a reduction of wages and deceptive statements as to the attitude of the mine management,

to induce plaintiff's employees to join the union and at the same time to break their agreement with plaintiff by remaining in its employ after joining; and this for the purpose not of enlarging the membership of the union, but of coercing plaintiff, through a strike or the threat of one, into recognition of the union. *Held*, that plaintiff was clearly entitled to an injunction.
214 Fed. Rep. 685, reversed.

THE case is stated in the opinion.

Mr. Hannis Taylor, with whom *Mr. George R. E. Gilchrist* was on the briefs, for petitioner.

Mr. Charles E. Hogg for respondents.

Space will not permit an adequate presentation of the elaborate arguments submitted by opposing counsel.

MR. JUSTICE PITNEY delivered the opinion of the court.

This was a suit in equity, commenced October 24, 1907, in the United States Circuit (afterwards District) Court for the Northern District of West Virginia, by the Hitchman Coal & Coke Company, a corporation organized under the laws of the State of West Virginia, against certain citizens of the State of Ohio, sued individually and also as officers of the United Mine Workers of America. Other non-citizens of plaintiff's State were named as defendants but not served with process. Those who were served and who answered the bill were T. L. Lewis, Vice President of the U. M. W. A. and of the International Union U. M. W. A.; William Green, D. H. Sullivan, and "George" W. Savage, (his correct Christian name is Gwilym), respectively President, Vice President, and Secretary-Treasurer of District No. 6, U. M. W. A.; and A. R. Watkins, John Zelenka, and Lee Rankin, respectively President, Vice President and Secretary-Treasurer of Sub-district No. 5 of District No. 6.

Plaintiff owns about 5,000 acres of coal lands situate at or near Benwood, in Marshall County, West Virginia, and within what is known as the "Pan Handle District" of that State, and operates a coal mine thereon, employing between 200 and 300 men, and having an annual output, in and before 1907, of about 300,000 tons. At the time of the filing of the bill, and for a considerable time before and ever since, it operated its mine "non-union," under an agreement with its men to the effect that the mine should be run on a non-union basis, that the employees should not become connected with the Union while employed by plaintiff, and that if they joined it their employment with plaintiff should cease. The bill set forth these facts, *inter alia*, alleged that they were known to defendants and each of them, and "that the said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely: to cause your orator's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as your orator shall submit to the demand of the Union that it shall unionize its plant, and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the Union," etc. The general object of the bill was to obtain an injunction to restrain defendants from interfering with the relations existing between plaintiff and its employees in order to compel plaintiff to "unionize" the mine.

A restraining order having been granted, followed by a temporary injunction, the served defendants filed answers, and thereupon made a motion to modify the injunction, which was refused. 172 Fed. Rep. 963. An appeal taken by defendants from this order was dismissed by the Circuit Court of Appeals. 176 Fed. Rep. 549. Afterwards

they applied for and obtained leave to withdraw their answers and file others; the order, however, prescribed that the withdrawn answers were "not to be removed from the file." The new answers denied all material averments of the bill, some of which had been admitted in the former answers. Plaintiff, having filed replications, obtained an order that the former answers should be treated as evidence on behalf of the plaintiff upon the issue joined. Upon this evidence and other evidence introduced before the court orally, the case was submitted, with the result that a final decree was made January 18, 1913, granting a perpetual injunction. 202 Fed. Rep. 512. This was reversed by the Circuit Court of Appeals June 1, 1914 (214 Fed. Rep. 685), but the mandate was stayed pending an application to this court for a writ of certiorari. Afterwards an appeal was allowed. This court dismissed the appeal, but granted the writ of certiorari (241 U. S. 644), the record on appeal to stand as a return.

The final decree of the District Court included an award of injunction against John Mitchell, W. B. Wilson, and Thomas Hughes, who while named as defendants in the bill were not served with process and entered no appearance except to object to the jurisdiction of the court over them. Under the federal practice, the appearance to object did not bind these parties to submit to the jurisdiction on the overruling of the objection (*Harkness* v. *Hyde*, 98 U. S. 476, 479; *Southern Pacific Co.* v. *Denton*, 146 U. S. 202, 206; *Mexican Central Ry. Co.* v. *Pinkney*, 149 U. S. 194, 209; *Goldey* v. *Morning News*, 156 U. S. 518; *Davis* v. *C., C., C. & St. L. Ry. Co.*, 217 U. S. 157, 174), and since the injunction operates only *in personam*, it was erroneous to include them as defendants. It also was erroneous to include personal relief by injunction against certain named parties who, pending suit, were chosen to succeed some of the original defendants as officers of the international, district, and sub-district

unions, but who were not served with process and did not appear, they being included upon the ground that they were "before the court by representation through service having been had upon their said predecessors in office." This suit was commenced, and was carried to final decree in the trial court, before the taking effect of the present Equity Rules (226 U. S. 629), and hence is governed by the former Rule 48 (210 U. S. 524), under which the rights of absent parties were expressly reserved.

But these procedural difficulties do not affect that part of the decree which awarded an injunction against the answering defendants (Lewis, Green, Sullivan, Savage, Watkins, Zelenka, and Rankin) "individually" and not as officers of the Union or its branches except as to Savage, against whom the decree goes in both his individual and official capacities, he alone having retained at the time of the final decree the same office he held at the beginning of the suit. If there was error in excluding the "official" responsibility of the others, it was not one of which they could complain, and it was not assigned for error upon their appeal to the Circuit Court of Appeals. If they were subject to injunction at all, they were so in their individual capacities. Whether the decree will bind their successors in office, or their fellow-members of the Union, is a question to be determined hereafter, if and when proceedings are taken to enforce the injunction against parties other than the answering defendants.

We proceed, therefore, to consider the case as it stands against the answering defendants.

The District Court based its decision upon two grounds: (1) That the organization known as the United Mine Workers of America, and its branches, as conducted and managed at the time of the suit and for many years before, was a common-law conspiracy in unreasonable restraint of trade, and also and especially a conspiracy against the rights of non-union miners in West Virginia;

and (2) That the defendants, in an effort to compel the plaintiff to enter into contractual relations with the Union relating to the employment of labor and the production of coal, although having knowledge of express contracts existing between plaintiff and its employees which excluded relations with the Union, endeavored by unlawful means to procure a breach of these contracts by the employees.

A brief recital of previous transactions between the parties becomes material. The Union is a voluntary and unincorporated association which was organized in the year 1890 in the States of Ohio and Indiana, and afterwards was extended to other States. It is made up of national or "international," district, sub-district, and local unions. District No. 6 comprises the coal districts of Ohio and the Panhandle of West Virginia. Sub-district No. 5 of that district comprises five counties and parts of counties in Ohio, and the Panhandle.

The answering defendants were and are active and influential members—leaders—of the Union, as well as officers. Savage, Lewis, and Sullivan have been members from its formation in 1890, and have held important offices in it and attended the national conventions. The others are long-time members, and possessed an influence indicated by the offices they held, but not limited to the duties of those offices.

From 1897 to 1906 what were known as joint interstate conferences were held annually or biennially between officials of the Union and representatives of the operators in the "Central Competitive Field" (which includes Western Pennsylvania, Ohio, Indiana, and Illinois, but not West Virginia), for the purpose of agreeing upon the scale of wages and the conditions of employment in that field. In addition there were occasional conferences of the same character affecting other States and districts.

Plaintiff's mine is within the territorial limits of Subdistrict No. 5 of District No. 6. Coal-mining operations were commenced there in the early part of the year 1902, and the mine was operated "non-union" until April, 1903, when, under threats from the Union officials, including defendants Watkins and Sullivan, that a certain unionized mine in Ohio, owned by the same proprietors, would be closed down if the men at the Hitchman were not allowed to organize, plaintiff consented to the unionization of the latter mine. This went into effect on the 1st of April, 1903, and upon the very next day the men were called out on strike because of a disagreement with the company as to the basis upon which mining should be paid for. The strike continued until May 23, requiring plaintiff to cease operations and preventing it from fulfilling its contracts, the most important of which was one for the daily supply of engine coal to the Baltimore & Ohio Railroad at a coaling station adjoining the mine. The financial loss to plaintiff was serious. The strike was settled and the men resumed work upon the basis of a modification of the official mining scale applicable to the Hitchman mine.

Again, in the spring of 1904, there was difficulty in renewing the scale. A temporary scale, agreed upon between operators and miners for the month of April, 1904, was signed in behalf of the Hitchman Company on the 18th of April. Two days later the men at the Hitchman struck, and the mine remained idle for two months, during which time plaintiff sustained serious losses in business and was put to heavy expense in obtaining coal from other sources to fill its contract with the Baltimore & Ohio Railroad Company. The strike was settled by the adoption of the official scale for the Panhandle District, with amendatory local rules for the Hitchman mine.

After this there was little further trouble until April 1,

1906, when a disagreement arose between the Union and an association of operators with which plaintiff was not connected—the association being in fact made up of its competitors—about arranging the terms of the scale for the ensuing two years. At the same time a similar disagreement arose between the operators and the Union officials in the Central Competitive Field. The result was a termination of the interstate conferences and a failure to establish any official scale for the ensuing two years, followed by a widespread strike, or a number of concurrent strikes, involving the most of the bituminous coal-producing districts. There was absolutely no grievance or ground of disagreement at the Hitchman mine, beyond the fact that the mining scale expired by its own terms on March 31, and the men had not received authority from the Union officials either to renew it or to agree to a new one in its place. Plaintiff came to an understanding with the local union to the effect that if its men would continue at work the company would pay them from April 1st whatever the new scale might be, except that if the new scale should prove to be lower than that which expired on March 31, there should be no reduction in wages, while if the scale was raised the company would pay the increased amount, dating it back to April 1st. This was satisfactory to the men; but as the question of a new scale was then under discussion at a conference between the officials of the Union and the representatives of the Operators' Association, and plaintiff's employees wished to get the sanction of their officers, the manager of the Hitchman mine got into communication with those officials, including defendant Green, President of District No. 6, and endeavored to secure their assent to the temporary arrangement, but without success. Then a committee of the local union, including Daugherty, its President, took up the matter with Green and received permission to mine and load engine coal

until further notice from him. Under this arrangement the men remained at work for about two weeks. On April 15th, defendant Zelenka, Vice President of the subdistrict, visited the mine, called a meeting of the miners, and addressed them in a foreign tongue, as a result of which they went on strike the next day, and the mine was shut down until the 12th of June when it resumed as a "non-union" mine, so far as relations with the U. M. W. A. were concerned.

During this strike plaintiff was subjected to heavy losses and extraordinary expenses with respect to its business, of the same kind that had befallen it during the previous strikes.

About the 1st of June a self-appointed committee of employees called upon plaintiff's president, stated in substance that they could not remain longer on strike because they were not receiving benefits from the Union, and asked upon what terms they could return to work. They were told that they could come back, but not as members of the United Mine Workers of America; that thenceforward the mine would be run non-union, and the company would deal with each man individually. They assented to this, and returned to work on a non-union basis. Mr. Pickett, the mine superintendent, had charge of employing the men, then and afterwards, and to each one who applied for employment he explained the conditions, which were that while the company paid the wages demanded by the Union and as much as anybody else, the mine was run non-union and would continue so to run; that the company would not recognize the United Mine Workers of America; that if any man wanted to become a member of that union he was at liberty to do so; but he could not be a member of it and remain in the employ of the Hitchman Company; that if he worked for the company he would have to work as a non-union man. To this each man employed gave his assent, un-

derstanding that while he worked for the company he must keep out of the Union.

Since January, 1908 (after the commencement of the suit), in addition to having this verbal understanding, each man has been required to sign an employment card expressing in substance the same terms. This has neither enlarged nor diminished plaintiff's rights, the agreement not being such as is required by law to be in writing.

Under this arrangement as to the terms of employment, plaintiff operated its mine from June 12, 1906, until the commencement of the suit in the fall of the following year.

During the same period a precisely similar method of employment obtained at the Glendale mine, a property consisting of about 1,200 acres of coal land adjoining the Hitchman property on the south, and operated by a company having the same stockholders and the same management as the Hitchman; the office of the Glendale mine being at the Hitchman Coal & Coke Company's office. Another mine in the Panhandle, known as the Richland, a few miles north of the Hitchman, likewise was run "non-union."

In fact, all coal mines in the Panhandle and elsewhere in West Virginia, except in a small district known as the Kanawha field, were run "non-union," while the entire industry in Ohio, Indiana, and Illinois was operated on the "closed-shop" basis, so that no man could hold a job about the mines unless he was a member of the United Mine Workers of America. Pennsylvania occupied a middle ground, only a part of it being under the jurisdiction of the Union. Other States need not be particularly mentioned.

The unorganized condition of the mines in the Panhandle and some other districts was recognized as a serious interference with the purposes of the Union in the

Central Competitive Field, particularly as it tended to keep the cost of production low, and, through competition with coal produced in the organized field, rendered it more difficult for the operators there to maintain prices high enough to induce them to grant certain concessions demanded by the Union. This was the subject of earnest and protracted discussion in the annual international convention of the U. M. W. A. held at Indianapolis, Indiana, in the month of January, 1907, at which all of the answering defendants were present as delegates and participated in the proceedings. The discussion was based upon statements contained in the annual reports of John Mitchell, as President of the Union (joined as a defendant in the bill but not served with process), and of defendant Lewis, as Vice President, respecting the causes and consequences of the strike of 1906, and the policy to be adopted by the Union for the future. In these reports it was made to appear that the strike had been caused immediately by the failure of the joint convention of operators and miners representing the central and southwestern competitive fields, held in the early part of the year 1906, to come to an agreement for a renewal of the mining scale; that the strike was widespread, involving not less than 400,000 mine workers, was terminated by "district settlements," with variant results in different parts of the territory involved, and had not been followed by a renewal of the former relations between the operators and miners in the Central Competitive Field. Another result of the strike was a large decrease in the membership of the Union. Two measures of relief were proposed: first, that steps be taken to reëstablish the joint interstate conferences; and second, the organization of the hitherto unorganized fields, including the Panhandle District of West Virginia, under closed-shop agreements, with all men about the mines included in the membership of the United Mine Workers

of America. In the course of the discussion the purpose of organizing West Virginia in the interest of the unionized mine workers in the Central Competitive Field, and the probability that it could be organized only by means of strikes, were repeatedly declared and were disputed by nobody. All who spoke advocated strikes, differing only as to whether these should be nation-wide or sectional. Defendant Lewis, in his report, recommended an abandonment of the policy of sectional settlements which had been pursued in the previous year. This recommendation, interpreted as a criticism of the policy pursued under the leadership of President Mitchell in the settlement of the 1906 strike, was the subject of long and earnest debate, in the course of which Lewis said: "When we organize West Virginia, when we organize the unorganized sections of Pennsylvania, we will organize them by a strike movement." And again, towards the close of the debate: "No one has made the statement that we can organize West Virginia without a strike." Defendant Green took part, favoring the view of Mr. Lewis that strikes should be treated nationally instead of sectionally. In the course of his remarks he said: "I say to you, gentlemen, one reason why I opposed the policy that was pursued last year was because over in Ohio we were peculiarly situated. We had West Virginia on the south and Pennsylvania on the east, and after four months of a strike in eastern Ohio we had reached the danger line. We felt keenly the competition from West Virginia, and during the suspension our mines in Ohio chafed under the object lesson they had. They saw West Virginia coal go by, train-load after train-load passing their doors, when they were on strike. This coal supplied the markets that they should have had. There is no disguising the fact, something must be done to remedy this condition. Year after year Ohio has had to go home and strike in some portion of the district to enforce the

interstate agreement that was signed up here. . . . I confess here and now that the overwhelming sentiment in Ohio was that a settlement by sections would not correct the conditions we complained of. Now, something must be done; it is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us." Mr. Mitchell opposed the view of defendant Lewis, reiterating an opinion, repeatedly expressed before, that West Virginia and the other unorganized fields, "would not be thoroughly organized except as the result of a successful strike"; but declaring that "they will not be organized at all, strike or no strike, unless we are able to support the men in those fields from the first day they lay down their tools. . . . Now, I believe it is possible, indeed I believe it is probable, that in the not distant future we will be able to inaugurate a movement in West Virginia and the other unorganized fields that will involve them in a strike, and then we will expect you to furnish the sinews of war, as you have done in the past, to keep these men in idleness."

The discussion continued during three days, and at the end of it the report of a committee which expressed disagreement with Vice President Lewis' opposition to sectional settlements and recommended "a continuation in the future of the same wise, conservative business-like policies" that had been pursued by President Mitchell, was adopted by a *viva voce* vote.

The plain effect of this action was to approve a policy which, as applied to the concrete case, meant that in order to relieve the union miners of Ohio, Indiana, and Illinois from the competition of the cheaper product of the non-union mines of West Virginia, the West Virginia mines should be "organized" by means of strikes local to West Virginia, the strike benefits to be paid by assessments upon the union miners in the other States mentioned, while they remained at work.

This convention was followed by an annual convention of Sub-district 5 of District 6, held in the month of March, 1907, at which defendants Watkins and Rankin were present as President and Secretary of the sub-district. Defendant Lewis, as National Vice President, occupied the chair during several of the sessions. Defendant Zelenka was present as a delegate, and also Thomas Hughes, who, while named as a defendant in the present suit, was not served with process. Watkins and Rankin in their reports recommended the complete unionization of the mines in the Panhandle counties, with particular reference to the Hitchman, the Glendale, the Richland, and two others; and as a result it was resolved "that the Sub-District officers, together with the District officers, be authorized to take up the work of organizing every mine in the Sub-District as quickly as it can be done."

Evidently in pursuance of this resolution, defendants Green, Zelenka, and Watkins, about July 1, 1907, called at plaintiff's office and laid before its general manager, Mr. Koch, a proposition for the unionization of the mine. He declined to consider it, but at their request laid it before plaintiff's board of directors, who rejected the proposition, and the manager informed Green of this. In one of the interviews Koch informed these defendants of the terms of plaintiff's working agreement with its employees to the effect that the mine was to be run non-union and they were not to become members of the Union.

About the same time, a Mr. McKinley, who was operating the Richland mine non-union, was interviewed by the Union leaders, notified of the resolution adopted by the sub-district convention, and, having asked that his mine be let alone, was met with the threat that they would secure the support of his men, and that if he did not recognize the Union they would shut down his mine.

In one of the interviews that ensued he was told that it was their purpose to organize the Glendale, the Hitchman, the Richland, and some other mines; that at the Glendale they had twenty-four men who had joined the organization, "and that they had sixty men who had signed up or had agreed to join the organization at Hitchman, and that they were going to shut the mine down as soon as they got a few more men." With respect to their progress at his own mine he was kept in the dark until about the middle of October, 1907, when, through the activities of the organizer Hughes, they succeeded in shutting it down, and it remained closed until a restraining order was allowed by the court, immediately after which it resumed non-union.

The evidence renders it clear that Hughes was sent into the Panhandle to organize all the mines there, in accordance with the resolution of the sub-district convention. The bill made a statement of his activities, and alleged that he was acting as an organizer for the Union. Defendants' final answers made a complete denial, but in this are contradicted by admissions made in the earlier answers and by other and undisputed evidence. The only defendant who testified upon the subject declared that Hughes was employed by District No. 6 as an organizer, but denied that he had power or authority to shut down the Hitchman mine.

He arrived at that mine some time in September, 1907, and remained there or in that vicinity until the latter part of October, conducting a campaign of organization at the Hitchman and at the neighboring Glendale and Richland mines.

The evidence shows that he had distinct and timely notice that membership in the Union was inconsistent with the terms of employment at all three mines, and a violation of the express provisions of the agreement at the Hitchman and Glendale.

Having unsuccessfully applied to Koch and McKinley for their coöperation, Hughes proceeded to interview as many of the men as he could reach and to hold public meetings in the interest of the Union. There is clear and uncontradicted evidence that he did not confine himself to mere persuasion, but resorted to deception and abuse. In his public speeches he employed abusive language respecting Mr. Pickett, William Daugherty, and Jim Jarrett.[1] He prophesied, in such a way that ignorant, foreign-born miners, such as he was addressing, naturally might believe him to be speaking with knowledge, that the wages paid by the Hitchman would be reduced unless the mine was unionized. The evidence as to the methods he employed in personally interviewing the miners, while meagre, is significant. Myers, a Hitchman miner, testified: "He told me that he was a good friend of Mr. Koch, and that Mr. Koch had nothing against having the place organized again. He said he was a friend of his, and I made the remark that I would ask Mr. Koch and see if it was so; and he said no, that was of no use because he was telling me the truth." He did not confine his attentions to men who already were in plaintiff's employ, but in addition dissuaded men who had accepted employment from going to work.

A highly significant thing, giving character to Hughes' entire course of conduct, is that while his solicitation of the men was more or less public, as necessarily it had to be, he was careful to keep secret the number and the names of those who agreed to join the Union. Myers, being asked to allow his name to be entered on a book

[1] Mr. Pickett was superintendent of the Hitchman and Glendale mines, and it was with him that the miners made their agreements to refrain from membership in the Union; Daugherty and Jarrett were miners at the Hitchman, and had been, respectively, President and Financial Secretary of the local union at the time of the 1906 strike, when the local deserted the U. M. W. A.

that Hughes carried, tried to see the names already entered, "but he would not show anything; he told me he had it, and I asked him how many names was on it, and he said he had about enough to 'crack off.'" To Stewart, another Hitchman miner, he said "he was forming a kind of secret order among the men; he said he had a few men—he did not state the number of them—and he said each man was supposed to give him so much dues to keep it going, and then he said after he got the majority he would organize the place." Pickett, the mine superintendent, had learned of only five men at the Glendale who were inclined to join Hughes' movement; but when these were asked to remain outside of the mine for a talk, fifteen other men waited with them, and upon being reminded that while the company would not try to prevent them from becoming mem- of the Union, they could not be members and at the same time work for the Glendale Company, they all accepted this as equivalent to a notice of discharge. And, as has been stated, the owner of the Richland, while repeatedly threatened with unionization, was kept in the dark as to the progress made by the organizer amongst his employees until the mine was actually shut down.

The question whether Hughes had "power or authority" to shut down the Hitchman mine is beside the mark. We are not here concerned with any question of *ultra vires*, but with an actual threat of closing down plaintiff's mine, made by Hughes while acting as agent of an organized body of men who indubitably were united in a purpose to close it unless plaintiff would conform to their wishes with respect to its management, and who lacked the power to carry out that purpose only because they had not as yet persuaded a sufficient number of the Hitchman miners to join with them, and hence employed Hughes as an "organizer" and sent him to the mine with the very

object of securing the support of the necessary number of miners. They succeeded with respect to one of the mines threatened (the Richland), and preparations of like character were in progress at the Hitchman and the Glendale at the time the restraining order was made in this cause.

If there be any practical distinction between organizing the miners and organizing the mine, it has no application to this case. Unionizing the miners is but a step in the process of unionizing the mine, followed by the latter almost as a matter of course. Plaintiff is as much entitled to prevent the first step as the second, so far as its own employees are concerned, and to be protected against irreparable injury resulting from either. Besides, the evidence shows, without any dispute, that defendants contemplated no half-way measures, but were bent on organizing the *mine*, the "consent" of plaintiff to be procured through such a control of its employees as would render any further independent operation of the mine out of the question. This is evident from the discussions and resolutions of the international and sub-district conventions, from what was said by defendants Green, Zelenka, and Watkins to plaintiff's manager, and to the operator of the Richland, and from all that was said and done by Hughes in his effort to organize the Hitchman, Glendale, and Richland mines.

In short, at the time the bill was filed, defendants, although having full notice of the terms of employment existing between plaintiff and its miners, were engaged in an earnest effort to subvert those relations without plaintiff's consent, and to alienate a sufficient number of the men to shut down the mine, to the end that the fear of losses through stoppage of operations might coerce plaintiff into "recognizing the union" at the cost of its own independence. The methods resorted to by their "organizer" were such as have been described. The legal consequences remain for discussion.

The facts we have recited are either admitted or else proved by clear and undisputed evidence and indubitable inferences therefrom. The proceedings of the international and sub-district conventions were shown by the introduction of official verbatim reports, properly authenticated. It is objected that these proceedings, especially in so far as they include the declarations and conduct of others than the answering defendants, are not admissible because the existence of a criminal or unlawful conspiracy is not made to appear by evidence *aliunde*. The objection is untenable. In order that the declarations and conduct of third parties may be admissible in such a case, it is necessary to show by independent evidence that there was a combination between them and defendants, but it is not necessary to show by independent evidence that the combination was criminal or otherwise unlawful. The element of illegality may be shown by the declarations themselves. The rule of evidence is commonly applied in criminal cases, but is of general operation; indeed, it originated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them. *Pleasants* v. *Fant*, 22 Wall. 116, 119; *Connecticut Mutual Life Ins. Co.* v. *Hillmon*, 188 U. S. 208, 218; Story Part., §§ 107, 108; 1 Greenleaf Ev., §§ 112, 113 (184 b, c); 2 Starkie Ev. (2d ed.) 25, 26; *King* v. *Hardwick*, 11 East, 578, 585, 589; *Sandilands* v. *Marsh*, 2 Barn. & Ald. 673, 679; *Wood* v. *Braddick*, 1 Taunt. 104, 105; *Van Reimsdyk* v. *Kane* (Story, J.), 1 Gall. 630, 635; 28 Fed. Cas. 1067, 1069; *Aldrich* v. *Warren*, 16 Maine, 465,

468; *Pierce* v. *Wood*, 23 N. H. 519, 531; *Page* v. *Parker*, 40 N. H. 47, 62; *State* v. *Thibeau*, 30 Vermont, 100, 105; *Jenne* v. *Joslyn*, 41 Vermont, 478, 484; *Locke* v. *Stearns*, 1 Metc. 560, 563; *Lowe* v. *Dalrymple*, 117 Pa. St. 564, 568; *Main* v. *Aukam*, 4 App. D. C. 51, 56.

Upon a kindred principle, the declarations and conduct of an agent, within the scope and in the course of his agency, are admissible as original evidence against the principal, just as his own declarations or conduct would be admissible. *Barreda* v. *Silsbee*, 21 How. 146, 164, 165; *Vicksburg & Meridian Railroad* v. *O'Brien*, 119 U. S. 99, 104; *LaAbra Silver Mining Co.* v. *United States*, 175 U. S. 423, 498. And since the evidence of Hughes' agency is clear and undisputed—that as the representative of a voluntary association of which the answering defendants were active members, and in the execution of a purpose to which they all had given consent, and in which some of them were actively coöperating, he was engaged in an effort to organize the coal mines of the Panhandle District—it is equally clear that his declarations and conduct while so doing are evidential against the defendants.

What are the legal consequences of the facts that have been detailed?

That the plaintiff was acting within its lawful rights in employing its men only upon terms of continuing non-membership in the United Mine Workers of America is not open to question. Plaintiff's repeated costly experiences of strikes and other interferences while attempting to "run union" were a sufficient explanation of its resolve to run "non-union," if any were needed. But neither explanation nor justification is needed. Whatever may be the advantages of "collective bargaining," it is not bargaining at all, in any just sense, unless it is voluntary on both sides. The same liberty which enables men to form unions, and through the union to enter into agree-

ments with employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. In the latter case, as in the former, the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power. *Adair* v. *United States*, 208 U. S. 161, 174; *Coppage* v. *Kansas*, 236 U. S. 1, 14. In the present case, needless to say, there is no act of legislation to which defendants may resort for justification.

Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employees, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was "at will," and terminable by either party at any time, is of no consequence. In *Truax* v. *Raich*, 239 U. S. 33, 38, this court ruled upon the precise question as follows: "It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employé has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight

of authority, the unjustified interference of third persons is actionable although the employment is at will." (Citing many cases.)

In short, plaintiff was and is entitled to the good will of its employees, precisely as a merchant is entitled to the good will of his customers although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employees, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See *Brennan* v. *United Hatters*, (cited with approval in *Truax* v. *Raich*, *supra*,) 73 N. J. L. 729, 749; *Brown* v. *Honiss*, 74 N. J. L. 501, 514 *et seq.*; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq. 759, 767; *Walker* v. *Cronin*, 107 Massachusetts, 555, 565–566; *Moran* v. *Dunphy*, 177 Massachusetts, 485, and cases there cited; *L. D. Wilcutt & Sons Co.* v. *Driscoll*, 200 Massachusetts, 110, 117, etc.

The right of action for persuading an employee to leave his employer is universally recognized—nowhere more clearly than in West Virginia—and it rests upon fundamental principles of general application, not upon the English statute of laborers. *Thacker Coal Co.* v. *Burke*, 59 W. Va. 253, 255; 8 Ann. Cas. 885, 886; *Walker* v. *Cronin*, 107 Massachusetts, 555, 567; *Angle* v. *Chicago, St. Paul &c. Ry. Co.*, 151 U. S. 1, 13; *Noice Adm'x.* v. *Brown*, 39 N. J. L. 569, 572.

We turn to the matters set up by way of justification or excuse for defendants' interference with the situation existing at plaintiff's mine.

The case involves no question of the rights of employees.

Defendants have no agency for plaintiff's employees, nor do they assert any disagreement or grievance in their behalf. In fact, there is none; but, if there were, defendants could not, without agency, set up any rights that employees might have. The right of the latter to strike would not give to defendants the right to instigate a strike. The difference is fundamental.

It is suggested as a ground of criticism that plaintiff endeavored to secure a closed non-union mine through individual agreements with its employees, as if this furnished some sort of excuse for the employment of coercive measures to secure a closed union shop through a collective agreement with the Union. It is a sufficient answer, in law, to repeat that plaintiff had a legal and constitutional right to exclude union men from its employ. But it may be worth while to say, in addition: first, that there was no middle ground open to plaintiff; no option to have an "open shop" employing union men and non-union men indifferently; it was the Union that insisted upon closed-shop agreements, requiring even carpenters employed about a mine to be members of the Union, and making the employment of any non-union man a ground for a strike; and secondly, plaintiff was in the reasonable exercise of its rights in excluding all union men from its employ, having learned, from a previous experience, that unless this were done union organizers might gain access to its mine in the guise of laborers.

Defendants set up, by way of justification or excuse, the right of workingmen to form unions, and to enlarge their membership by inviting other workingmen to join. The right is freely conceded, provided the objects of the union be proper and legitimate, which we assume to be true, in a general sense, with respect to the Union here in question. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 439. The cardinal error of defendants' position lies

in the assumption that the right is so absolute that it may be exercised under any circumstances and without any qualification; whereas in truth, like other rights that exist in civilized society, it must always be exercised with reasonable regard for the conflicting rights of others. *Brennan* v. *United Hatters*, 73 N. J. L. 729, 749. The familiar maxim, *Sic utere tuo ut alienum non lædas*—literally translated, "So use your own property as not to injure that of another person," but by more proper interpretation, "so as not to injure *the rights* of another," (Broom's Leg. Max., 8th ed., 289)—applies to conflicting rights of every description. For example, where two or more persons are entitled to use the same road or passage, each one in using it is under a duty to exercise care not to interfere with its use by the others, or to damage them while they are using it. And a most familiar application is the action for enticing an employee, in which it never was a justification that defendant wished to retain for himself the services of the employee. 1 Black. Com. 429; 3 *Id.* 142.

Now, assuming defendants were exercising, through Hughes, the right to invite men to join their Union, still they had plain notice that plaintiff's mine was run "non-union," that none of the men had a right to remain at work there after joining the Union, and that the observance of this agreement was of great importance and value both to plaintiff and to its men who had voluntarily made the agreement and desired to continue working under it. Yet defendants, far from exercising any care to refrain from unnecessarily injuring plaintiff, deliberately and advisedly selected that method of enlarging their membership which would inflict the greatest injury upon plaintiff and its loyal employees. Every Hitchman miner who joined Hughes' "secret order" and permitted his name to be entered upon Hughes' list was guilty of a breach of his contract of employment and

acted a lie whenever thereafter he entered plaintiff's mine to work. Hughes not only connived at this, but must be deemed to have caused and procured it, for it was the main feature of defendants' plan, the *sine qua non* of their programme. Evidently it was deemed to be necessary, in order to "organize the Panhandle by a strike movement," that at the Hitchman, for example, man after man should be persuaded to join the Union, and having done so to remain at work, keeping the employer in ignorance of their number and identity, until so many had joined that by stopping work in a body they could coerce the employer and the remaining miners to "organize the mine," that is, to make an agreement that none but members of the Union should be employed, that terms of employment should be determined by negotiation not with the employees but with union officers—perhaps residents of other States and employees of competing mines—and that all questions in controversy between the mine operator and the miners should likewise be settled with outsiders.

True, it is suggested that under the existing contract an employee was not called upon to leave plaintiff's employ until he actually joined the Union, and that the evidence shows only an attempt by Hughes to induce the men to *agree* to join, but no attempt to induce them to violate their contract by failing to withdraw from plaintiff's employment after *actually joining*. But in a court of equity, which looks to the substance and essence of things and disregards matters of form and technical nicety, it is sufficient to say that to induce men to *agree* to join is but a mode of inducing them to join, and that when defendants "had sixty men who had signed up or agreed to join the organization at Hitchman," and were "going to shut the mine down as soon as they got a few more men," the sixty were for practical purposes, and therefore in the sight of equity, already members of the

Union, and it needed no formal ritual or taking of an oath to constitute them such; their uniting with the Union in the plan to subvert the system of employment at the Hitchman mine, to which they had voluntarily agreed and upon which their employer and their fellow employees were relying, was sufficient.

But the facts render it plain that what the defendants were endeavoring to do at the Hitchman mine and neighboring mines cannot be treated as a *bona fide* effort to enlarge the membership of the Union. There is no evidence to show, nor can it be inferred, that defendants intended or desired to have the men at these mines join the Union, *unless they could organize the mines.* Without this, the new members would be added to the number of men competing for jobs in the organized districts, while non-union men would take their places in the Panhandle mines. Except as a means to the end of compelling the owners of these mines to change their method of operation, the defendants were not seeking to enlarge the union membership.

In any aspect of the matter, it cannot be said that defendants were pursuing their object by *lawful* means. The question of their intentions—of their *bona fides*—cannot be ignored. It enters into the question of malice. As Bowen, L. J., justly said, in the *Mogul Steamship Case*, 23 Q. B. Div. 613, "Intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other person's property or trade, is actionable if done without just cause or excuse." And the intentional infliction of such damage upon another, without justification or excuse, is malicious in law. *Bitterman* v. *Louisville & Nashville R. R. Co.*, 207 U. S. 205, 223; *Brennan* v. *United Hatters*, 73 N. J. L. 729, 744 *et seq.*, and cases cited. Of course, in a court of equity, when passing upon the right of injunction, damage threatened, irremediable by action at law, is equivalent to damage done. And we cannot deem

the proffered excuse to be a "*just* cause or excuse," where it is based, as in this case, upon an assertion of conflicting rights that are sought to be attained by unfair methods, and for the very purpose of interfering with plaintiff's rights, of which defendants have full notice.

Another fundamental error in defendants' position consists in the assumption that all measures that may be resorted to are lawful if they are "peaceable"—that is, if they stop short of physical violence, or coercion through fear of it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation. *Flaccus* v. *Smith*, 199 Pa. St. 128; 54 L. R. A. 640; *South Wales Miners' Federation* v. *Glamorgan Coal Co.*, [1905] A. C. 239, 244, 250, 253; *Jonas Glass Co.* v. *Glass Bottle Blowers Association*, 77 N. J. Eq. 219, 223.

The present is not a case of merely withholding from an employer an economic need—as a supply of labor—until he assents to be governed by union regulations. Defendants have no supply of labor of which plaintiff stands in need. By the statement of defendant Lewis himself, made in his formal report to the Indianapolis convention of 1907, out of more than 370,000 coal miners in the States of Pennsylvania, Maryland, Virginia, and West Virginia, less than 80,000 (about 22 per cent.) were members of the Union. Considering the Panhandle separately, doubtless the proportion was even smaller, and the supply of non-union labor ample. There is no reason to doubt that if defendants had been actuated by a genuine desire to increase the membership of the Union without unnecessary injury to the known rights of plaintiff, they would have permitted their proselytes to withdraw from plaintiff's employ when and as they became

affiliated with the Union—as their contract of employment required them to do—and that in this event plaintiff would have been able to secure an adequate supply of non-union men to take their places. It was with knowledge of this, and because of it, that defendants, through Hughes as their agent, caused the new members to remain at work in plaintiff's mine until a sufficient number of men should be persuaded to join so as to bring about a strike and render it difficult if not practically impossible for plaintiff to continue to exercise its undoubted legal and constitutional right to run its mine "non-union."

It was one thing for plaintiff to find, from time to time, comparatively small numbers of men to take vacant places in a going mine, another and a much more difficult thing to find a complete gang of new men to start up a mine shut down by a strike, when there might be a reasonable apprehension of violence at the hands of the strikers and their sympathizers. The disordered condition of a mining town in time of strike is matter of common knowledge. It was this kind of intimidation, as well as that resulting from the large organized membership of the Union, that defendants sought to exert upon plaintiff, and it renders pertinent what was said by this court in the *Gompers Case* (221 U. S. 418, 439), immediately following the recognition of the right to form labor unions: "But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many as well as the many against the one."

Defendants' acts cannot be justified by any analogy to competition in trade. They are not competitors of plaintiff; and if they were their conduct exceeds the bounds of fair trade. Certainly, if a competing trader should endeavor to draw custom from his rival, not by offering better or cheaper goods, employing more competent salesmen, or displaying more attractive advertisements, but by persuading the rival's clerks to desert him under circumstances rendering it difficult or embarrassing for him to fill their places, any court of equity would grant an injunction to restrain this as unfair competition.

Upon all the facts, we are constrained to hold that the purpose entertained by defendants to bring about a strike at plaintiff's mine in order to compel plaintiff, through fear of financial loss, to consent to the unionization of the mine as the lesser evil, was an unlawful purpose, and that the methods resorted to by Hughes—the inducing of employees to unite with the Union in an effort to subvert the system of employment at the mine by concerted breaches of the contracts of employment known to be in force there, not to mention misrepresentation, deceptive statements, and threats of pecuniary loss communicated by Hughes to the men—were unlawful and malicious methods, and not to be justified as a fair exercise of the right to increase the membership of the Union.

There can be no question that plaintiff was threatened with danger of an immediate strike as a result of the activities of Hughes. The effect of his arguments and representations is not to be judged from the testimony of those witnesses who rejected his overtures. Naturally, it was not easy for plaintiff to find men who would testify that they had agreed with Hughes to break their contract with plaintiff. One such did testify. But the true measure of the extent of his operations and the probability of his carrying them to success are indicated by his

declaration to Myers that he had about enough names at the Hitchman to "crack off," by the statement to McKinley that twenty-four men at the Glendale mine had joined the organization, and sixty at the Hitchman, and by the fact that they actually succeeded in shutting down the Richland about the middle of October. The declaration made concerning the Glendale is corroborated by the evidence of what happened at that mine.

That the damage resulting from a strike would be irremediable at law is too plain for discussion.

Therefore, upon the undisputed facts of the case, and the indubitable inferences from them, plaintiff is entitled to relief by injunction. Having become convinced by three costly strikes, occurring within a period of as many years, of the futility of attempting to operate under a closed-shop agreement with the Union, it established the mine on a non-union basis, with the unanimous approval of its employees—in fact upon their suggestion—and under a mutual agreement, assented to by every employee, that plaintiff would continue to run its mine non-union and would not recognize the United Mine Workers of America; that if any man wanted to become a member of that Union he was at liberty to do so, but he could not be a member and remain in plaintiff's employ. Under that agreement plaintiff ran its mine for a year and more, and, so far as appears, without the slighest disagreement between it and its men, and without any grievance on their part. Thereupon defendants, having full notice of the working agreement between plaintiff and its men, and acting without any agency for those men, but as representatives of an organization of mine workers in other States, and in order to subject plaintiff to such participation by the Union in the management of the mine as necessarily results from the making of a closed-shop agreement, sent their agent to the mine, who, with full notice of, and for the very purpose of subverting,

the status arising from plaintiff's working agreement and subjecting the mine to the Union control, proceeded, without physical violence, indeed, but by persuasion accompanied with threats of a reduction of wages and deceptive statements as to the attitude of the mine management, to induce plaintiff's employees to join the Union and at the same time to break their agreement with plaintiff by remaining in its employ after joining; and this for the purpose not of enlarging the membership of the Union, but of coercing plaintiff, through a strike or the threat of one, into recognition of the Union.

As against the answering defendants, plaintiff's right to an injunction is clear; as to the others named as defendants, but not served with process, the decree is erroneous, as already stated.

Respecting the sweep of the injunction, we differ somewhat from the result reached by the District Court.

So far as it restrains—(1) Interfering or attempting to interfere with plaintiff's employees for the purpose of unionizing plaintiff's mine without its consent, by representing or causing to be represented to any of plaintiff's employees, or to any person who might become an employee of plaintiff, that such person will suffer or is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, by reason of plaintiff not recognizing the Union, or because plaintiff runs a non-union mine; (2) Interfering or attempting to interfere with plaintiff's employees for the purpose of unionizing the mine without plaintiff's consent, and in aid of such purpose knowingly and wilfully bringing about the breaking by plaintiff's employees of contracts of service known at the time to exist with plaintiff's present and future employees; (3) Knowingly and wilfully enticing plaintiff's employees, present or future, to leave plaintiff's service on the ground that plaintiff does not recognize the United Mine Workers of America or runs a non-union mine,

etc.; (4) Interfering or attempting to interfere with plaintiff's employees so as knowingly and wilfully to bring about the breaking by plaintiff's employees, present and future, of their contracts of service, known to the defendants to exist, and especially from knowingly and wilfully enticing such employees, present or future, to leave plaintiff's service without plaintiff's consent; (5) Trespassing on or entering upon the grounds and premises of plaintiff or its mine for the purpose of interfering therewith or hindering or obstructing its business, or with the purpose of compelling or inducing, by threats, intimidation, violent or abusive language, or persuasion, any of plaintiff's employees to refuse or fail to perform their duties as such; and (6) Compelling or inducing or attempting to compel or induce, by threats, intimidation, or abusive or violent language, any of plaintiff's employees to leave its service or fail or refuse to perform their duties as such employees, or compelling or attempting to compel by like means any person desiring to seek employment in plaintiff's mine and works from so accepting employment therein;—the decree is fully supported by the proofs. But it goes further, and awards an injunction against picketing and against acts of physical violence, and we find no evidence that either of these forms of interference was threatened. The decree should be modified by eliminating picketing and physical violence from the sweep of the injunction, but without prejudice to plaintiff's right to obtain an injunction hereafter against these forms of interference if proof shall be produced, either in proceedings supplemental to this action or in an independent action, that such an injunction is needed.

The decree of the Circuit Court of Appeals is reversed, and the decree of the District Court is modified as above stated, and as so modified it is affirmed, and the cause is remanded to the District Court for further proceedings in conformity with this opinion.

MR. JUSTICE BRANDEIS, dissenting.

This suit was begun October 24, 1907. The Hitchman Coal & Coke Company, plaintiff below, is the owner of a coal mine in West Virginia. John Mitchell and nine others, defendants below, were then the chief executive officers of the United Mine Workers of America and of its district and sub-district organizations having "jurisdiction" over the territory in which plaintiff's mine is situated; and were sued both individually and as such officers. The mine had been "unionized" about three years prior to April 16th, 1906; and until about that date was operated as a "union" mine, under a collective agreement with a local union of the United Mine Workers of America. Then a strike was declared by the union; and a short shut-down followed. While the strike so declared was still in force, as the bill alleges, the company re-opened the mine as a closed non-union mine. Thereafter persons applying for work were required as a condition of obtaining employment to agree that they would not, while in the service of the company, be a member of the union, and if they joined the union would withdraw from the company's employ.[1]

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[1] About two months *after* the restraining order was issued in this case the plaintiff company began the practice of requiring applicants for work to sign employment cards, in the following terms:

"I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any efforts amongst its employees to bring about the union-

Alleging that efforts were being made illegally to unionize its mine "without its consent," the company brought in the United States Circuit (now District) Court for the Northern District of West Virginia this suit to enjoin such efforts. District Judge Dayton granted a restraining order upon the filing of the bill. An order was entered May 26, 1908, continuing it as a temporary injunction. A motion to modify the same was denied, September 21, 1909. 172 Fed. Rep. 963. An appeal from this order was dismissed by the Circuit Court of Appeals, March 11, 1910. 176 Fed. Rep. 549. The case was then heard on the merits; defendants having denied in their answer all the charges of unlawful conduct set forth in the bill; and on January 18, 1913, a decree was entered for a perpetual injunction substantially in the form of the restraining order. 202 Fed. Rep. 512. This decree was reversed by the Circuit Court of Appeals on June 1, 1914 (214 Fed. Rep. 685); but a stay was granted pending an application to this court for a writ of certiorari. The company appealed to this court and also applied for a writ of certiorari. The appeal was dismissed, as the jurisdiction of

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izing of that mine against the company's wish. I have either read the above or heard the same read."

Prior to that time, the agreement rested in oral understanding merely, and is sufficiently indicated in the following excerpts from the testimony of the mine superintendent as to what he told the men applying for employment:

"I also told them that any man who wanted to become a member of the United Mine Workers—that that was his business—but he could not be a member of the United Mine Workers and be affiliated with the United Mine Workers and be under the employ of the Hitchman Coal & Coke Company, or be under the jurisdiction of the United Mine Workers; that the mine was run non-union so far as the United Mine Workers of America were concerned.

"Q. You mean you made every man understand that while he worked for the Hitchman Company he must keep out of the union?

"A. Yes, sir; or at least they said they understood it."

the Circuit (District) Court was rested wholly upon diversity of citizenship, plaintiff being a corporation organized under the laws of West Virginia and all the defendants citizens and residents of other States. 241 U. S. 644. A writ of certiorari was granted, however, March 13, 1916. The case was argued at that term and a reargument was ordered.

The District Court held that the United Mine Workers of America with its subordinate branches constitutes an unlawful organization—illegal both under the law of West Virginia and under the Federal Anti-Trust Act; that its long continued effort to unionize the mines of West Virginia had not been "in the interest either of the betterment of mine labor in the State or of upholding that free commerce in coal between the States guaranteed by Federal law," but to restrain if not destroy it for the benefit of "rival operators and producers in Ohio, Western Pennsylvania, Illinois, and Indiana, competitive fields" in which the mines had been unionized; and that "in pursuit of its unlawful purposes" the union "have sought and still seek to compel the plaintiff . . . to submit to contractual relations with it as an organization relating to the employment of labor and production contrary to the will and wish of said company; that its officers, in pursuance of such unlawful effort to monopolize labor and restrain trade, and with knowledge of the express contracts existing between this plaintiff and its employees, have unlawfully sought to cause the breach of the said contracts on the part of its said employees."

The decree, besides the usual injunction against threat, intimidation, force or violence, and against inducing breaches of employees' contracts or trespassing upon plaintiff's property, enjoined defendants (and others hereinafter described), among other things, from—

1. "Representing ["for the purpose of unionizing plaintiff's mine without plaintiff's consent"] . . . to

any of plaintiff's employees, or to any person who might become an employee of plaintiff, that such person . . . is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, . . . representing . . . to such employee . . . that such loss or trouble . . . may come by reason of plaintiff not recognizing the United Mine Workers of America, or because plaintiff runs a non-union mine."

2. " . . . knowingly and wilfully enticing ["for the purpose of unionizing plaintiff's mine without plaintiff's consent"] plaintiff's employees, present or future, . . . to leave plaintiff's service, giving or assigning . . . as a reason for . . . leaving of plaintiff's service, that plaintiff does not recognize the United Mine Workers of America, or that plaintiff runs a non-union mine."

3. " . . . knowingly and wilfully enticing plaintiff's employees, present or future, . . . to leave plaintiff's service, without plaintiff's consent, against plaintiff's will, and to plaintiff's injury."

4. " . . . establishing a picket . . . for the purpose of inducing . . . by . . . persuasion . . . any person . . . coming to plaintiff's mine to accept employment . . . to refuse . . . to accept service with plaintiff."

5. " . . . interfering in any manner whatsoever, either by . . . persuasion or entreaty with any person in the employ of plaintiff who has contracted with and is in the actual service of plaintiff to . . . induce him to quit the service of plaintiff . . . or assisting, or abetting in any manner" his doing so.

Three of the defendants—Mitchell, Wilson and Hughes—were never served with process and did not enter any appearance except to object to the jurisdiction of the court over them. Of the remaining seven all but two had, prior to the entry of the final decree, ceased to hold

any office either in the United Mine Workers of America or in any of the district or sub-district organizations. Nevertheless the decree directed that the injunction issue against each of the ten original defendants, "individually"; and also in their official capacities against their successors in office (who were named in the decree) although these had not been served with process or been named in the bill; the court declaring such persons to be "before the court by representation through service having been made upon their said predecessors in office, sued as such officers and as members of the United Mine Workers of America." The decree extended the injunction, among others, also to "all persons now members of said United Mine Workers of America, and all persons who though not now members do become members of said United Mine Workers of America."

The Circuit Court of Appeals, reversing the decree of the District Court, held that the United Mine Workers of America was not an unlawful organization under the laws of West Virginia, that its validity under the Federal Anti-Trust Act could not be considered in this proceeding; that so long as defendants "refrained from resorting to unlawful measures to effectuate" their purpose "they could not be said to be engaged in a conspiracy to unionize plaintiff's mine"; that "the evidence fails to show that any unlawful methods were resorted to by these defendants in this instance"; and specifically that there was nothing in the individual contracts which barred defendants from inducing the employees to join the union. With these conclusions I agree substantially.

First: The alleged illegality of the United Mine Workers of America under the law of West Virginia.

The United Mine Workers of America does not appear to differ essentially in character and purpose from other international unions which, like it, are affiliated with the American Federation of Labor. Its membership is said

to be larger than that of any other; and it may be more powerful. But the common law does not limit the size of unions or the degree to which individual workmen may by union increase their bargaining power. As stated in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 439: "The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association." We do not find either in the decisions or the statutes of West Virginia anything inconsistent with the law as declared by this court. The union is not an unlawful organization, and is not in itself an unlawful conspiracy. We have no occasion to consider the legality of the specific provisions contained in its constitution or by-laws.

Second: The alleged illegality of the United Mine Workers of America under the Federal Anti-Trust Act.

The District Judge undertook to pass upon the legality of the United Mine Workers of America under the Federal Anti-Trust Act; but the question was not in issue in the case. It had not been raised in the bill or by answer. Evidence bearing upon the issue was properly objected to by defendants and should have been excluded.

Third: The alleged conspiracy against the West Virginia Mines.

It was doubtless the desire of the United Mine Workers to unionize every mine on the American continent and especially those in West Virginia which compete directly with the mines of Western Pennsylvania, Ohio, Indiana, and other States already unionized. That desire and the purpose to effect it were not unlawful. They were part of a reasonable effort to improve the condition of workingmen engaged in the industry by strengthening their bargaining power through unions; and extending the field of union power. No conspiracy to shut down or otherwise injure West Virginia was proved, nor was there

any averment in the bill of such conspiracy, or any issue otherwise raised by the pleadings which justified the consideration of that question by the District Court.[1]

Fourth: "Unionizing plaintiff's mine without plaintiff's consent."

The fundamental prohibition of the injunction is against acts done "for the purpose of unionizing plaintiff's mine without plaintiff's consent." Unionizing a shop does not mean inducing the employees to become members of the union.[2] It means inducing the employer

[1] This alleged conspiracy not being in issue, the District Court improperly allowed the introduction of, and considered, a mass of documents referring to various mine workers' conventions, and joint conventions of miners and operators held years previous to the filing of the bill. Judge Dayton laid great stress on reported declarations of the delegates to these conventions, although the declarations of alleged co-conspirators were obviously inadmissible, there being no foundation for the conspiracy charge.

[2] A witness for the defendants testified as follows:

"There is a difference between unionizing a mine and unionizing the employees in a mine; unionizing the employees is having the men join the organization; unionizing a mine is creating joint relations between the employers and employees; a mine cannot be unionized unless the employer enters into contractual relations with the union; it is not the policy or purpose of the United Mine Workers as an organization to coerce a man into doing a thing against his will; this distinction between unionizing a mine and unionizing the employees of a mine has existed since the organization came about, and this method of unionizing a mine existed in 1906 and 1907."

A witness for the plaintiff testified that "the term 'union,' when applied to mining, means the United Mine Workers, and a union mine is a mine that is under their jurisdiction and so recognized . . ." The contrary is "non-union or open shop." And further, "The men might be unionized at a mine and the mine owners not recognize the union. That would in effect be an open shop. When I said 'unionize the employees' I meant practically all of the employees; but a union mine, as I understand it, is one wherein the closed shop is practically enforced." In such case, the witness explained, the operator would be practically in contract relation with the organization.

It was also testified: "The difference between organizing the men at

to enter into a collective agreement with the union governing the relations of the employer to the employees. Unionizing implies, therefore, at least *formal* consent of the employer. Both plaintiff and defendants insisted upon exercising the right to secure contracts for a closed shop. The plaintiff sought to secure the *closed non-union shop* through individual agreements with employees. The defendants sought to secure the *closed union shop* through a collective agreement with the union. Since collective bargaining is legal, the fact that the workingmen's agreement is made not by individuals directly with the employer, but by the employees with the union and by it, on their behalf, with the employer, is of no significance in this connection. The end being *lawful*, defendant's efforts to unionize the mine can be illegal, only if the methods or means pursued were unlawful; unless indeed there is some special significance in the expression "unionizing without plaintiff's consent."

It is urged that a union agreement curtails the liberty of the operator. Every agreement curtails the liberty of those who enter into it. The test of legality is not whether an agreement curtails liberty, but whether the parties have agreed upon some thing which the law prohibits or declares otherwise to be inconsistent with the public welfare. The operator by the union agreement

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the mine and organizing the mine is that when the miners are organized the work of organizing the mine is only just started. They next proceed to meet with the operator who owns the mine, or operates it, for the purpose of making contracts or agreements. Under the constitution and methods of the United Mine Workers a mine cannot be organized without the consent of the owner, and it is not the object or purpose of the United Mine Workers to do so, and never has been; it has never been attempted as far as witness knows. After a mine has been organized, the agreement between the employer and the organization is paramount. The constitution of the organization has nothing to do with the workings afterwards; that agreement does not take away from the operator the control of his men."

binds himself: (1) to employ only members of the union; (2) to negotiate with union officers instead of with employees individually the scale of wages and the hours of work; (3) to treat with the duly constituted representatives of the union to settle disputes concerning the discharge of men and other controversies arising out of the employment. These are the chief features of a "unionizing" by which the employer's liberty is curtailed. Each of them is legal. To obtain any of them or all of them men may lawfully strive and even strike. And, if the union may legally strike to obtain each of the things for which the agreement provides, why may it not strike or use equivalent economic pressure to secure an agreement to provide them?

It is also urged that defendants are seeking to "coerce" plaintiff to "unionize" its mine. But coercion, in a legal sense, is not exerted when a union merely endeavors to induce employees to join a union with the intention thereafter to order a strike unless the employer consents to unionize his shop. Such pressure is not coercion in a legal sense. The employer is free either to accept the agreement or the disadvantage. Indeed, the plaintiff's whole case is rested upon agreements secured under similar pressure of economic necessity or disadvantage. If it is coercion to threaten to strike unless plaintiff consents to a closed union shop, it is coercion also to threaten not to give one employment unless the applicant will consent to a closed non-union shop. The employer may sign the union agreement for fear that *labor* may not be otherwise obtainable; the workman may sign the individual agreement for fear that *employment* may not be otherwise obtainable. But such fear does not imply coercion in a legal sense.

In other words an employer, in order to effectuate the closing of his shop to *union* labor, may exact an agreement to that effect from his employees. The agreement

itself being a lawful one, the employer may withhold from the men an economic need—employment—until they assent to make it. Likewise an agreement closing a shop to *non-union* labor being lawful, the union may withhold from an employer an economic need—labor—until he assents to make it. In a legal sense an agreement entered into, under such circumstances, is voluntarily entered into; and as the agreement is in itself legal, no reason appears why the general rule that a legal end may be pursued by legal means should not be applied. Or, putting it in other words, there is nothing in the character of the agreement which should make *unlawful* means used to attain it, which in other connections are recognized as *lawful*.

Fifth: There was no attempt to induce employees to violate their contracts.

The contract created an employment at will; and the employee was free to leave at any time. The contract did not bind the employee *not* to join the union; and he was free to join it at any time. The contract merely bound him to withdraw from plaintiff's employ, if he joined the union. There is evidence of an attempt to induce plaintiff's employees to *agree* to join the union; but none whatever of any attempt to induce them to violate their contract. Until an employee actually joined the union he was not, under the contract, called upon to leave plaintiff's employ. There consequently would be no breach of contract until the employee both joined the union *and* failed to withdraw from plaintiff's employ. There was no evidence that any employee was persuaded to do that or that such a course was contemplated. What perhaps was intended was to secure agreements or assurances from individual employees that they would join the union when a large number of them should have consented to do so; with the purpose, when such time arrived, to have them join the union

together and strike—unless plaintiff consented to unionize the mine. Such a course would have been clearly permissible under the contract.

Sixth: Merely persuading employees to leave plaintiff's employ or others not to enter it was not unlawful.

To induce third persons to leave an employment is actionable if done maliciously and without justifiable cause although such persons are free to leave at their own will. *Truax* v. *Raich*, 239 U. S. 33, 38; *Thacker Coal Co.* v. *Burke*, 59 W. Va. 253. It is equally actionable so to induce others not to enter the service. The individual contracts of plaintiff with its employees added nothing to its right in this connection, since the employment was terminable at will.

As persuasion, considered merely as a means, is clearly legal, defendants were within their rights if, and only if, their interference with the relation of plaintiff to its employees was for justifiable cause. The purpose of interfering was confessedly in order to strengthen the union, in the belief that thereby the condition of workmen engaged in mining would be improved; the bargaining power of the individual workingman was to be strengthened by collective bargaining; and collective bargaining was to be ensured by obtaining the union agreement. It should not, at this day, be doubted that to induce workingmen to leave or not to enter an employment in order to advance such a purpose is justifiable when the workmen are not bound by contract to remain in such employment.

Seventh: There was no "threat, violence or intimidation."

The decree enjoined "threats, violence or intimidation." Such action would, of course, be unlawful though employed in a justifiable cause. But there is no evidence that any of the defendants have resorted to such means. The propaganda among plaintiff's employees was conducted almost entirely by one man, the defendant Hughes, a District No. 6 organizer. His actions were orderly and

peaceable, consisting of informal talks with the men, and a few quietly conducted public meetings,[1] in which he argued the benefits of organization and pointed out to the men that, although the company was then paying them according to the union scale, there would be nothing to prevent a later reduction of wages unless the men united. He also urged upon the men that if they lost their present jobs, membership in the union was requisite to obtaining employment in the union mines of the neighboring States. But there is no suggestion that he exceeded the moderate bounds of peaceful persuasion, and indeed, if plaintiff's witnesses are to be believed, men with whom Hughes had talked, his argument made no impression on them, and they expressed to him their satisfaction with existing conditions at the mine.

When this suit was filed no right of the plaintiff had been infringed and there was no reasonable ground to believe that any of its rights would be interfered with; and, in my opinion, the Circuit Court of Appeals properly reversed the decree of the District Court, and directed that the bill be dismissed.

MR. JUSTICE HOLMES and MR. JUSTICE CLARKE concur in this dissent.

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[1] Following is a notice of one of Hughes' meetings which was torn from a telegraph pole in the street by the plaintiff's mine superintendent:

"Notice to the miners of the Hitchman mine. There will be a mass meeting Friday evening at 6.30 P. M. at Nick Heil's Base Ball Grounds, for the purpose of discussing the principals of organization. President William Green will be present. All miners are cordially invited to attend."